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PUBLIC FINANCIAL MANAGEMENT (PROCUREMENT) REGULATIONS 2021

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PUBLIC FINANCIAL MANAGEMENT (PROCUREMENT) REGULATIONS 2021

I, Hon. Manasseh Damukana Sogavare, Minister for Finance and Treasury, under section 82(a) of *Public Financial Management Act 2013,* in consultation with the Permanent Secretary of the Ministry of Finance and Treasury and the Accountant General, make the following Regulations:

PART 1 PRELIMINARY MATTERS

1 Citation

These Regulations may be cited as the *Public Financial Management (Procurement) Regulations 2021*.

2 Commencement

These Regulations commence on the day on which they are published in the *Gazette*.

3 Purpose and application

(1) The purpose of these Regulations is to:

(a) specify the procedures for Government procurement activities; and

(b) provide for a fair and transparent tendering process in Government procurement; and

(c) provide a framework for monitoring procurement compliance, and for taking other initiatives relating to procurement performance.

PART 2 INTERPRETATION

Division 1 General interpretation

4 Definitions

In these Regulations, unless the context otherwise requires:

"***bid waiver"*** means waiving competitive tendering and simple procurement procedures and procuring goods or services in another way that is appropriate in the circumstances;

"***Central Tender Board***" means the Central Tender Board referred to in regulation 18;

"competitive tendering" means a procurement process that:

(a) involves publicly inviting tenders; and

(b) is open to all tenderers who satisfy specified eligibility criteria;

"***conflict of interest***" includes any matter that may lead to action that is not in the best interest of the relevant organisation and that has the potential to involve some personal gain;

"***consulting services***" include the following:

(a) policy advice;

(b) policy studies and development;

(c) project feasibility studies;

(d) topographic, bathymetric ad infrastructure condition surveys;

(e) environmental assessments;

(f) population census, socio-economic surveys and household surveys;

(g) engineering design;

(h) system design;

(i) project or program design;

(j) project preparation;

(k) project or program implementation management;

(l) monitoring and evaluation;

(m) design of buildings, roads, wharves, bridges or any other infrastructure in whole or in part;

(n) software development and installation;

(o) construction supervision;

(p) technical support;

(q) accounting services;

(r) audit services;

(s) legal services

(t) design or delivery of training programs;

(u) other professional, technical or management services;

"***corrupt practice***" includes:

(a) offering or giving (directly or indirectly) anything of value in order to influence improperly the actions of another person; and

(b) requesting or accepting (directly or indirectly) anything of value in order to influence improperly the actions of another person;

(c) influencing or attempting to influence a public official to depart from compliance with the Act or these Regulations, or Government practice or procedure, with a view to securing a benefit for a person;

"***day"*** means a calendar day;

"***defects liability period"*** means the period during which a contractor continues to be liable for defects in workmanship;

"***FIDIC***" means the Federation Internationale Des Ingenieurs-Conseils (the International Federation of Consulting Engineers);

"***function***" includes power and responsibility;

"goods" include:

(a) drugs and medical supplies;

(b) textbooks, teaching and learning materials;

(c) other instructional materials;

(d) office supplies and consumables;

(e) food and catering supplies and equipment;

(f) furniture and fixtures;

(g) computers, including software;

(h) printers;

(i) photocopying machines;

(j) communications equipment;

(k) printing and reproduction goods;

(l) other office equipment;

(m) audio-visual equipment;

(n) medical equipment;

(o) surveying equipment;

(p) workshop tools and equipment;

(q) testing equipment;

(r) laboratory equipment;

(s) power generating sets;

(t) air conditioners;

(u) other equipment used in the day-to-day operations of a Ministry;

"***international company***" means a company which is registered under the company law of another country or territory;

"i***nternational competitive tendering***" means competitive tendering that is open to tenders from both national and international tenderers;

"i***nternational consultant***" means a consultant who or which is:

(a) an international company; or

(b) an individual who is not a citizen of Solomon Islands; or

(c) a business conducted by two or more individuals (whether as a

partnership, joint venture or under any other arrangement) each of whom are not a citizen of Solomon Islands;

"***liquidated damages***" means a monetary penalty imposed for delay in completing a procurement contract;

"***local company***" means a company which is registered in Solomon Islands under the Companies Act 2009;

"***LESR tender***" or "***lowest evaluated substantially responsive*** tender" means the lowest-priced tender that has passed the relevant evaluation procedures and is determined as qualified to perform the contract;

"***Ministerial Tender Board***" means the Ministerial Tender Board referred to in regulation 28;

"***MOFT***" means the Ministry that is, under the Minister, responsible for the administration of the Act;

"***national competitive tendering***" means competitive tendering that is open to tenders from national tenderers only;

"national consultant" means a consultant who or which is:

(a) a national company; or

(b) an individual who is a citizen of Solomon Islands; or

(c) a business conducted by two or more individuals (whether as a partnership, joint venture or under another arrangement), each of whom is a citizen of Solomon Islands; or

(d) a charitable trust incorporated under the Charitable Trusts Act (Cap. 55);

"***non-consulting services***" include:

(a) repair and maintenance of office equipment;

(b) repair and maintenance of air-conditioning units;

(c) repair and maintenance of generating sets;

(d) repair and maintenance of vehicles;

(e) material services;

(f) laboratory tests;

(g) IT network cabling;

(h) publishing services, including printing and reproduction;

(i) use of radio broadcast services;

(j) janitorial and cleaning services;

(k) security services;

(l) shipping and freighting;

(m) courier and delivery;

(n) hauling and forwarding;

(o) similar services;

"***performance securing declaration***" means the standard form that is a performance security declaration for a tender that has a value of $5,000,000.00 or less;

"***performance security***" means the instrument used for a tender that has a value of more than $5,000,000.00 which:

(a) is a guarantee, bond or other instrument issued by a bank, insurance company or other provider of financial services; and

(b) provides one party to a procurement contract protection or security against failure of another party to satisfactorily complete or properly perform that party's obligations under the procurement contract;

"***period contract***" means a contract for the supply of goods or services over a period of at least 12 months which is awarded through competitive tendering;

"***Permanent Secretary MOFT***" means the Permanent Secretary of MOFT;

"***procurement officer***", of a Ministry for which goods, services or works are procured, means the accountable officer, an accounting officer or any other officer of the Ministry carrying out duties for the procurement of those goods or services;

"***provisional sum***" means a contingency amount added into cost estimates as provision for potential technical circumstances or requirements that may or may not arise;

"***purchase order***" means a form of contract used for a transaction entered into under the simple procurement process or a period contract;

"***simple procurement***" means a system of obtaining priced quotations which:

(a) relate to goods, non-consulting services or works; and

(b) have a total value of more than $10,000 but not more than $100,000;

"***tender evaluation***" means the procedures followed to determine the lowest evaluated substantially responsive tender;

"***tender security***" means a bank guarantee or other financial instrument designed to ensure that:

(a) a tenderer respects the terms and conditions of tendering; and

(b) if the tenderer's offer is accepted, the tenderer accepts the contract award;

"T***ender Evaluation Committee***" means a Tender Evaluation Committee for a Ministry referred to in regulation 41;

"***Treasury Procurement Uni***t" or "***TPU***" means the Treasury Procurement

Unit referred to in regulation 39;

"***Vendor Assessment Panel***" means the Vendor Assessment Panel established referred to in regulation 43;

"***works***" includes construction, minor repair, maintenance and rehabilitation of any of the following:

(a) buildings;

(b) other vertical structures;

(c) roads;

(d) bridges;

(e) wharves;

(f) airports;

(g) other transport infrastructure.

Note to Part 2, Division 1.

In these Regulations:

(a) in accordance with section 63(2) of the Interpretation and General Provisions Act (Cap. 85), subject to a contrary intention, words and expressions used in these Regulations have the same meaning as they have in the Financial Management Act 2013; and

(b) in accordance with section 63(3) of the Interpretation and General Provisions Act (Cap. 85), a reference to "the Act" in these Regulations is a reference to the Financial Management Act 2013; and

(c) in accordance with section 13(1)(a), a reference to a Schedule by number is a reference to the Schedule designated by that number to the Regulations.

Division 2 Interpretation of key definitions

5 Meaning of procurement

In these Regulations:

"***procurement***" means procurement of supply of goods, provision of services or construction of works that is:

(a) funded under Government Budget or appropriated donor funds; or

(b) funded by special funds established under section 24 of the Act; or

(c) funded by any other statutory fund; or

(d) the disposal of Government assets; or

(e) funded under loans, grants or financing agreements between the Government and multilateral development banks, foreign donor partners and other bilateral or commercial financing institutions;

"***procurement contract***" means a contract for procurement of goods, services or works for the purposes of a Government authority.

6 Meaning of bid, tender, tenderer, tendering procedure and resolution procedure

(1) In these Regulations:

"***bid***", "***tender***", "***quotation***", "***offer***" and "***proposal***" mean a binding offer to supply goods, provide services or carry out works for a specified price;

"***consultant***" means an individual, firm or company who or which:

(a) tenders to provide consulting services; or

(b) provides consulting services under a procurement contract;

"***contractor***" means an individual, firm or company who or which:

(a) tenders to carry out works; or

(b) carries out works under a procurement contract;

"***service provider***" means an individual, firm or company who or which:

(a) tenders to supply non-consulting services; or

(b) supplies non-consulting services under a procurement contract;

"***supplier***" means an individual, firm or company who or which:

(c) tenders to supply goods; or

(d) supplies goods under a procurement contract;

"***tenderer***" means an individual, firm or company who submits a tender and participates in the tendering process.

(2) In these Regulations:

(a) references to the Government procurement procedure refer to the processes, or one or more of the processes, specified in Schedule 1 by which procurement is arranged, tenders are put together, bids for supplying goods, providing services or carrying out works are invited and submitted, and a procurement contract awarded; and

(b) references to the procedure for making and resolving issues or complaints about tendering or procurement contracts refer to the procedure to do so specified in Schedule 1.

7 Meaning of internationally accepted best practices

In these Regulations:

"***internationally accepted best practices in procurement***" includes practices specified in procurement policies, rules and procedures used by:

(a) the Asian Development Bank, the World Bank and other international development banks; and

(b) the Department of Foreign Affairs and Trade of Australia and other bilateral agencies; and

(c) the United Nations Development Programme and other international development agencies; and

(d) the FIDIC.

8 Meaning of non-current asset, disposable asset and disposable non-current moveable asset

(1) In the Regulations:

"***non-current asset***" means an asset which is expected to have a useful life of more than one year but has:

(a) exceeded its useful productive life and is no longer economical to maintain; or

(b) become technologically obsolete;

"***disposable asse***t" means an asset, taking no account of whether it has scrap value:

(a) which:

(i) costs the Government more to maintain than is justified by reference to its current market value; or

(ii) serves no present useful purpose for the Government; and

(b) disposing of which will have no harmful effect on the core business operation or processes of a Government agency;

"d***isposable non-current movable asset***" means a movable asset that is:

(a) a non-current asset; and

(b) a disposable asset

(2) In subregulation (1):

"***movable asset***" means any movable property and includes:

(a) machinery and other equipment; and

(b) motor vehicles; and

(c) office furniture.

9 Meaning of standard documents

(1) All tender documents and procurement contracts must be in the form of the standard documents approved and made available by the TPU.

(2) Standard documents for contracts for works with values above $2,500,000 must use the FIDIC's Conditions of Contract for Construction, second edition 2017.

(3) If a standard document is not available for a particular tendering process or procurement contract, the TPU may approve the form of the document to be

used.

(4) If a supplier, service provider, consultant or contractor insists on using documents that are not standard documents, before the contract is signed and countersigned, the Attorney-General must advise on the legality of the documents, and approve them as lawful and suitable for use.

(5) In these Regulations:

(a) references to tender documents and procurement contracts include references to the documents, or the appropriate document, specified in Schedule 2; and

(b) "***lump-sum contract***" means a contract procuring simple works in which the scope of work and works specifications are clearly defined with a high degree of accuracy; and

(c) "***unit-rate contrac***t" means a contract for works in which the scope of work and work specifications cannot be defined in advance with a reasonable level of accuracy.

PART 3 PRINCIPLES AND BEST PRACTICES

Division 1 Procurement principles

10 Principles for carrying out procurement activities

(1) The following principles apply for carrying out procurement activities under the Act and these Regulations:

(a) the principle of value for money, which is the principle that, in acquiring good, services or works, a procurement officer should aim to secure good quality at the lowest price;

(b) the principle of competitive purchasing, which is the principle that a procurement officer should aim to permit the entire relevant market to compete to supply Government;

(c) the principle of efficient, effective and ethical use of resources, which is the principle that procurement should be conducted so as to eliminate waste and make only proper use of Government resources;

(d) the principle of accountability and transparency, which is the principle that procurement decisions should be expressed and recorded in writing in such a way to make it clear what has been done and why it has been done;

(e) the principle of financial sustainability, which is the principle that procurement should be conducted in parallel with a sustainable fiscal strategy which:

(i) can be continued into the foreseeable future without substantial

amendment; and

(ii) is designed to avoid sudden changes in tax rates or spending decisions and so prevent a substantial deterioration in the country's fiscal position;

(f) the principle of equity, which is the principle that procurement should be conducted in a manner which:

(i) supports equality of opportunity in general; and

(ii) in particular advances community equality by providing economic opportunities for all Solomon Islanders, including women, youth and people with disabilities.

11 Duty to apply principles etc.

In carrying out procurement activities, procurement officers must act consistently with:

(a) the principles set out in Part 9 of the Act; and

(b) the principles specified in regulation 10; and

(c) the standards specified under Part 6 of these Regulations; and

(c) internationally accepted best practices in procurement.

12 Manner in which to apply principles

(1) In applying the principles referred to in regulation 10, a procurement officer must aim to balance them against each other in the manner that seems most appropriate in the circumstances.

(2) A procurement officer may depart from a principle if the officer is satisfied that doing so:

(a) achieves a proper balance of the principles specified in regulation 10; and

(b) is in accordance with the principles set out in Part 9 of the Act; and

(c) is appropriate in the circumstances.

(3) In particular:

(a) the value for money principle does not prevent a procurement officer from acquiring goods, services or works at a price that is not the lowest attainable price if satisfied that it is the most appropriate course having regard to other factors that directly contribute to using public funds in the most efficient and effective manner; and

(b) the accountability and transparency principle does not prevent a procurement officer from agreeing to respect commercial confidentiality in respect of particular matters if satisfied that it is appropriate in the circumstances and that a reasonable degree of accountability and

transparency can be achieved.

Division 2 Contracts and tenders

13 Valuation of contracts and tenders

In valuing contracts and tenders, a procurement officer:

(a) must use cost estimates that are complete, accurate and current; and

(b) value goods using bulk prices (not retail prices) and include costs of shipping and delivery, installation or commissioning, warranties and other requirements; and

(c) must base cost estimates of works on engineer's built-up unit rates developed for each work item in the schedule of activities or items of work or bill of quantities; and

(d) must not base cost estimates on a contractor's bid price; and

(e) may not include vehicles for use by public officers or other Government employees as a cost item in the bill of quantities; and

(f) may include contingencies and provisional sums in cost estimates.

14 Packaging of contracts

(1) A procurement officer must ensure that goods and services to be procured are packaged in a manner that maximises efficiency and economy.

(2) In packaging procurement contracts, a procurement officer must:

(a) group contracts into the following categories:

(i) goods;

(ii) consulting services;

(iii) non-consulting services;

(iv) works; and

(b) take account of the following:

(i) the capacity of the domestic market and maximising local participation in tendering;

(ii) the need to open a tender to international competition if there is limited or lack of capacity in the domestic market; and

(c) within each category, combine similar or related items into a single contract package if it is likely that doing so will enable bulk purchasing for a reduced unit price and if it is reasonably practical to do so; and

(d) determine the appropriate procurement method for each contract package as a whole.

15 Commencement of tendering process

(1) The tendering process begins on the advertisement of the tender.

(2) The tendering process must not begin unless the TPU has reviewed and approved the tender documents.

16 Signification of procurement contract with value exceeding $100,000

(1) A procurement contract referred to in this regulation is not effective unless it is signed in accordance with this regulation.

(2) A procurement contract with a value of more than $100,000 and less than $500,000 must be:

(a) signed by the accountable officer of the Ministry responsible for the procurement; and

(b) personally countersigned by the Accountant-General.

(3) A procurement contract with a value of $500,000 or more must be:

(a) personally signed by the accountable officer of the Ministry responsible for the procurement; and

(b) personally countersigned by the Permanent Secretary MOFT.

(4) For the avoidance of doubt, the Permanent Secretary MOFT or the Accountant-General must countersign the procurement contact personally. He or she may not delegate or authorise another person to sign instead of him or her.

17 References to mode of transporting goods in tender documents and contracts

To achieve uniformity in use of terminology to refer to the mode of transporting imported goods, the internationally recognised set of trade terms known as the "International Commercial Terms" (or "Incoterms"), as published from time to time by the International Chamber of Commerce, must be used in all tendering and contract documentation.

PART 4 ROLES AND RESPONSIBILITIES

Division 1 Central Tender Board

18 Establishment of Central Tender Board

There is a Central Tender Board.

19 Function of Central Tender Board

(1) The Central Tender Board awards tenders with values of $500,000 or more.

(2) The function of the Central Tender Board is, in relation to tenders with values of $500,000 or more, to:

(a) receive tenders;

(b) conduct the public opening of tenders;

(c) approve, reject or vary recommendations for award submitted by Ministerial Tender Boards;

(d) issue letters of award;

(e) publish lists of recently awarded contracts;

(f) approve, reject or vary requests from Ministerial Tender Boards for bid waivers;

(g) approve, reject or vary requests for variations involving individual or cumulative increases in amount in excess of 10% of the original contract price that are allowable under procurement contacts;

(h) resolve issues including tenderers' complaints and protests referred to it;

(i) approve, reject or vary recommendations for contract termination submitted by Ministerial Tender Boards in relation to contracts awarded by the Central Tender Board;

(j) compile and maintain a list of individuals, companies, charitable trusts and firms who are ineligible to tender for or be awarded procurement contracts (known as the List of Disqualified Bidders and Contractors).

20 Membership of Central Tender Board

(1) The members of the Central Tender Board are:

(a) the Permanent Secretary MOFT; and

(b) the Accountant General; and

(c) the Permanent Secretary of the Ministry responsible for development planning and aid coordination; and

(d) the Permanent Secretary of the Ministry responsible for infrastructure development; and

(e) the Attorney-General; and

(f) a Permanent Secretary appointed under subregulation (3).

(2) The Permanent Secretary MOFT is the Chairperson of the Central Tender Board.

(3) The Chairperson must appoint the Permanent Secretary of another Ministry to be a member for 12 months. The appointment is made from amongst the Permanent Secretaries of the Ministries not referred to in subregulation (1)(c) and (d), in rotation.

(4) A member may nominate an alternate member to attend a meeting on the member's behalf.

(5) An alternate member:

(a) must:

(i) hold the position of at least Deputy Secretary level in the member's Ministry; and

(ii) have appropriate technical competence and skills; and

(iii) have appropriate experience of relevant decision-making; and

(b) at a meeting, has all the rights, responsibilities and obligations of the member on whose behalf the alternate member attends the meeting (and a reference to the member in these Regulations includes a reference to the alternate member).

21 Register of interests of members of Central Tender Board

(1) There is a register of financial interests of members of the Central Tender Board.

(2) The Chairperson must:

(a) keep the register in an appropriate form or combination of forms, including an electronic form; and

(b) on a member making the disclosure under subregulation (3), record the member's interests in the register.

(3) A member must, on appointment and if the member's interests subsequently change, disclose the member's financial interests or the change to those interests to the Chairperson.

22 Conflict of interest of member of Central Tender Board

(1) This regulation applies if a member of the Central Tender Board:

(a) has a direct or indirect financial interest in a matter being considered, or about to be considered, by the Board; or

(b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about a matter being considered, or about to be considered, by the Board.

(2) The member:

(a) must disclose to the other members the nature of the interest and how it relates to the matter; and

(b) must not take part in any deliberation or decision of the Board about the matter; and

(c) must be disregarded for the purpose of constituting the quorum of the

Board for the deliberation or decision.

(3) The member need not disclose an interest if the interest is an interest shared in common with:

(a) persons of a class, which includes the member, or a substantial section of those persons; or

(b) the public generally or a substantial section of the public.

(4) The disclosure must be noted in the records of the Board.

(5) A failure by the member to disclose an interest in a matter does not, on its own, invalidate a decision of the Board about the matter.

23 Advisers and sub-committees of Central Tender Board

(1) The Central Tender Board may:

(a) establish sub-committees for carrying out its functions; and

(b) appoint advisers to review a matter relating to the functions of the Board and advise and make recommendations about the matter.

(2) An adviser:

(a) must make a written report to the Central Tender Board on the conduct of the adviser's review and providing his or her advice and recommendations on the matter reviewed; and

(b) may attend the part of a meeting of the Board when the adviser's report is considered (but, for the avoidance of doubt, may not vote).

24 Performance of functions of Central Tender Board by sub-committees etc.

(1) The Central Tender Board may, by resolution, delegate:

(a) any of its functions to a sub-committee or a Ministerial Tender Board; or

(b) its function for considering requests for bid waivers for contracts with a value of more than $10,000 but not more than $100,000 to the Accountant General; or

(c) its function for considering requests for bid waivers for contracts with a value of more than $100,000 to the Permanent Secretary MOFT.

(2) The delegation:

(a) must be in writing specifying:

(i) the function delegated; and

(ii) to whom the function is delegated; and

(iii) the conditions of the delegation (if any); and

(b) may be varied or revoked; and

(c) does not prevent the Central Tender Board performing the function.

(3) If a sub-committee, a Ministerial Tender Board, the Accountant General or the Permanent Secretary MOFT performs a function delegated under this regulation, the performance of the function and the exercise of any powers or performance of any function associated or incidental to performing the function are taken to have been exercised or performed by the Central Tender Board.

25 Transparency and accountability of Central Tender Board

(1) The Central Tender Board must conduct all its proceedings in accordance with the principles of transparency and accountability.

(2) Accordingly:

(a) the Board must keep a record of all its procedures; and

(b) a decision of the Board is a public record; and

(c) tender awards and other decisions of the Board must be published without delay; and

(d) information about each tender award should be sent to all bidding parties and other interested persons; and

(e) the Board must keep, and make available for inspection by members of the public, a register of the procurement activities it performs; and

(e) the Board must keep, and make available for inspection by members of the public, records of performance measures in relation to SIG procurement.

(3) In addition, the Central Tender Board must:

(a) for each year, make an annual report to the Minister about the performance of Government procurement during that year; and

(b) give the report to the Minister before 1 May of the immediately following year.

26 Other procedural matters of Central Tender Board

(1) The Chairperson must convene the Central Tender Board at least 4 times in each year.

(2) All members and their alternates must be given sufficient notice of the meetings of the Central Tender Board and information to enable them to participate in the meetings.

(3) The Chairperson presides at a meeting.

(4) The quorum for a meeting is 4 members.

(5) A member may participate in a meeting, and is taken to be present at the meeting if participating, by:

(a) telephone; or

(b) exchange of emails; or

(c) online facilities; or

(d) any other means of electronic communication.

(6) Decisions of the Central Tender Board must be in the form of a resolution signed by all members present, noting whether each member voted for or against the resolution.

(7) In making the decisions:

(a) each member present has 1 vote; and

(b) in the event of an equality of votes, the Chairperson has a casting vote.

(8) A member who dissents from the majority in a particular decision may require that the member's dissent be recorded in the minutes.

(9) Unless at least one member requires that particular business of the Central Tender Board be decided at a meeting, the Chairperson may arrange for urgent business of the Board to be decided by:

(a) a written proposed resolution and necessary accompanying papers dealing with the business being circulated (by any means including by electronic communication) amongst all of the members; and

(b) the resolution being passed by all of the members entitled to vote on the resolution by each of them:

(i) signing on the resolution that they are in favour of it; and

(ii) returning the resolution to the Chairperson; and

(d) noting the resolution at the next subsequent meeting of the Board and including it as part of the minutes of that meeting.

(10) An irregularity in the procedures of the Central Tender Board does not, on its own, invalidate an act or decision of the Board.

27 Provision of administrative assistance and resources etc. to Central Tender Board

(1) The Chairperson must arrange for officers working in MOFT to provide to the Central Tender Board the services, facilities, resources and technical and administrative assistance necessary for the Board to perform its functions.

(2) The Chairperson must ensure that there is an appropriate level of confidentiality

for conducting the Central Tender Board's proceedings.

(3) The Chairperson's responsibility under subregulation (1) includes ensuring there is a Secretary to the Central Tender Board.

(4) The Secretary to the Central Tender Board:

(a) is the custodian of the Board records; and

(b) is responsible for:

(i) recording the resolutions of the Board; and

(ii) recording the minutes of Board meetings.

Division 2 Ministerial Tender Boards

28 Establishment of Ministerial Tender Boards

There is a Ministerial Tender Board for each Ministry.

29 Functions of Ministerial Tender Boards

(1) A Ministerial Tender Board awards tenders that have values of more than $100,000 but less than $500,000, but only if the TPU has approved the tender documents, and the Accountant-General has issued an Endorsement to Tender, for the tenders.

(2) The functions of a Ministerial Tender Board are:

(a) to recommend to the Central Tender Board awards of tenders with values of $500,000 or more; and

(b) obtain approval from the Central Tender Board to terminate a contract that has a value of $500,000 or more and, if approved, terminate the contract; and

(c) in relation to tenders with values of more than $100,000 but less than $500,000, to:

(i) review draft tender documents before they are submitted to the TPU; and

(ii) arrange the publication of tender advertisements by publishing them in a newspaper that circulates nationally and posting them on public notice boards; and

(iii) issue to prospective bidders the tender documents for ministerial procurement which:

(A) have been approved by the TPU; and

(B) for which an Endorsement to Tender has been issued by the Accountant-General; and

(C) if a tender that will be awarded by the Central Tendering Board, for which that Board has issued a number; and

(iv) respond to inquiries from prospective tenderers; and

(v) conduct pre-tender conferences; and

(vi) issue tender addenda containing responses to queries; and

(vii) receive tenders and conduct public opening of tenders within its authorised threshold; and

(viii) oversee the tender evaluation process that is performed by a Tender Evaluation Committee established by the Board; and

(ix) review tenders received by itself and the Central Tender Board, the results of the evaluation process of those tenders and the recommendations for award contained in the tender evaluation report; and

(x) determine requests for contract variations involving individual or cumulative increases of up to 10% of the original contract price that are allowable under procurement contracts; and

(xi) determine requests for contract time extensions that are allowable under procurement contracts; and

(xii) obtain approval from the Central Tender Board for a justifiable bid waiver; and

(xiii) resolve issues and complaints arising from of the tendering process or a procurement contract; and

(xvi) recommend to the Vendor Assessment Panel that a supplier, service provider, consultant or contractor be included in the Central Tender Board List of Disqualified Bidders and Contractors because of:

(A) contravention of tendering rules; or

(B) fraud; or

(C) corrupt practice; or

(D) failure to perform obligations under a procurement contract.

30 Membership of Ministerial Tender Boards

(1) A Ministerial Tender Board must not have more than 5 members.

(2) The members of a Ministerial Tender Board for a Ministry other than MOFT are:

(a) the Permanent Secretary of the Ministry; and

(b) the financial controller of the Ministry; and

(c) one to 3 other members appointed under subregulation (5).

(2) The Permanent Secretary of the Ministry is the Chairperson of the Ministerial

Tender Board.

(3) The members of the Ministerial Tender Board for MOFT are:

(a) an Under-Secretary of MOFT appointed by the Permanent Secretary MOFT; and

(b) the financial controller of MOFT; and

(c) one to three other members appointed under subregulation (5).

(4) The Under-Secretary referred to in subregulation (3)(a) is the Chairperson of MOFT's Ministerial Tender Board.

(5) The Chairperson of a Ministerial Tender Board must appoint at least one, but not more than 3, persons to be members of the Board.

(6) The Chairperson must not appoint a person to be a member under subregulation (5) unless the person has directly relevant experience, competence and skills in procurement or other technical area or corporate services at an executive or senior level.

(7) If a member cannot avoid being absent from a meeting, the member may nominate an alternate member to attend the meeting on the member's behalf.

(8) An alternate member:

(a) must:

(i) hold the position of at least Deputy Secretary or Director level in the Ministry concerned; and

(ii) have appropriate technical competence and skills; and

(iii) have appropriate experience of relevant decision-making; and

(b) at a meeting, has all the rights, responsibilities and obligations of the member on whose behalf the alternate member attends the meeting (and a reference to the member in this Division includes a reference to the alternate member).

31 Conflict of interest of member of Ministerial Tender Board

(1) This regulation applies if a member of a Ministerial Tender Board:

(a) has a direct or indirect financial interest in a matter being considered, or about to be considered, by the Board; or

(b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about a matter being considered, or about to be considered, by the Board.

(2) The member:

(a) must disclose to the other members present the nature of the interest and how it relates to the matter; and

(b) must not take part in any deliberation or decision of the Board about the matter; and

(c) must be disregarded for the purpose of constituting the quorum of the Board for the deliberation or decision.

(3) The member need not disclose an interest if the interest is an interest shared in common with:

(a) persons of a class, which includes the member, or a substantial section of those persons; or

(b) the public generally or a substantial section of the public.

(4) The disclosure must be noted in the records of the Board.

(5) A failure by the member to disclose an interest in a matter does not, on its own, invalidate a decision of the Board about the matter.

32 Advisers to Ministerial Tender Boards

(1) A Ministerial Tender Board may appoint advisers to review a matter relating to the functions of the Board and advise and make recommendations about the matter.

(2) An adviser:

(a) must make a written report to the Ministerial Tender Board on the conduct of the adviser's review and providing his or her advice and recommendations on the matter reviewed; and

(b) may attend the part of a meeting of the Board when the adviser's report is considered (but, for the avoidance of doubt, may not vote).

33 Transparency and accountability of Ministerial Tender Boards

(1) A Ministerial Tender Board must conduct all its proceedings in accordance with the principles of transparency and accountability.

(2) Accordingly:

(a) the Board must keep a record of all its procedures; and

(b) a decision of the Board is a public record; and

(c) tender awards and other decisions by the Board must be published without delay; and

(d) information about each tender award should be sent to all bidding parties and other interested persons; and

(e) the Board must keep, and make available for inspection by members of

the public, a register of the procurement activities it performs; and

(f) the Board must keep, and make available for inspection by members of the public, records of performance measures in relation to procurement it is responsible for.

(3) In addition, the Ministerial Tender Board must:

(a) for each year, make an annual report to the Minister responsible for the Board's Ministry and to the Central Tender Board about the performance of the Ministry's procurement during that year; and

(b) give the report to the Minister and the Central Tender Board before 1 May of the immediately following year.

34 Other procedural matters of Ministerial Tender Boards

(1) The Chairperson must convene the Ministerial Tender Board as is necessary for the Board to perform its functions.

(2) All members and their alternates must be given notice of the meetings of the Ministerial Tender Board and information and to enable them to participate in the meetings.

(3) The Chairperson presides at a meeting.

(4) The quorum for a meeting is 3 members.

(5) A member may participate in a meeting, and is taken to be present at the meeting if participating, by:

(a) telephone; or

(b) exchange of emails; or

(c) online facilities; or

(d) any other means of electronic communication.

(6) Decisions of the Ministerial Tender Board must be in the form of a resolution signed by all members present, noting whether each member voted for or against the resolution.

(7) In deciding questions at a meeting:

(a) each member present has 1 vote; and

(b) in the event of an equality of votes, the Chairperson has a casting vote.

(8) A member who dissents from the majority in a particular decision may require that the member's dissent be recorded in the minutes.

(9) Unless at least one member requires that particular business of the Ministerial Tender Board be decided at a meeting, the Chairperson may arrange for urgent business of the Board to be decided by:

(a) a written proposed resolution and necessary accompanying papers dealing with the business being circulated, including by an electronic means of communication, amongst all of the members; and

(b) the resolution being passed by all of the members entitled to vote on the resolution by each of them:

(i) signing on the resolution that they are in favour of it; and

(ii) returning the resolution to the Chairperson; and

(e) noting the resolution at the next subsequent meeting of the Board and including it as part of the minutes of that meeting.

(10) An irregularity in the procedures of the Ministerial Tender Board does not, on its own, invalidate an act or decision of the Board.

35 Provision of administrative assistance and resources etc. to Ministerial Tender Boards

(1) The Chairperson must arrange for officers of the Ministerial Tender Board's Ministry to provide to the Board the services, facilities, resources and technical and administrative assistance necessary for the Board to perform its functions.

(2) The Chairperson must ensure that there is an appropriate level of confidentiality for conducting the Ministerial Tender Board's proceedings.

(3) The Chairperson's responsibility under subregulation (1) includes ensuring there is a Secretary to the Ministerial Tender Board.

(4) The Secretary to the Ministerial Tender Board:

(a) is the custodian of the Board records; and

(b) is responsible for recording the minutes of the Board; and

(c) is responsible for making available for inspection the register of the Board's procurement activities and the record of the performance measures referred to in regulation 33(2)(e) and (f).

Division 3 Responsibility of accountable officers

36 Responsibility for decisions

(1) The accountable officer of a Ministry is responsible for the procurement decisions and activities for the Ministry.

(2) The accountable officer of a Ministry must sign all documents relating to the procurement of goods, services or works for the Ministry that must be submitted to the TPU, Accountant-General, Permanent Secretary MOFT or the Central Tender Board (as the case requires).

Division 4 Treasury Procurement Unit

37 Establishment of TPU

(1) There is in the Treasury Division of MOFT a unit known as the Treasury Procurement Unit.

(2) The Accountant-General is responsible for the TPU and must ensure that persons working in the TPU must:

(a) have expertise in internationally accepted best practices in procurement; and

(b) be given training to ensure their knowledge and expertise is kept up-to-date.

38 Function of TPU

(1) The function of the TPU is to:

(a) develop Government procurement policy and standard document templates; and

(b) develop the Government public procurement legal and regulatory framework; and

(c) provide advice about Part 9 of the Act and these Regulations; and

(d) provide procurement advice and support on operational procurement issues to all stakeholders in public procurement; and

(e) undertake the procurement of items for common use within Government; and

(f) arrange for counter-signature of contracts in accordance with regulation 16; and

(g) manage procurement data and information, including publicly available information, to support procurement decisions; and

(h) conduct compliance review of procurement documents to ensure they comply with SIG procurement policies, practices and standard document templates, including the following:

(i) procurement plans;

(ii) draft tender documents;

(iii) tender evaluation reports;

(iv) recommendations for awards;

(v) proposed contract variations amounting individually or cumulatively to more than 10% in value;

(vi) requests for contract time extension, and similar submissions that are likely to increase costs;

(vii) contracts for the Permanent Secretary MOFT or the Accountant-General to approve and counter-sign; and

(i) conduct compliance audits of procurement activities in Ministries; and

(j) provide education and training for conduct of procurement activities.

(2) In conducting compliance audits, the TPU must avoid duplicating a Ministry's internal audit processes.

(3) In providing education and training, the TPU may:

(a) conduct training courses;

(b) produce and provide written guidance or other information, the content of which is approved by the Accountant-General; or

(c) engage national or international consultants who have suitable expertise to provide education and training on its behalf.

Division 5 Tender Evaluation Committees

39 Establishment of Tender Evaluation Committees

(1) A Ministerial Tender Board must establish a Tender Evaluation Committee for each tender submitted to the Board.

(2) The function of the Tender Evaluation Committee is to:

(a) evaluate the tender for which it is established; and

(b) make a written report to the Ministerial Tender Board of its evaluation of the tender, specifying its advice and recommendations on the tender.

(3) The Tender Evaluation Committee is constituted by the following members appointed by the Ministerial Tender Board:

(a) the Chairperson of the Committee and

(b) at least 2 other members.

(4) At least one of the members appointed under subregulation (3)(b) must have technical knowledge relevant to the tender.

(5) If possible, one of the members appointed under subregulation (3)(b) should be the accounting officer or financial controller of the Ministry.

(6) A person who works in MOFT may not be a member of another Ministry's Committee.

40 Procedures of Tender Evaluation Committees

(1) In conducting its evaluation, the Tender Evaluation Committee:

(a) must apply Part 9 of the Act and these Regulations; and

(b) may be advised by technical experts, who may be:

(i) persons working in a Ministry or in the private sector; or

(ii) national or international consultants.

(2) A person who works in MOFT may not attend a Committee meeting unless the person is providing technical advice on the request of the Committee.

(3) Despite subregulation (2), a person who works in the TPU must not attend a meeting of MOFT's Tender Evaluation Committee for any reason other than as an observer.

(4) The Committee must:

(a) act independently and without interference or influence from outside of the Committee; and

(b) act in accordance with Government procurement policies and procedures; and

(c) maintain absolute confidentiality.

Division 6 Vendor Assessment Panel

41 Establishment of Vendor Assessment Panel

There is the Vendor Assessment Panel.

42 Function of Panel

The function of the Vendor Assessment Panel is to assess the performance of suppliers, service providers, consultants and contractors and make recommendations to the Central Tender Board about:

(a) including an erring or under-performing supplier, service provider, consultant or contractor on the Central Tender Board's List of Disqualified Bidders and Contractors; or

(b) removing a supplier, service provider, consultant or contractor from the List.

43 Membership of Panel

(1) The members of the Vendor Assessment Panel are:

(a) the Director of the Internal Audit Unit of MOFT; and

(b) the following other members appointed by the Permanent Secretary MOFT:

(i) a public officer who works in the TPU;

(ii) a public officer who works in the Customs and Excise Division of MOFT;

(iii) a public officer who works in the Inland Revenue Division of

MOFT;

(iv) any other public officer who the Permanent Secretary MOFT considers suitable to be a member.

(2) The Director of the Internal Audit Unit is the Chairperson of the Vendor Assessment Panel.

44 Meetings and procedures of Panel

(1) The Vendor Assessment Panel meets when requested to do so by the Permanent Secretary MOFT.

(2) The Panel conducts its procedures in accordance with the Permanent Secretary MOFT's instructions.

PART 5 PROCUREMENT PRACTICE

Division 1 Procurement planning

45 General duty

The accounting officer of a Ministry must plan the procurement activities for the Ministry to ensure that:

(a) necessary goods, services and works are procured in the most efficient, economical and timely manner possible; and

(b) there is uninterrupted delivery of public services.

46 Annual procurement planning

(1) Procurement plans for a Ministry for a financial year must:

(a) be in accordance with its budget allocations; and

(b) support the implementation of the annual work plan.

(2) Each procurement plan must include the following information:

(a) tender packages grouped into:

(i) goods;

(ii) works;

(iii) consulting services;

(iv) non-consulting services;

(c) the estimated value of each package and each lot;

(d) the appropriate method of procurement to be used for each package;

(e) the awarding authority;

(f) key procurement milestone dates.

(3) A procurement plan:

(a) must, before the end of June of each financial year, be reviewed at least once and, if necessary as a result of the review, varied; and

(b) may otherwise be varied as needed during a financial year.

(4) Each procurement plan, and each variation of a procurement plan, must not be implemented unless the TPU has reviewed it, and it has been approved by the MOFT Budget Unit, under regulation 47.

(5) A procurement plan that is approved under subregulation (4) has effect until the whichever of the following first occurs:

(a) a variation of the plan is reviewed and approved under subregulation (4);

(b) 31 December of the financial year it relates to.

47 MOFT review, approval and publication of procurement plans

(1) In reviewing a procurement plan for a Ministry or a variation of a procurement plan, the TPU must assess whether:

(a) the proposed tender packages comprise suitable items;

(b) the procurement strategies and methods specified in the plan are appropriate for the goods, services and works to be procured;

(c) the procurement schedule is realistic and realisable; and

(d) no package is broken down into lots with the intention of avoiding open competitive tendering.

(2) On completing the review, the TPU must:

(a) if satisfied as to the matters referred to in subregulation (1), refer the plan to the MOFT Budget Unite to approve the plan or variation; or

(b) return the plan or variation to the accounting officer or accountable officer of the Ministry (whoever submitted the plan to the TPU) specifying in writing why the plan or variation is not approved and requiring the accounting officer or accountable officer to make changes to the plan or variation to rectify those matters (which plan or variation will, on being changed by the accounting officer or accountable officer, be returned to the TPU for review under subregulation (1)).

48 Monitoring of procurement plans

The procurement officers of a Ministry must:

(a) monitor the progress in complying with the procurement plans for the Ministry; and

(b) if a procurement officer identifies a delay or other difficulty in complying with any of the plans, the officer must recommend corrective action to overcome the delay or difficulty to the accountable officer of

the Ministry; and

(c) each month, give a report on the progress of procurement activities, and make recommendations relating to those procurement activities, to the accountable officer of the Ministry.

Division 2 Competitive tendering

49 Definitions for Part 5, Division 2

In this Division:

"***tender envelope***" means the envelope into which a tenderer puts the tenderer's tender under regulation 59(5)(b);

"***tender evaluation***" means the process, using evaluation criteria specified in the tender documents, to evaluate and compare tenders;

"t***endering period***" means the period commencing on the date the invitation for tenders opens and ending on the closing date and time for submitting tenders;

"***tender price***" means the rate or price specified in a tender for the supply of the goods, services or works being procured;

"***tender-securing declaration***" means a declaration by a tenderer that, if the tenderer is awarded the tender, the tenderer will enter into the procurement contract at the price and on the conditions specified in the tenderer's tender;

"***tender security***" means security provided by a tenderer to secure the performance of the tenderer's obligation under a procurement contract if awarded to the tenderer;

"***tender validity period***" means the period after the invitation to tender closes during which the tender price and conditions of tender:

(a) remain valid and open for acceptance; and

(b) may not be changed by the tenderer.

50 Default procurement method and tendering procedure

(1) Competitive tendering is the procurement method that is to be used for:

(a) tenders that have values of more than $100,000; and

(b) all other Government procurement for which no other system or method for procurement is required or permitted under these Regulations.

(2) Under competitive tendering:

(a) subject to paragraph (b)(iii), national competitive tendering must be used for the procurement of goods, services or works with a tender value exceeding $100,000 and less than $5,000,000;

(b) international competitive tendering must be used for:

(i) contracts for procurement of goods, non-consulting services or works with a value exceeding $5,000,000; and

(ii) contracts for consulting services with a value exceeding $5,000,000; and

(iii) contracts in respect of which the accountable officer of the Ministry concerned, in consultation with the TPU, is satisfied that the capacity of the domestic market is limited in respect of availability, quality or other matters that makes it necessary or expedient to use international competitive tendering.

51 Competitive tendering procedure

(1) The Single Stage, One Envelope procedure is the competitive tendering procedure used by the Government for procuring goods, non-consulting services and works unless these Regulations or the tender documents require or permit otherwise.

(2) The competitive tendering procedure:

(a) must include the following steps:

(i) advertisement;

(ii) receipt of tenders;

(iii) public opening of tenders;

(iv) tender evaluation;

(v) post-qualification of LESR tender;

(vi) notification of qualified LESR tender that selected to be contracted;

(vii) contract negotiation;

(viii) contract award and signing;

(ix) publication of tender award; and

(b) may include:

(i) after the tender is advertised, a tender prequalification process; and

(ii) before receipt of tenders, a pre-tender conference; and

(c) must comply with these Regulations.

52 Advertising tenders

(1) A tender must be advertised:

(a) at least once in a local newspaper with a national circulation; and

(b) on a Government website to which the public have free access.

(2) To effect wider dissemination, a procurement officer may post the tender on

his or her Ministry's own website, on notice boards on the Ministry's premises and in public places such as markets, offices and shopping centres.

(3) For international competitive tendering:

(a) the tender must also be advertised internationally by advertising in international media outlets or on an electronic tender platform; and

(b) copies of the tender may be given to embassies, consular offices, foreign trade representatives and local agents for dissemination.

53 Tendering period

(1) The tendering period commences on the day invitation for tenders opens.

(2) Invitation for tenders opens:

(a) on the day after the day on which the tender is first published; or

(b) if after the day referred to in paragraph (a), on the day after the day on which the tender documents are made available to tenderers.

(2) The tendering period:

(a) must:

(i) for national competitive tendering, be for at least 14 days; or

(ii) for international competitive tendering, be for at least 45 days; and

(b) must commence on the day after the day the tender documents are made available to tenderers.

(3) The tendering period must be specified in the advertisement of a tender and in the tender documents.

(4) A procurement officer must not accept a tender that is submitted after the time on the day when tendering period ends.

54 Tender security

(1) If a tender has a value of more than $5,000,000, the accountable officer of the Ministry for which the goods are being procured must require each bidding tenderer to provide a tender security to the accountable officer.

(2) A tender security referred to in subregulation (1):

(a) must be:

(i) not less than 2% of the value of the tender; and

(ii) valid until at least 28 days after the end of the tender validity period; and

(b) may be:

(i) an unconditional bank guarantee; or

(ii) a bank cheque.

(3) If a tender has a value of $5,000,000 or less, the accountable officer must require each bidding tenderer to submit a tender-securing declaration in the standard form included in the tender documents.

55 Tender validity period

(1) The tender validity period must be:

(a) at least 90 days from the date the invitation to tender closes; and

(b) specified in the tender documents.

(2) Tender prices must be valid for the tender validity period.

(3) On the tender validity period ending, a tenderer is not bound by a tender price.

(4) The accountable officer of the Ministry procuring the goods may, in writing, request tenderers for a procurement contract to extend the tender validity period.

(5) If a tenderer extends the tender validity period, the tenderer must do so in writing.

56 Currency of tender price

(1) Subject to subregulation (3), tender prices must be specified in Solomon Islands Dollars.

(2) For supplies of goods and services from outside Solomon Islands:

(a) the rate of exchange that a tenderer uses for currency conversion to ascertain the tender price must be the selling rate for similar transactions prevailing during the 28-day period immediately before the closing date for submitting tenders as published by the Central Bank of Solomon Islands; and

(b) that rate of exchange applies for the duration of the contract.

(3) For international competitive bidding, tenderers, who expect to incur expenditure in other currencies for suppling goods or services, or components of goods or services, from outside Solomon Islands, and who request to be paid in a foreign currency, must propose not more than 3 foreign currencies in their tenders.

(4) A tenderer referred to in subregulation (3) must list the goods or services, or components of goods and services, to be supplied from outside of Solomon Islands which they request to be paid for in foreign currency.

(5) The accountable officer of the Ministry procuring the goods or services must ensure that payment in a foreign currency:

(a) is justified and reasonable; and

(b) is in accordance with the *Exchange Control Act* (Cap. 51) and the *Money Laundering and Proceeds of Crime Act* 2002.

57 Form of tender

(1) Subject to subregulation (2), the documents used for competitive tendering tenders must be the standard tender documents.

(2) If an accountable officer considers that a standard tender document is not suitable for a particular tender (for example a tender for design and build works or complex IT goods), the accountable officer must request the Accountant-General to approve a suitable tender document based on international best practice models to use for the tender, and use that tender document.

(3) A tender document may be made available in electronic form in PDF format.

(4) A fee may be charged for providing tender documents. The fee must not be more than the costs for printing or otherwise reproducing the tender documents.

(5) A tenderer must:

(a) use the tender document provided; and

(b) place the completed tender document in an envelope, seal the envelope and mark the envelope as specified in the tender document; and

(c) put the tender envelope in the tender box as required by regulation 61(3) on or before the date and hour specified in the tender documents for closure of the invitation to tender.

58 Joint venture tenderers

(1) Subject to this regulation, two or more persons joining together as a joint venture may submit a tender.

(2) Each joint venturer must:

(a) provide all the documents and information required by the tender documents; and

(b) meet the minimum qualification requirements specified in the tender documents; and

(c) if the joint venture is awarded the procurement contract, comply with all the pre-conditions to contract signing

(3) To provide a complying tender, the tendering joint venture must submit one

of the following as part of the documentary evidence supporting its tender:

(a) the duly authenticated joint venture agreement;

(b) a duly authenticated formal letter of intent to enter into a joint venture agreement if awarded a procurement contract.

(4) The agreement between the joint venturers or formal letter of intent to enter a joint venture referred to in subregulation (3) must:

(a) nominate a representative of the joint venture and authorise him or her to represent and conduct business for and on behalf of all or any of the joint venturers during the tendering process and, if the procurement contract is awarded to the joint venture, for the duration of the contract; and

(b) include an undertaking that the joint venturers are jointly and severally liable for all actions taken by the joint venture.

(5) In this regulation:

"***duly authenticated***" means:

(a) signed and dated by each joint venturer; and

(b) if a joint venturer is not a citizen of Solomon Islands, bearing the seal of the joint venturer's national diplomatic representative in Solomon Islands;

"***joint venturer***" means a person who is a party to a joint venture agreement or has signed a formal letter of intent to enter a joint venture with the other signatories to the letter if awarded a procurement contract.

59 Tender pre-qualification process

(1) The purpose of tender pre-qualification is to select interested prospective tenderers who have the technical qualification and expertise, and the financial capacity, to invite to tender.

(2) Tender pre-qualification may be used for tenders to:

(a) design or construct large and complex works; or

(b) supply, including by tender packaging, large and specialised or technically complex goods or services (for example, complex IT goods, pharmaceuticals or medical supplies or equipment).

(2) The invitation to submit applications for pre-qualification:

(a) must be advertised in accordance with regulation 52; and

(b) opens:

(i) on the day after the day on which the tender is first published; or

(ii) if after the day referred to in paragraph (a), on the day after

the day on which the tender documents are made available to tenderers; and

(c) must specify the period within which pre-qualification applications must be submitted.

(2) The period for submitting pre-qualification applications must be at least 28 days duration commencing on the day referred to in subregulation (2)(b)(i) or (ii), as applicable.

(3) A procurement officer must not accept a pre-qualification application that is submitted after the end of the period for doing so.

60 Pre-tender conference

(1) There may be a pre-tender conference on the date and time, and at the place, specified in both the invitation to tender and the tender documents (which must be at least 7 days after the advertisement of the tender under regulation 52).

(2) The purpose of the pre-tender conference is:

(a) for procurement officers, to clarify and instruct on the details of goods and services, scope of work or and other tendering requirements and on preparing the tender documents; and

(b) for prospective tenderers, to have the opportunity to obtain answers to their questions about the tender and tender documents.

(3) The procurement officer of the Ministry procuring the goods or services:

(a) may conduct a pre-tender conference by teleconferencing or video-conferencing; and

(b) must prepare an Agenda for the pre-tender conference;

(c) must take minutes of the pre-tender conference, including a record of the questions raised and responses given; and

(d) must send to all persons who requested tender documents (whether or not they attended the conference) a copy of the Agenda and the minutes.

(4) If presence at the pre-tender conference is specified as mandatory in the tender documents, all persons who requested tender documents must attend the conference.

61 Receipt and opening of tenders

(1) A procurement officer must:

(a) prepare a tender box for a tender; and

(b) label the tender box so the tender is clearly identified.

(2) During the tendering period, the tender box must be always locked and stored in a secure place.

(3) All tenders for the tender must be put into the box.

(4) All competitive tenders must be opened in public.

(5) Exactly, at the time that the invitation to tender closes, the Secretary to the relevant Tender Board must:

(a) announce the name of the tender and that tenders are closed; and

(b) unlock and open the tender box; and

(c) open the tender envelopes that are inside the tender box at that time.

(6) On opening all the tender envelopes:

(a) the tender prices must be read out aloud: and

(b) the following information must be written on a whiteboard or projection screen in clear view of the tenderers and public present:

(i) the name of the tenderers whose envelopes are opened;

(ii) the tender prices;

(iii) the amount, form and validity of the tender security for each tender (if any).

(7) The procurement officer must not, at this time:

(a) reject any of the tenders that have been opened; or

(b) award the tender to a tenderer whose tender has been opened.

(8) If tenders are received after the invitation to tender closes:

(a) each of those tenders must be rejected; and

(b) there must be a record of the details of those tenders; and

(c) the tenders must be returned unopened to the tenderers.

62 Tender evaluation

(1) As soon as practicable after opening tenders, the Technical Evaluation Committee appointed for the tender must commence evaluating the tenders.

(2) Tender evaluation must be conducted:

(a) in the following 2 phases:

(i) preliminary evaluation;

(ii) detailed evaluation; or

(b) for tenders for consulting services, by a merit point system (that is by using a procedure of assigning weights and scoring against a set of evaluation criteria).

(3) Preliminary evaluation is conducted in the following way:

(a) evaluators must ascertain whether a tender fulfils the tender documentation requirements, is properly signed and is generally in order;

(b) however, in the interest of maintaining competition, evaluators may decide not to reject a tender because of minor, non-substantial errors or omissions and allow the tenderer a reasonable time within which to rectify such errors;

(c) according to the outcome of the processes under paragraphs (a) and (b), determine whether a tender fulfils the tender document requirements and award a pass or fail.

(4) The tenders that pass preliminary evaluation are given detailed evaluation in the following way:

(a) evaluators must determine whether a tender:

(i) is clear of arithmetical errors, omissions, and deviations and any necessary corrections and adjustments have all been made, including any necessary adjustment of the tender price; and

(ii) is substantially responsive to the tender requirements particularly in terms of specifications, production or construction equipment requirements, and qualification and experience requirements; and

(b) according to the outcome of the process under paragraph (a), determine whether a tender fulfils the requirements under that paragraph and award the tender a pass or fail.

(5) The tender prices specified in the tenders that pass the detailed evaluation under subregulation (4) must be evaluated and compared, and the tenders must be ranked and labelled according to the tender price as the lowest, second lowest, third lowest, and so on.

(6) The tender that is ranked the lowest under subregulation (5) must be declared the LESR.

63 Post qualification of tender

(1) Post qualification of a tender occurs after evaluation of tenders and before the contract is awarded to the successful tenderer to verify and validate the competence, capability and resources of the tenderer to perform the contract.

(2) The Technical Evaluation Committee must evaluate the LESR tender and determine whether the tenderer is capable and competent to perform the contract, and if so award the tenderer a pass. If that tenderer is not awarded a pass, the second LESR (which is the tender ranked the second lowest under

subregulation (5)) must then be post qualification evaluated, and so on until a pass is awarded.

(3) If the Technical Evaluation Committee does not evaluate a tenderer as capable and competent to perform the contract, and does not award the tenderer with a pass, under subregulation (2), the Committee must have justifiable reasons for doing so and make a record of those reasons.

64 Notification to successful tenderer that selected to be awarded contracted

If a tenderer is awarded a pass under regulation 63(2):

(a) the tenderer is determined to be qualified to perform the contract and is awarded the contract; and

(b) the Secretary to the awarding Tender Board must in writing notify the tenderer that the tenderer has been selected to be awarded the contract.

65 Contract negotiation

(1) This regulation applies to:

(a) a tender for the supply of consulting services; or

(b) a tender for the supply of goods, non-consulting services or works if:

(i) the LESR bid is higher than the cost estimates or approved budget for the procurement; or

(ii) the approved budget for the procurement has been reduced after the tender documents became available.

(2) A procurement officer and the selected tenderer must negotiate the terms of the contract for procuring the goods, services or works.

(3) The procurement officer must:

(a) ensure that the negotiation proceedings are recorded; and

(b) for procuring goods and services, confine the scope of the negotiation to reducing the quantities and related requirements; and

(c) for designing and constructing works, confine the scope of the negotiation to reducing the scope of work (but not to the extent that the building, structure or facility concerned would not be operational or functional when completed); and

(d) negotiate keeping in mind the Government's interests and the protection of those interests and not agree to terms and conditions that are inequitable, unfair or grossly disadvantageous to the Government or that are unlawful or inconsistent with government policy.

(3) On the conclusion of the negotiation, the record of the contract negotiation must be signed by both procurement officer for the Government and the tenderer.

(4) The signed record of the contract negotiation will form part of the tender evaluation report and will be considered by the Tender Evaluation Committee in deciding its recommendation for awarding the tender.

66 Pre-conditions to signing contract

(1) A contract must not be signed until all the conditions specified in the tender documents or letter of award as conditions that must be fulfilled before the contract is signed have been fulfilled.

(2) The procurement officer must ensure that all pre-conditions for signing of the contract have been complied with by the tenderer awarded the contract.

(3) The tenderer awarded the contract must:

(a) within 30 days of receiving the letter of award, submit the required bank guarantee as performance security, or performance security declaration, to the appropriate officer of the Ministry; and

(b) within 45 days of receiving the letter of award, have completed all licensing and registration requirements under the law of Solomon Islands applying to the tenderer; and

(v) comply with all other conditions specified in the tender documents or letter of award that must be satisfied before the contract is signed.

67 Publication of tenders awarded by Central Tender Board

The Central Tender Board must, within 7 days of the Board issuing a letter of award to a tenderer:

(a) publish notice of the award of the tender to the tenderer on a Government website to which the public have free access; and

(b) update the register of contracts kept by the TPU to specify the details of the contract.

68 Debriefing

(1) A tenderer who is not awarded the contract in a recently concluded tender may request, and as soon as practicable after the request is made, must be given:

(a) written reasons why the tenderer was not awarded the contract; or

(b) a debriefing about the tenderer's performance of the tender processes.

(2) The debriefing must be conducted at a meeting at the office premises of the Ministry attended by the tenderer and relevant procurement and other Ministerial officers.

(3) The meeting must be conducted in a fair, constructive and transparent manner; and deal only with the tenderer's tender performance.

(4) One of the procurement officers present must take minutes of the meeting. After the end of the meeting the tenderer must be asked to sign a copy of the minutes as a true and correct record of the meeting, and then be given a copy of the minutes so signed.

(5) If the tenderer remains dissatisfied with the tendering and debriefing processes, the tenderer may take further action in accordance with the complaints resolution procedure specified in Schedule 1.

Division 3 Simple procurement

69 Form of documents for simple procurement

The standard document for simple procurement tenders:

(a) is the Request for Quotations Form; and

(b) must contain:

(i) the form of the quotation; and

(ii) a schedule of requirements which contains a detailed description of specifications of the goods, non-consulting services or works being procured; and

(iii) a schedule of delivery of the goods, non-consulting services or works and related services; and

(iv) if appropriate, a draft contract (which is a standard form contract specifying terms and conditions relevant for the tender).

70 Quotations

(1) A procurement officer:

(a) must obtain at least 3 written quotations for the supply of the goods, provision of non-consulting services or carrying out works in accordance with the schedules of requirements and delivery in the Request for Quotations, at a stated price; and

(b) must give each tenderer at least 7 days from the date the tenderer receives the Request for Quotations within which to give the tenderer's quotation to the Ministry.

(2) The quotations must be:

(a) provided at the tenderer's cost, which will not be reimbursed; and

(b) valid for at least 30 days.

71 Comparative bid analysis

(1) The procurement officer must evaluate each quotation received and determine its compliance with:

(a) the form of the documents provided; and

(b) the schedule of requirements; and

(c) the schedule of delivery; and

(d) specified qualifications required for performance of the tender.

(2) On completing the evaluation, the procurement officer must produce a summary of the results of the evaluation in the form of a comparison of all quotations received (which could be set out as a table of comparison between all the quotations).

(3) The LESC quote is determined on the basis of the evaluation.

72 Award of simple procurement tender

(1) A simple procurement tender is awarded by the procurement officer issuing a purchase order to the tenderer who provided the LESC quotation.

(2) The purchase order must:

(a) specify all of the following:

(i) the specifications of the goods, non-consulting services or works to be supplied;

(ii) the schedule of delivery of the goods or completion of the non-consulting services or works;

(iii) total contract amount;

(iv) terms of payment, and list of documentation required to support claims for payment;

(v) if appropriate, warranties and after sales services and any other special requirements; and

(b) provide for signification of both the accountable officer of other ministerial officer authorised by the accountable officer to sign and the supplier, service provider or contractor.

(3) If the tenderer with the LESC quotation does not accept the purchase order, the procurement officer may issue the purchase order to one of the other tenderers who provided a quotation.

Division 4 Bid waiver

73 Application of bid waiver

(1) Bid waiver applies if the conditions specified in regulations both 76 and 77 are satisfied.

(2) If bid waiver applies, Divisions 2 and 3 do not apply and goods or services may be procured in any other way that is appropriate in the circumstances.

74 Situations where bid waiver may be used

(1) Bid waiver may only be used for procurement in the circumstances set out in this regulation.

(2) Bid Waiver applies if:

(a) a proclamation declaring a state of public emergency is in force under section 16(2) of the Constitution; and

(b) as a result, procurement by competitive tendering or simple procurement procedures is not possible.

(3) Bid waiver applies if:

(a) an Order declaring the whole or a part of Solomon Islands to be in a state of disaster is in force under section 12 of the National Disaster Council Act (Cap. 148); and

(b) as a result, procurement by competitive tendering or simple procurement procedures is not possible.

(4) Bid waiver applies if:

(a) there is a genuine market limitation of the number of potential tenderers; and

(b) as a result, no benefit is expected to be obtained from following the competitive tendering or simple procurement processes.

(5) Bid waiver applies if:

(a) the procurement is of specialised technical equipment or services which are available from 2 or less potential tenderers (whether national or international); and

(b) as a result, no benefit is expected to be obtained from following the competitive tendering or simple procurement processes.

75 Bid waiver request process

(1) Bid waiver does not apply unless:

(a) an accountable officer completes a bid waiver request that:

(i) is in the form approved by the Central Tender Board; and

(ii) describes the circumstances for requiring bid waiver, which circumstances amount to a situation referred to in regulation 76; and

(ii) includes a declaration by the Permanent Secretary of the Ministry concerned that the Permanent Secretary is satisfied that in the circumstances bid waiver is:

(A) necessary to avoid significant detriment to the people or

property of Solomon Islands; or

(B) appropriate having regard to the lack of benefit expected to accrue from following the competitive tendering or simple procurement processes; and

(b) the bid waiver request is:

(i) approved by the Ministerial Tender Board; and

(ii) after approval by the Ministerial Tender Board, is given to the TPU for consideration and the TPU agrees that bid waiver is appropriate in the circumstances; and

(ii) if agreed to by the TPU, given to the Central Tender Board for consideration and is approved by the Central Tender Board.

Division 5 Period contracts

76 When period contracts may be used

Period procurement contracts are used:

(a) to procure goods or services which are regularly required, such as the following:

(i) office supplies;

(ii) computer and photocopying consumables;

(iii) pharmaceuticals and other medical supplies;

(iv) non-perishable food rations;

(v) IT equipment; and

(b) to procure services which are regularly required, such as the following:

(i) food catering;

(ii) printing services;

(iii) maintenance of air conditioning units, power generating sets and vehicles;

(iv) security services.

77 Centralised control of period contracts

(1) The Permanent Secretary MOFT:

(a) is responsible for all period procurement contracts; and

(b) subject to subregulations (3) and (4), enters into a period procurement contract for the benefit of the Government.

(2) The Central Tender Board must award each period contract.

(3) If there are reasons of urgency or expediency to do so agreed to in writing by the Permanent Secretary MOFT, an accountable officer may initiate or test-pilot a period contract under the supervision of the Permanent Secretary

MOFT.

(4) If the Central Tender Board first approves in writing, a procurement officer may carry out the tender process, and award a period contract, for the procurement of specialised equipment or services for the procurement officer's Ministry.

78 Tendering process for period contracts

(1) The competitive tendering procedure must be used to procure supply of goods or provision of services under a period contract.

(2) Substantially compliant tenders must be rejected if specifying unit prices which are more than 5% higher than the average unit price of all compliant tenders.

(3) At least 3 period contracts must be awarded for each tendering process.

(4) The unit price specified in a tender for which a period contract is awarded must be fixed for the duration of the period contract.

79 Exclusivity of period contracts

On the signing of the period contracts awarded for a tendering process, the goods or services that may be supplied under the contract:

(a) are available for supply to all Ministries; and

(b) must not be procured other than under those period contracts.

80 Duration of period contracts

(1) The duration of a period contract must not be for more than 12 months.

(2) A period contract is not renewable, and must not be expressed to be renewable.

(3) However, a period contract may include provision for an extension of duration of the period contract for 12 months or less if:

(a) the Ministry and the other contracting party agree to extend the duration of the contract for a period of 12 months or less; and

(b) the unit price specified in the contract as first entered into applies throughout the period of extension; and

(c) the extension of the contract is approved by the Central Tender Board and countersigned by the Permanent Secretary MOFT.

81 Operation of period contracts

When procuring goods or services under a period contract:

(a) it is not necessary to obtain alternative quotations; and

(b) the goods or services are purchased by issuing a purchase order to the supplier or service provider under a period contract.

PART 6 CLASSES OF PROCUREMENT

82 Purpose of Part 6

This Part provides standards for Government procurement practice for the following classes of procurement (regardless of the method of procurement used):

(a) procurement of goods;

(b) procurement of non-consulting services;

(c) procurement of general works;

(d) procurement of small works: labour-based equipment-supported road maintenance works;

(e) procurement of small works: maintenance of provincial airstrips by landowners and local community groups;

(f) procurement of consulting services;

(g) disposal of moveable non-current goods.

83 Specification of standards for classes of procurement

The standards are specified in the Schedules as follows:

(a) Schedule 3 specifies standards for procurement of goods;

(b) Schedule 4 specifies standards for procurement of non-consulting services;

(c) Schedule 5 specifies standards for procurement of general works;

(d) Schedule 6 specifies standards for procurement of small works: labour-based equipment-supported road maintenance works;

(e) Schedule 7 specifies standards for procurement of small works: maintenance of provincial airstrips by landowners and local community groups;

(f) Schedule 8 specifies standards for procurement of consulting services;

(g) Schedule 9 specifies standards for disposal of moveable non-current assets.

PART 7 MISCELLANEOUS MATTERS

84 Purpose of Part 7

This Part specifies additional requirements for sound procurement practice.

85 Bid pricing and costs estimates

(1) All bid pricing and costs estimates in tenders are strictly confidential during the tendering process.

(2) Costs estimates must be:

(a) made known to, and used solely by, procurement officers as necessary for the purposes of evaluating tenders; and

(b) used as a guide in determining the reasonableness of evaluated bids.

(3) A LESR tender must not be considered to contain an unreasonably low bid price, and must not be rejected because of that, if the tender was graded as "passed" in both of the preliminary and detailed evaluations.

86 Advance payment

Advance payment processes must be conducted in accordance with instructions given by the Accountant-General.

87 Restrictive practices

A procurement officer must not:

(a) set up a panel of preferred tenderers, or have any similar restrictive practice arrangement, for procuring goods, services or works; and

(b) engage in bracketing (that is set an upper and lower limit for bid pricing and consider only tenders with bid prices that fall within those limits).

88 Records

All records of procurement of goods, services or works by the Government must be retained in an accessible manner for not less than 7 years.

89 Communications

All communications relating to tenders or procurement contracts by a procurement officer or any other ministerial officer must be:

(a) in writing; and

(b) in English.

90 Conduct of procurement officers

(1) A procurement officer must at all times act in the interests of the Government and the public interest.

(2) A procurement officer, and all other officers of the Ministry for which works are being procured, must observe strict confidentiality of cost estimates during the tendering process.

91 Conduct of tenderers and contractors

Tenderers and contractors must, in complying with these Regulations, act honestly and in accordance with international best practice.

92 Non-compliant procurement arrangements

(1) In this regulation:

"***arrangement*** means a contract or agreement, whether express or implied and whether legally enforceable or not, for procuring goods, services or works to which these Regulations apply, but which does not comply with these Regulations;

"***government official***" means an officer or employee of the Government.

(2) If a government official enters into an arrangement, the Permanent Secretary MOFT and the Permanent Secretary of the Ministry for whom the procurement is made must:

(a) jointly write to each party to the arrangement drawing the party's attention to the breach of the Government procurement practice; and

(b) decide whether to commence criminal or civil proceedings against the parties to the arrangement.

93 Termination of contracts

Whichever of the Central Tender Board or the Ministerial Tender Board which awarded a procurement contract may terminate the contract on one or more of the following grounds:

(a) poor performance by the supplier, service provider, consultant or contractor (as the case requires);

(b) default by the supplier, service provider, consultant or contractor (as the case requires);

(c) force majeure;

(d) lack of finances to complete the contract;

(e) any other reason that makes the continuation of the contract impossible, impractical or unadvisable.

SCHEDULE 1
(Regulation 6(2))

PROCUREMENT PROCEDURES

1. Competitive tendering procedure for goods, non-consulting services and works has the following steps:

(a) prepare tender bidding documents and obtain approval from relevant Tender Board;

(b) issue of request for tender and tender bidding documents;

(c) provide for clarification by potential tenderers;

(d) receipt of bids;

(e) opening of bids – prepare tender opening register;

(f) formation of Tender Evaluation Board;

(g) conduct preliminary evaluation;

(h) seek post offer clarifications (if necessary);

(i) conduct tender evaluation and prepare tender evaluation report;

(j) Tender Board approval of contract award – tender award notification issued;

(j) draft contract prepared by Ministry or other Agency concerned and submitted to Accountant-General for approval;

(j) contract signing by successful tenderer and purchasing Ministry or other agency;

(j) publication of contract award, advice given to unsuccessful tenderers and debriefings.

2. Simple Procurement procedure has the following steps:

(a) obtain quotations;

(b) compare offers and select tenderer – prepare bid analysis;

(c) completion and approval of purchase requisition;

(d) are any tenderers selected or does the selected tenderer accept the purchase order:

(i) if yes:

(A) submit purchase requisition to TPU with required documents for compliance checking;

(B) purchase order issued after compliance checking;

(C) procurement officer delivers purchase order to supplier, service provider or contractor;

(D) supplier, service provider or contractor delivers goods, services or works;

(E) receipt and inspection of goods, services or works and purchase order endorsed to confirm receipt;

(F) endorsed purchase order submitted to the TPU by supplier, service provider or contractor or procurement officer;

(G) Accountant-General issues payment for purchase order after compliance checking;

(H) filing of payment documentation; or

(ii) if no, and another tenderer is able to deliver same goods, works or services using purchase order, use procedure under

subparagraph (i); or

(iii) if no and there is no other tenderer:

(A) prepare payment voucher and submit to the TPU with purchase requisition and other required documents for compliance checking;

(B) Accountant-General issues payment in advance after compliance checking and files documents;

(C) procurement officer files copy of payment voucher in payments in advance file;

(D) supplier, service provider or contractor delivers goods, services or works;

(E) receipt and inspection carried out and copy of purchase voucher endorsed to confirm receipt of goods, services or works;

(F) procurement officer removes payment voucher from payment in advance file.

3. The procedure for resolution of complaints and other issues arising from the tendering process of a contract is:

(a) a person who is dissatisfied with the tendering procedure, award of the tender or contractual arrangement may make a complaint to the Tender Board that awards the contract;

(b) the matter is investigated and consultations engaged in to resolve the complaint or issue;

(c) if the matter is before a Ministerial Tender Board and is not resolved to the satisfaction of the complainant, the dissatisfied person may take the matter to the Central Tender Board;

(d) the Central Tender Board investigates the matter and engages in consultations to resolve the matter;

(e) if a matter before the Central Tender Board is not resolved, the party may take the matter to the Ombudsman.

SCHEDULE 2

(Regulation 6(3))

TENDER DOCUMENTS

When preparing draft tender documents, a procurement officer must use the standard document from the following list that is recommended for the type of procurement:

(a) Standard Bidding Document for Goods;

(b) Standard Bidding Documents for Major Goods;

(c) Standard Bidding Documents for Works;

(d) Standard Bidding Documents for Major Works;

(e) Simplified Request for Proposal for Non-Consulting Services;

(f) Standard Request for Expression of Interests for Consultants;

(g) pro forma contracts, including:

(i) FIDIC Short Form Contracts, for works contracts valued at more than $2,500,000; and

(j) Consultants Contracts; and

(k) Consultants Large Contracts, for consultants' contracts valued at more than $2,500,000.

SCHEDULE 3
(Regulation 83)

STANDARDS FOR PROCUREMENT OF GOODS

1 Application of Schedule 3

Schedule 3 specifies standards for the procurement of goods.

2 Contracts packaging

The following standards apply for contracts packaging for the procurement of goods:

(a) goods being procured must be packaged in a manner that maximises efficiency and economy;

(b) similar or related goods must be combined in a single package in lots;

(c) as tendering of shipping and delivery of goods must be part of the tender process for procuring the supply of goods, the contract package must include costs for shipping, delivery, installation and commissioning, as applicable;

(d) if national tenderers may tender, the manner of packaging must accord with the technical and financial capacities of national tenderers.

3 Technical specifications and schedule of requirements

(1) Technical specifications for the procurement of goods must:

(a) specify the technical and performance characteristics of the goods required; and

(b) be expressed in the manner that makes clear the required standards of workmanship; and

(c) not restrict competition in tendering to supply or in supplying the product; and

(d) not be unduly restrictive, for example by referring to brand names, catalogue numbers or other details that limit a material or item to a specific manufacturer or supplier; and

(e) if containing an item description, have the words "or its equivalent" after the description.

(2) Schedules of requirements for the procurement of goods must:

(a) specify general and detailed technical and performance characteristics of the goods that are essential for ensuring the supply of goods required; and

(b) include detailed instructions on packaging, marking, packing, shipping or other mode of transportation, inspection, testing, installation, commissioning, replacement of defective or damaged goods and final acceptance; and

(c) include instructions for providing reasonable quantities of spare parts needed during initial period of operation; and

(d) include template forms and documentation, for example pro-forma delivery receipts, that need to be filled in and signed by receiving ministerial personnel and the supplier.

4 Qualification requirements

(1) The minimum qualifications that a supplier under a procurement contract for goods must have are that the supplier must:

(a) be registered with the Company Haus of the Ministry of Commerce, Industries, Labour and Immigration; and

(b) have a business licence applying for the area where the supplier conducts business; and

(c) have a Tax Identification Number and a bank account; and

(d) have been in the business of supplying the goods or similar goods during the immediately preceding period of 3 years; and

(e) maintain a goods display store or stores and a business office that is open and accessible to the public; and

(f) have, within the immediately preceding period of 3 years, successfully completed at least one contract for the supply of goods of similar size, technical complexity and condition and delivery of the goods to a similar location; and

(g) have production, supply and financial capacities to supply the goods; and

(h) have not failed to perform, or poorly performed, a similar contract; and

(i) have not been suspended or blacklisted from performing or completing a previous contract.

(2) The qualification requirements must be specified in the invitation to tender and the tender documents;

(3) Tenderers must provide documentary evidence of their compliance with the qualifications.

(4) International tenderers must not be required to comply with registration and business licence requirements under the law in force in Solomon Islands, but if awarded a contract of more than 12 month's duration they must be required to comply with those requirements as a pre-condition to signing the contract.

(5) A contract cannot be awarded to a local agent of an international tenderer, but must be awarded to the tenderer the agent represents.

5 Supplier's capacity

Contracts for the procurement of goods must not be awarded to a supplier if the contract would exceed:

(a) the limit of a supplier's production or supply capacity; and

(b) the limit of the supplier's financial capacities.

6 Payment schedule

If goods are procured from national suppliers, the contract must specify that payment is made in full on the procurement officer receiving evidence of:

(a) satisfactory completion of delivery; and

(b) satisfactory acceptance of the goods which comply with the requirements specified in the contract.

7 Variations

(1) The value of all variations to the quantity of supply of goods under a contract for procurement of the goods should not cumulatively be an increase of more than 10% of the original contract price.

(2) If goods being procured are no longer available in the market, variation of the contract for procuring goods as to the technical specification of the goods may occur as long as the specifications of the proposed substitute product is at least equivalent to (if not better than) the original specifications.

(3) A contract for procuring goods must not be varied unless:

(a) the tender board which approved the contract approves the variation to the contract; and

(b) the TPU approves the variation to the contract.

8 Liquidated damages

(1) The tender documents for the procurement of goods must provide for payment by the supplier of liquidated damages for delayed completion of the contract for the supply of the goods.

(2) Liquidated damages of at least 0.1% of the contract price, but not more than 10% of the contract price, must be:

(a) payable for every day that completion of the contract is delayed; and

(b) deducted from the final payment made under the contract.

9 Warranties

(1) Warranties for goods procured must be valid for at least 12 months after the date of acceptance of the goods.

(2) The original copies of the certificates of warranty for goods procured must be given for safekeeping to the procurement officer on completion of delivery of the goods.

SCHEDULE 4
(Regulation 83)

STANDARDS FOR PROCUREMENT OF NON-CONSULTING SERVICES

1 Application of Schedule 4

Schedule 4 specifies standards applying to the procurement of non-consulting services.

2 Contracts packaging

The following standards apply for contracts packaging for the procurement of non-consulting services:

(a) the services being procured must be packaged in a manner that maximises efficiency and economy;

(b) similar or related services must be combined in a single package in lots;

(c) if national tenderers may tender, the manner of packaging must accord with the technical and financial capacities of national tenderers.

3 Schedule of requirements

(1) The schedule of requirements to a contract for procurement of non-consulting services must specify both general and detailed specific technical

specifications of the services.

(2) The technical specifications must include the following:

(a) scope of services, duties, tasks or activities;

(b) service or performance outputs;

(c) type, number and qualification of personnel required;

(d) time-inputs of personnel;

(e) work schedule for providing the services.

(3) Schedules of requirements for the procurement of non-consulting services must include template forms and documentation that need to be filled in and signed by receiving ministerial personnel and the supplier.

4 Qualification requirements

(1) The minimum qualifications that a service provider under a contract procuring non-consulting services must have are that the service provider must:

(j) be registered with the Company Haus of the Ministry of Commerce, Industries, Labour and Immigration; and

(k) have a business licence applying for the area where the service provider conducts business; and

(l) have a Tax Identification Number and a bank account; and

(m) have been in the business of performing the services or similar services during the immediately preceding period of 3 years; and

(n) maintain a business office that is open and accessible to the public; and

(o) have, within the immediately preceding period of 3 years, successfully completed at least one contract for the provision of non-consulting services of similar size, technical complexity and condition and delivery of the goods to a similar location; and

(p) have the technical and financial capacity to perform the services; and

(q) have not failed to perform, or poorly performed, a similar contract; and

(r) have not been suspended or blacklisted from performing or completing a previous contract.

(2) The qualification requirements must be specified in the invitation to tender and the tender documents.

(3) Tenderers must provide documentary evidence of their compliance with the qualifications.

(4) International tenderers should not be required to comply with registration and business licence requirements under the law in force in Solomon Islands, but

if awarded a contract of more than 12 month's duration they must be required to comply with those requirements as a pre-condition to signing the contract.

(5) A contract cannot be awarded to a local agent of an international tenderer, but must be awarded to the tenderer they represent.

5 Service provider's capacity

Contracts for the procurement of non-consulting services must not be awarded to a service provider if the contract would exceed:

(a) the limit of the service provider's technical capacity; and

(b) the limit of the service provider's financial capacities.

6 Payment

(1) For provision of janitorial, cleaning or security services under a contract with a duration of 12 months or less, payment should be made monthly.

(2) For the performance of all other non-consulting services, payment should be made in full on the procurement officer's satisfactory acceptance of completion of performance of the service.

7 Advance payment

(1) This paragraph applies subject to regulation 86.

(2) There must be no advance payment for provision of non-consulting services under a one-off, low value contract of 12 months or less duration.

8 Variations

(1) A contract for the procurement of non-consulting services must not be varied unless:

(a) the variation is within the scope of services specified in the contract; and

(b) the variation is essential to make equipment or facilities specified in the original wording of the contract operational and functional; and

(c) the cost of all variations under the contract is not cumulatively an increase of more than 10% of the original contract price; and

(d) the cost of the variation is based on unit rates specified in the original wording of the contract; and

(e) the tender board which approved the contract approves the variation to the contract; and

(f) the TPU approves the variation to the contract.

9 Liquidated damages

(1) The tender documents for the procurement of non-consulting services must provide for payment by the service provider of liquidated damages for delayed shipping, delayed delivery of the services or delayed completion of repair work.

(2) Subject to subparagraph (3), liquidated damages of at least 0.1% of the contract price per day must be:

(a) payable for every day that completion of the provision of the service is delayed; and

(b) deducted from the final payment to the service provider made under the contract.

(3) The total amount of liquidated damages paid by the service provider must not to exceed 10% of the contract price.

10 Warranties

(1) Warranties must cover quality of workmanship of goods.

(2) Any repairs made must have a warranty for at least 90 days or by reference to an objective measure of quality or performance.

SCHEDULE 5
(Regulation 83)

STANDARDS FOR PROCUREMENT OF GENERAL WORKS

1 Application of Schedule 5

Schedule 5 specifies standards applying to the procurement of general works.

2 Contracts packaging

The following standards apply for contracts packaging for the procurement of general works:

(a) the services being procured must be packaged in a manner that maximises efficiency and economy;

(b) similar or related services must be combined in a single package in lots;

(c) arranging a works package into materials, labour and plant or equipment hire components, and tendering for each component individually and separately must not occur;

(d) if national tenderers may tender, the manner of packaging must accord with the technical and financial capacities of national tenderers.

3 Specification of works

(1) A contract for procurement of general works must specify the works required in detail.

(2) In complying with subparagraph (1), the contract must specify at least the following:

(a) the scope of works;

(b) a schedule or activities or items of work;

(c) technical specifications for the works, including construction methodologies, quality standards and required tests and assurances;

(d) a bill of quantities;

(e) a list of required plant and equipment, including their description and quantities;

(f) a list and quantities of required key construction personnel and their qualifications and experience;

(g) the duration of the works;

(h) a construction schedule in Gantt chart format;

(i) all relevant detailed technical designs, plans and drawings;

(j) details of requirements for provision of safety and health of construction workers and for environmental protection.

(3) If the tender is for relatively large design-and-build works or specifies out of the ordinary procurement relating to works, the tender process must not commence unless the following have been reviewed and approved by the TPU:

(a) the design and performance parameters of the works;

(b) the detail of the procedures for evaluating technical proposals;

(c) the criteria for evaluating tenderers' qualifications and experience.

(4) Maintenance contracts for transport infrastructure (roads, bridges and international and domestic airports) must be performance based.

(5) The tender documents must, in their works requirements and technical specifications sections, define the desired quality and performance standards of the work outputs, and how they will be measured.

4 Tendering period

The tendering period for tenders for transport infrastructure works with values of more than $5,000,000 must be for at least 21 days.

5 Qualification requirements

(1) The minimum qualifications that a contractor under a contract for general works must have are that the contractor must:

(a) be registered with the Company Haus of the Ministry of Commerce, Industries, Labour and Immigration; and

(b) have a business licence applying for the area where the contractor conducts business; and

(c) have a Tax Identification Number and a bank account; and

(d) have been in the business of carrying out the works being tendered or similar works during the immediately preceding period of 3 years; and

(e) maintain a business office that is open and accessible to the public; and

(f) have, within the immediately preceding period of 3 years, successfully completed at least one contract for general works of similar size, technical complexity and condition and in a similar location; and

(g) have the technical and financial capacity to perform the works; and

(h) have not failed to perform, or poorly performed, a similar contract; and

(i) have not been suspended or blacklisted from performing or completing a previous contract.

(2) The qualification requirements must be specified in the invitation to tender and the tender documents;

(3) Tenderers must provide documentary evidence of their compliance with the qualifications.

(4) International tenderers should not be required to comply with subparagraph (1)(a) and (b), and with any other registration and licence requirements under the law in force in Solomon Islands, but if awarded a contract of more than 12 month's duration they must be required to comply with those requirements as a pre-condition to signing the contract.

(5) A contract cannot be awarded to a local agent of an international tenderer, but must be awarded to the tenderer they represent.

6 Contractor's capacity

Contracts for the procurement of general works must not be awarded to a contractor if the contract exceeds:

(a) the limit of the service provider's technical capacity; and

(b) the limit of the service provider's financial capacities.

7 Tender evaluation

(1) In evaluating tenders for procurement of general works, the following

additional special procedures must be complied with at the detailed evaluation stage:

(a) subject to paragraph 8, a special procedure for examining whether the unit rates of the bid are balanced;

(b) subject to paragraph 9, a special procedure for examining the responsiveness of the bid to the price variance analysis for the technical requirements.

(5) A tender must be rejected for the following reasons only:

(a) a matter relating to the substance of the bid, including works specifications and requirements, qualification and experience requirements, technical and financial capacities;

(b) irregularity in the bid pricing.

8 Unbalanced bids

(1) A bid is unbalanced if the unit rates are substantially higher in relation to the estimate and rates quoted by other tenderers for:

(a) items of work to be performed early in the contract delivery; or

(b) underestimated quantities for certain items of work.

(2) The procedures for correcting or balancing an unbalanced bid must be specified in detail in the tender documents.

9 Price variance analysis

(1) Price variance analysis:

(a) is a comparison made work-item by work-item between unit prices in the cost estimates and tenderer's unit prices; and

(b) focuses on the work items with tender prices that are lower than cost estimates or have negative variances.

(2) In conducting this analysis, a tenderer's unit price on a particular work item that is more than 15% lower than the unit price in the cost estimates must be verified as follows:

(a) the tenderer must, on request by the procurement officer, explain the tenderer's unit price on the work item;

(b) the procurement officer must carry out an independent review of the cost estimates on that particular work item.

(3) Procurement officers carrying out the evaluation must satisfy themselves that:

(a) the explanation given by the tenderer for the unit price of that work

item is acceptable; and

(b) the corresponding cost estimate on that work item is complete, accurate and current.

(4) Procurement officers must reject tenders with total unexplained low unit prices for a significant number of critical work items which are more than 15% lower than the total verified cost estimates for those work items.

10 Lump-sum contract

(1) Subject to subparagraph (2), unless otherwise specified in the tender documents, contracts for the procurement of general works must be a lump-sum contract.

(2) A unit-rate contract or a contract formed by combination of a lump-sum contract and a unit-rate contract should be used for contracts where the scope of the works cannot be clearly defined and completed specifications and schedules of activities cannot be included in the tender documents.

(3) If a lump-sum contract is used, the following applies:

(a) on being awarded the contract the contractor is contractually bound to complete the whole of the works in accordance with the works requirements (including scope of work, specifications and quality standards) for the accepted lump-sum price regardless of minor errors or omissions made by the tenderer in tendering to perform the works; and

(b) any attempt by any means made at contract execution stage by a party to the contract to correct such errors or omissions (for example by way of variation or adjustment of quantities or unit prices) must be treated as an attempt to tamper with the contract.

(4) The matters specified in subparagraph (3) must be specified in the tender documents.

(5) The procurement officer must inform the tenderer awarded a lump-sum contract of the matters specified in subparagraph (3).

(5) Progress payments under lump-sum contracts must be based on well-defined key construction milestones, or on percentage of completion, as specified in the contracts.

11 Advance payment

(1) There must be no advance payment under a contract procuring general works unless:

(a) the contract is for a duration of at least 6 months; and

(b) the advance payment:

(i) is made only for the purpose of providing the contractor with initial funds to meet start-up costs and expenses incurred before the work actually begins; and

(ii) does not exceed 20% of the contract price; and

(iii) is not released to the contractor until the contractor provides security for the amount of the advanced payment in the form of an unconditional bank guarantee, callable on demand, issued by a bank acceptable to the TPU; and

(c) the advance payment is recouped either as:

(i) a one-off sum in the first 3 months of contract execution; or

(ii) equal instalments spread over the first 3 months of contract execution or first 3 progress billings, whichever occurs first.

(2) If a contractor requests an advance of an interim payment or a series of interim payments under a contract procuring general works, the request must be rejected.

Note to paragraph 11(2).

Advancing an interim payment or series of interim payments under such a contract does not conform with international construction industry practice and is inconsistent with good procurement practice.

12 Payment

(1) Payment under a contract for procurement of general works should be based on satisfactory fulfilment of desired quality of workmanship of outputs.

(2) If outputs are of sub-standard quality, payments to be made under the contract must be reduced in proportion to the sub-standard quality.

13 Variations

(1) A contract for the procurement of general works may be varied if:

(a) the variation is essential to render the works specified in the contract complete, operational and functional; and

(b) the variation is for activities or works within the original scope of work; and

(c) the cost of the variation does not cumulatively exceed more than 10% of the original contract price; and

(d) the cost of the variation is based on unit rates specified in the original wording of the contract.

(2) Extension of time for completing the contract should be allowed if:

(a) time needs to be extended as a result of a variation; and

(b) t he work required by the variation falls along the critical path of the approved Program Evaluation Review Technique or Critical Path Method of the works schedule.

(3) Additional works that are completely outside of the original architectural, structural or engineering design or the scope of works is not a variation and must not be allowed.

(4) The variation to the contract must be approved in writing by:

(a) the tender board which approved the contract; and

(b) the TPU.

14 Liquidated damages

(1) The tender documents for the procurement of general works should provide for payment of liquidated damages for delayed completion of the works.

(2) Subject to subparagraph (3), liquidated damages of at least 0.1% of the contract price per day must be:

(a) payable for every day that completion of the provision of the service is delayed; and

(b) deducted from the final payment to the service provider made under the contract.

(3) The total amount of liquidated damages paid by the service provider must not to exceed 10% of the contract price.

15 Defects liability

(1) Defects liability under a contract for procuring general works should cover quality of workmanship of all works completed.

(2) The defects liability period should be for at least 12 months after the date of completion.

16 Retention money

(1) The tender documents and contracts for the procurement of general works may require an amount of money that is to be paid to a contractor be retained as a guarantee or protection, and to be used to pay for rectification works, if the contractor neglects or fails to rectify a defect in workmanship during the defects liability period (***retention money***).

(2) Retention money:

(a) money not exceed 10% of the contract price; and

(b) must be deducted progressively in instalments from the gross amount of each progress payment to be made to the contractor; and

(c) must be held on deposit by the Government until the expiry of the defects liability period.

(3) Despite subparagraph (2)(c):

(a) half of the amount of the retention money may be paid to the contractor on satisfactory completion of the works (and when the defects liability period commences); and

(b) the balance of the retention money would then be paid to the contractor if defects identified during the defects liability period have been satisfactorily rectified.

SCHEDULE 6
(Regulation 83)

STANDARDS FOR PROCUREMENT OF LABOUR-BASED EQUIPMENT-SUPPORTED ROAD MAINTENANCE WORKS

1 Application of Schedule 6

Schedule 6 specifies standards applying to the procurement of small value road maintenance works.

2 Characteristics of labour-based equipment-supported works

(1) Labour-based equipment-supported works ("***LBES works"***) are undertaken in rural areas by:

(a) small contractors; or

(b) organised community groups.

(2) Contracts for LBES works are for:

(a) several month's or several year's duration; or

(b) a one-off repair job.

3 Qualification requirements

(1) Subject to subparagraph (2), the minimum qualifications that a contractor who performs LBES works under a procurement contract must have are that the contractor must:

(a) be registered with the Company Haus of the Ministry of Commerce, Industries, Labour and Immigration; and

(b) have a business licence applying for the area where the contractor conducts business; and

(c) have a Tax Identification Number and a bank account; and

(d) have successfully completed relevant training given by the Ministry of

Infrastructure Development; and

(e) have the necessary tools and equipment to perform the works; and

(f) have successfully completed at least one contract for the provision of LBES works; and

(g) have not failed to perform, or have poorly performed, a similar contract; and

(h) have not been suspended or blacklisted from performing or completing a previous contract.

(2) The minimum qualifications that a community group, which is participating in tendering for LBES works contracts for the first time, must have are that:

(a) the leaders of the group must have completed LBES training given by the Ministry of Infrastructure Development and have been awarded a certificate of completion; and

(b) the group has the written consent of the leaders of the community where the LBES works will be carried out to carry out the work.

(3) The qualification requirements must be specified in the invitation to tender and the tender documents;

(4) Tenderers must provide documentary evidence of their compliance with the qualifications.

(5) A community group which is awarded an LBES works contract for the first time, must comply with subparagraph (1)(b) and (c) before the contract is signed, and compliance with those requirements must be a pre-condition to signing the contract.

4 Contractor's capacity

A community group must be awarded one LBES contract at a time.

5 Type of contract for road maintenance contracts

A unit-rate contract or a contract formed by combination of a lump-sum contract and a unit-rate contract should be used for LBES road maintenance contracts.

6 Advance payment

(1) There must be no advance payment under a LBES contract if the contract is not for a one-off repair or a maintenance works contract with a duration of less than 3 months under a contract.

(2) There must be no advance payment under a LBES works contract procuring works unless:

(a) the contract is for a duration of at least 6 months; and

(b) the advance payment:

(i) is made only for the purpose of providing the contractor with initial funds to meet start-up costs and expenses incurred before the work actually begins; and

(ii) does not exceed 20% of the contract price; and

(c) the advance payment is recouped either:

(i) in full as a one-off sum in the first 3 months of contract execution; or

(ii) in equal instalments spread over the first 3 months of contract execution or first 3 progress billings, whichever occurs first.

SCHEDULE 7
(Regulation 83)

STANDARDS FOR PROCUREMENT OF OTHER SMALL WORKS

1 Application of Schedule 7

Schedule 7 specifies standards applying to the procurement of small works.

2 Characteristics of small works

(1) Small works are maintenance of provincial airstrips that are:

(a) small-value labour-based routine maintenance works; and

(b) undertaken by the landowners or local community groups whose land the airstrip is on.

(2) Competitive tendering is not appropriate for small works to which this Schedule applies. The procedures specified in this Schedule should be used instead.

3 Invitation to submit offers

(1) The procurement officer of the Ministry of Communication and Aviation should invite landowners and local community groups to submit offers to maintain provincial airstrips on their land.

(2) The invitation must specify:

(a) the works requirements (including the scope of works, items of work, technical specifications, performance standards and measures, bill of quantities, required tools and equipment, qualifications of work supervisor and work schedule); and

(b) training and qualification requirements; and

(c) the criteria and procedure for evaluating offers; and

(d) the pre-conditions to the award of the contract.

4 Evaluation of offers and award of contract

(1) Offers to maintain a provincial airstrip must be evaluated on the basis of:

(a) compliance with documentation requirements, including written and signed consent to maintaining the airstrip from all landowners and local community groups; and

(b) compliance with qualification requirements; and

(c) reasonableness of offered contract price with reference to cost estimates.

(2) For a contract the value of which is $500,000 or more, the award of the contract must be:

(a) recommended to the Central Tender Board by the Ministerial Tender Board; and

(b) approved by the Central Tender Board.

5 Advance payment

There must be no advance payment under a small works contract procuring works for maintaining an airstrip unless:

(a) the advance payment:

(i) is made only for the purpose of providing the contractor with initial funds to meet start-up costs and expenses incurred before the work actually begins; and

(ii) does not exceed 20% of the contract price; and

(b) the advance payment is recouped either:

(i) in full as a one-off sum in the first 3 months of contract execution; or

(ii) in equal instalments spread over the first 3 months of contract execution or first 3 progress payment billings, whichever occurs first.

6 Payment

(1) Payment under a contract for small works should be:

(a) made no more frequently than monthly; and

(b) based on satisfactory fulfilment of desired quality of workmanship of outputs.

(2) If outputs are of sub-standard quality, payments to be made under the contract must be reduced in proportion to the sub-standard quality.

7 Contracts to be performance based

(1) Maintenance of an airstrip under a small works contract should be performance-based.

(2) The works requirements specified in the invitation to submit offers must define the desired quality and performance standards of the work outputs, including how they will be measured.

(3) The terms of the contract must provide that:

(a) the contract will be terminated if the performance of the maintenance works under the contract are consistently rated unsatisfactory; and

(b) a replacement contractor, selected through competitive tendering or a negotiated contract, will be engaged to take over the maintenance works.

SCHEDULE 8
(Regulation 83)

STANDARDS FOR PROCUREMENT OF CONSULTING SERVICES

1 Application of Schedule 8

Schedule 8 specifies standards applying to the procurement of consulting services.

2 Contracts packaging

The following standards apply for contracts packaging for the procurement of consulting services:

(a) the services being procured must be packaged in a manner that maximises efficiency and economy;

(b) similar or related services must be combined in a single package in lots;

(j) the manner of packaging must accord with the technical and financial capacities of consultants.

3 Terms of reference

(1) A contract for procuring consulting services must include terms of reference setting out the objectives and scope of the contract and deliverables under the contract.

(2) The terms of reference for consultants providing the consulting services who are firms (whether companies or other business organisations) must specify:

(a) the background to and purpose of the consulting services; and

(b) the scope of the consulting services; and

(c) the technical approach and methodology to be employed in providing the consulting services; and

(d) the consultant's tasks and the activities and required deliverables or outputs for each task; and

(e) a list of key experts and specialists and their required qualifications and experience; and

(f) a list of tasks and the outputs and deliverables of each expert or specialist; and

(g) a table showing the estimated time-inputs allocated for each key expert or specialist and his or her expected start dates and end dates; and

(h) the start date and end date for providing the consulting services; and

(i) the facilities and support to be provided to the consultant by ministerial officers.

(3) The terms of reference for consultants providing the consulting services who are individuals must specify:

(a) the background to and purpose of the consulting services; and

(b) the scope of the consulting services; and

(c) the technical approach and methodology to be employed in providing the consulting services; and

(d) the consultant's tasks and the activities and required deliverables or outputs for each task; and

(e) qualification and experience requirements; and

(f) the start date and end date for providing the consulting services; and

(g) the facilities and support to be provided to the consultant by ministerial officers.

4 Cost estimates

To provide guidance for evaluating tenders, the procurement officer must prepare detailed cost estimates of:

(a) consultants' remuneration fees;

(b) reimbursable costs;

(c) reasonable provision for contingencies.

5 Qualification requirements for consultants who are firms

(1) The minimum qualifications for a firm (whether a company or other business organisation) providing consulting services are that the firm must:

(a) be registered with the Company Haus of the Ministry of Commerce,

Industries, Labour and Immigration; and

(b) have a business licence applying for the area where the consultant conducts business; and

(c) have a Tax Identification Number and a bank account; and

(d) maintain a business office that is open and accessible to the public; and

(e) have, within the immediately preceding period of 5 years, successfully completed at least one contract for the provision of consulting services of similar size, scope and technical complexity in a similar location and condition; and

(f) have the technical and financial capacity, and the staff, to perform the services; and

(g) have not failed to perform, or poorly performed, a similar contract; and

(h) have not been suspended or blacklisted from performing or completing a previous contract.

(2) The qualification requirements must be specified in the invitation to submit expressions of interest;

(3) Tenderers must provide documentary evidence of their compliance with the qualifications.

(4) International tenderers should not be required to comply with registration and business licence requirements under the law in force in Solomon Islands, but if awarded a contract of more than 12 month's duration they must be required to comply with those requirements as a pre-condition to signing the contract.

(5) A contract cannot be awarded to a local agent of an international tenderer, but must be awarded to the tenderer they represent.

6 Qualification requirements for consultants who are individuals

(1) Small value, simple-type consulting services should be provided by consultants who are individuals.

(2) The minimum qualifications for an individual providing consulting services are that the individual must:

(a) have a Tax Identification Number and a bank account; and

(b) have, within the immediately preceding period of 5 years, successfully completed at least one contract for the provision of consulting services of similar size, scope and technical complexity in a similar location and condition; and

(c) have not failed to perform, or poorly performed, a similar contract; and

(d) have not been suspended or blacklisted from performing or completing

a previous contract.

(2) The qualification requirements must be specified in the invitation to submit expressions of interest;

(3) Tenderers must provide documentary evidence of their compliance with the qualifications.

7 Invitation to submit expressions of interest: form, content and advertisement

(1) Invitations to submit expressions of interest must be in the standard form and must contain at least all of the following:

(a) a brief description of the consulting services to be provided;

(b) required qualifications and experience;

(c) the criteria and procedures that will be used in evaluating expressions of interest and proposals;

(d) the latest date (which must be at least 14 days after the invitation is advertised) by which the invitations must be received;

(e) where a copy of the terms of reference for the consultancy can be obtained.

(2) Invitations to submit expressions of interest must be advertised at least once in a newspaper of national circulation and on a Government website to which the public have free access.

(3) The invitation to submit expressions of interest could also be posted conspicuously on tender notice boards and notice boards in public places.

(4) Advertising the invitation to submit expressions of interest is not necessary if:

(a) the accounting officer is satisfied that there are at least 5 consultants who are qualified to provide the consulting services and who are suitable to be short-listed for contract negotiation and award; and

(b) the Permanent Secretary MOFT has, in writing, approved that advertisement of the invitation is not necessary.

8 Consulting firms: selection procedure

(1) The procedure for selecting a firm to provide consulting services:

(a) must emphasise quality over price; and

(b) must comply with the Quality-Cost Based Selection procedure; and

(c) must use evaluation criteria approved by the Accountant –General; and

(d) must weight the criteria used for evaluating the tenders so that criteria going to quality are at least 70%, but not more than 80%, of the weight

values assigned; and

(e) must comply with paragraphs 9 to 15.

(2) The standard form tender document that must be used for procuring consulting services from firms is the Request for Proposals form.

(3) The Request for Proposals form must:

(a) comprise a technical proposal and a financial proposal; and

(b) at least specify:

(i) the weighted criteria for evaluating each tender; and

(ii) the procedure that will be used in evaluating and scoring the tenders; and

(iii) the minimum technical qualifying score.

(4) A guide to evaluating tenders to provide consulting services must be prepared by the procurement officer taking into consideration the qualification requirements stated in the tender documents, approved by the Accountant-General and provided to the Tender Evaluation Committee to use in evaluating and scoring proposals.

(5) Procedure for advance payment to consulting firms and variation of procurement contracts with consulting firms are specified in paragraphs 16 and 17.

9 Consulting firms: short-listing and request for proposals

(1) Expressions of interest received from firms after the closing date must not be considered for short-listing.

(2) Expressions of interest from firms must be:

(a) evaluated based on required qualification and experience specified in the invitation; and

(b) on the basis of the evaluation results, ranked in order of compliance with qualification and experience specifications.

(3) The short-list of consulting firms is compiled based on the order of ranking of the expressions of interest and must contain at least the consultants ranked first, second, third, fourth and fifth most compliant.

(4) The procurement officer must send the Request for Proposals form to each short-listed consultants.

10 Consulting firms: order in which technical and financial proposals opened

(1) Technical proposals contained in firms' tender documents for procuring

consulting services are opened and evaluated first.

(2) The envelopes containing the financial proposals must remain sealed and be kept in a safe place until the evaluation of the technical proposals and the identification of the tenders that meet the minimum qualifying technical score specified in the Request for Proposal.

11 Consulting firms: opening and evaluation of technical proposals

(1) The envelopes holding technical proposals for providing consulting services must be opened in the presence of representatives of the tendering firms and any members of the public that choose to attend.

(2) At evaluation, the technical proposals must be evaluated using the criteria, weighting and procedures specified in the Request for Proposal and given a score.

(3) The envelope holding a tenderer's financial proposal must not be opened and evaluated unless the tenderer's technical proposal, is evaluated to meet the minimum technical qualifying score specified in the Request for Proposal.

12 Consulting firms: opening and evaluation of financial proposals

(1) The envelopes holding the financial proposals of tenderers' whose technical proposal meets the minimum technical qualifying score for providing consulting services must be opened and the proposals evaluated using the formula and procedures specified in the Request for Proposal, and given a score.

(2) The envelopes holding the financial proposals of the tenderers whose technical proposals failed to meet the minimum technical qualifying score must:

(a) remain unopened; and

(b) be returned to the tenderers unopened after the contract signing.

13 Consulting firms: ranking

(1) The evaluation and ranking process of consulting firms must be confidential.

(2) The sum of a tenderer's technical proposal's score and financial proposal's score is the final combined score.

(3) All the tenderers' combined scores must be ranked from highest to lowest.

14 Consulting firms: contract negotiation

(1) The tenderer with the highest ranked combined score must be invited for contract negotiation. The letter of invitation must specify the date and time when and the venue where the negotiation will take place.

(2) The negotiation proceedings must be:

(a) recorded; and

(b) conducted keeping in mind the Government's interests and the protection of those interests.

(3) Negotiation discussions must focus on:

(a) a detailed and complete discussion on the tenderer's evaluated technical proposal and its correlation with the terms of reference for the purpose of excluding proposed tasks and activities, and corresponding resources and costs, that exceed requirements for providing the consulting services and are unnecessary; and

(b) a finally agreed description of services to be specified in the contract; and

(c) a detailed and complete discussion on the tenderer's evaluated financial proposal and, taking into account the agreements and conclusions made under paragraphs (a) and (b), corresponding adjustments which should be made to the financial proposal; and

(d) reviewing and agreeing on the key provisions, terms and conditions of the contract; and

(e) a finally agreed contract price, and the breakdown of the price into components, which should be specified in the contract.

(4) There must be no negotiation on the tenderer's offered total price or unit rates.

(5) There must be no agreement to terms and conditions that are:

(a) inequitable, unfair or grossly disadvantageous to the Government; or

(b) unlawful or inconsistent with government policy.

(6) On the conclusion of the negotiation, the record of the contract negotiation must be signed by both procurement officer for the Government and the tenderer.

(7) The signed record of the contract negotiation will form part of the tender evaluation report and will be considered in recommending the award of the tender referred to in the report.

15 Consulting firms: contract award

(1) If contract negotiation with the highest-ranked tenderer is successful, on completion of the negotiation the procurement officer must:

(a) report the successful result to the Ministerial Tender Board; and

(b) recommend to the Ministerial Tender Board that the contract be

awarded to the tenderer.

(2) The award of the contract is subject to, and cannot be made until the recommendation to award is:

(a) approved by the Ministerial Tender Board; and

(b) if approved by the Ministerial Tender Board, reviewed and endorsed by the TPU; and

(c) if appropriate, approved by the Central Tender Board.

(3) If the negotiation with that tenderer is not successful, the contract negotiation with that tenderer must be declared unsuccessful and the next-ranked short-listed consultant must be invited for contract negotiation, and this process continues until the contract is awarded.

(4) After the signing of the contract:

(a) the Secretary to the Central Tender Board must publish the successful tenderer on a Government website to which the public have free access; and

(b) each unsuccessful tenderer may request a debriefing about the tenderer's performance of the tender process from the procurement officer.

16 Consulting firms: advance payment

There must be no advance payment under a contract with a firm for procuring consulting services unless:

(a) the contract is for a duration of at least 6 months; and

(b) the advance payment:

(i) is made only for the purpose of providing the consultant with initial funds to meet start-up costs and expenses incurred before the work actually begins; and

(ii) does not exceed 20% of the contract price; and

(iii) is not released to the consultant until the consultant provides security for the amount of the advanced payment in the form of an unconditional bank guarantee, callable on demand, issued by a bank acceptable to the TPU; and

(c) the advance payment is recouped either as:

(i) a one-off sum in the first 3 months of contract execution; or

(ii) equal instalments spread over the first 3 months of contract execution or the first 3 progress billings, whichever occurs first.

17 Consulting firms: variation

(1) A contract for the provision of consulting services by a firm may be varied if:

(a) the variation is necessary; and

(b) the variation is within the original scope of work; and

(c) unless the TPU otherwise approves because of special circumstances, the cost of the variation does not cumulatively exceed more than 10% of the original contract price; and

(d) the cost of the variation is based on unit rates specified in the original wording of the contract.

(2) The variation to the contract is invalid and has no effect unless it is approved in writing by:

(a) the tender board which approved the contract; and

(b) the TPU.

18 Individual consultants: procedures

(1) The procedure for selecting an individual to provide consulting services is specified in paragraphs 18 to 20.

(2) The Procedures for the payment of individual consultants and variation of procurement contracts with individual consultants are specified in paragraphs 21 and 22.

(3) The use of the Request for Proposal and Quality-Cost Based Selection procedure selection process for individual consultants is dealt with in paragraph 23.

19 Individual consultants: valuation, ranking and short-listing

(1) Expressions of interest received from individual consultants after the closing date must not be considered for short-listing.

(2) Expressions of interest must be:

(c) evaluated based on required qualification and experience specified in the invitation; and

(d) on the basis of the evaluation results, ranked in order of compliance with qualification and experience specifications.

(3) The short-list of consultants is compiled based on the order of ranking of the invitations and must contain at least the consultants ranked first, second and third most compliant.

20 Individual consultants: contract negotiation and award

(1) The first-ranked individual consultant must be invited for contract negotiation. The letter of invitation must specify the date and time when and the venue where the negotiation will take place.

(2) Negotiation discussions must deal with at least:

(a) for national consultants:

(i) remuneration fees; and

(ii) benefit entitlements; and

(iii) out-of-pocket expenses and reimbursable costs; and

(iv) local taxes; and

(b) for international consultants:

(i) remuneration fees; and

(ii) airfares; and

(iii) accommodation and per diems;

(iv) benefit entitlements; and

(v) payment of local taxes.

(3) If the negotiation is successful, the contract must be awarded on completion of the negotiation. If the negotiation is not successful, the next-ranked short-listed consultant will be invited for contract negotiation, and this process continues until the contract is awarded.

21 Individual consultants: payment

(1) If payment under a contract for providing consulting services by an individual consultant is by milestone payments, payments must be linked to the deliverables and outputs specified in the contract.

(2) If payment under a contract for providing consulting services by an individual is time-based, payment must be made at least monthly.

22 Individual consultants: variation

(1) A contract for the provision of consulting services by an individual consultant may be varied if:

(a) the variation is necessary; and

(b) the variation is within the original scope of work; and

(c) unless the TPU otherwise approves because of special circumstances, the cost of the variation does not cumulatively exceed more than 10% of the original contract price; and

(d) the cost of the variation is based on unit rates specified in the original wording of the contract.

(2) The variation to the contract is invalid and has no effect unless it is approved in writing by:

(a) the tender board which approved the contract; and

(b) the TPU.

23 Individual consultants: use of Request for Proposal process

If the procurement of consulting services by an individual consultant involves the provision of unusual or complex services, the procurement officer must:

(a) send tenderers short-listed under paragraph 19 a Request for Proposal form; and

(b) use the Quality-Cost Based Selection procedure; and

(c) rank the tenderers and negotiate and award the contract on the basis of the technical and financial proposals provided by the tenderers.

SCHEDULE 9
(Regulation 83)

STANDARDS FOR DISPOSAL OF MOVEABLE NON-CURRENT ASSETS

1 Application of Schedule 9

Schedule 9 specifies standards applying to contracts for the disposal of moveable non-current assets.

2 Moveable non-current assets with no scrap value

Permanent Secretaries may decide how to dispose of moveable non-current assets with no scrap value.

3 Moveable non-current assets with scrap value

(1) For the disposal of moveable non-current assets with scrap value of more than $10,000 but not more than $100,000, the accountable officer must obtain at least 3 quotes from interested tenderers.

(2) For the disposal of moveable non-current assets with scrap value of more than $100,000 but not more than $500,000:

(a) the Ministerial Tender Board must dispose of the assets through the competitive tendering process for the highest evaluated substantially responsive bid; and

(b) the disposal of the asset to the highest evaluated substantially responsive bid must be approved by the Permanent Secretary MOFT.

(3) For the disposal of moveable non-current assets with scrap value of more than $500,000:

(a) the Ministerial Tender Board must dispose of the assets through the competitive tendering process for the highest evaluated substantially responsive bid; and

(b) the disposal of the asset to the highest evaluated substantially responsive bid must be approved by the Central Tender Board.

4 Qualification requirements

The following persons may participate in the tendering process for disposing of moveable non-current assets:

(a) individuals who are citizens of Solomon Islands;

(b) local companies.

5 Advertising of disposal of asset with scrap value of more than $100,000

(1) The advertisement of a tender for disposing of a moveable non-current asset with scrap value of more than $100,000 must be published:

(a) at least once in a newspaper of national circulation; and

(b) on a Government website to which the public has free access.

(2) The advertisement must include a description of the asset and specify at least the following:

(a) the asset registration number (if any); and

(b) the asset serial number (if any); and

(c) the condition of the asset; and

(d) the location of the asset.

6 Tender basis

Tenders for the disposal of moveable non-current assets must be on an "as is, where is" basis, and the successful tenderer must collect or move the asset from its specified location, in its specified state or condition, at the tenderer's own cost and expense.

7 Tender documents

Standard documents should be used for the tender documents, award letter, contract of sale.

8 Tender security

(1) Tenders must be accompanied by a tender security.

(2) The tender security must be:

(a) 2% of the amount of the tender price, paid in cash or by bank cheque; and

(b) paid in Solomon Islands dollars.

9 Tender evaluation

(1) Tender evaluation procedures used must determine the highest evaluated substantially responsive tender.

(2) Tender evaluation reports should be in the form of the standard document.

10 Payment

(1) The successful tenderer must pay the purchase price, less the amount of tender security, for the moveable non-current asset:

(a) in full; and

(b) in cash or by bank cheque; and

(c) on signing of the contract of sale.

(2) The asset must be released to the tenderer on receipt of payment of the purchase price.

Made this fourteenth-day of October 2021.

HON. MANASSEH DAMUKANA SOGAVARE
MINISTER FOR FINANCE AND TREASURY

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