

# Saint Lucia

Draft

## Public Procurement Manual

June 1, 2021

Issued by the Procurement Administration Unit  
Department of Finance, Economic Affairs & Job Creation  
Saint Lucia

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This Procurement Manual is written to assist with applying the provisions of the Public Procurement Act and the Procurement Regulations enacted in St Lucia. It shall serve as a guide to procuring entities in executing their procurements.

It is expected that there will be changes to organizational structures and responsibilities for procurement as our capacity improves and improvements are made to our procurement processes. For this reason it is anticipated that this Procurement Manual will require further review and amendment as the procurement context evolves.

This Manual applies to all the functions related to Public Procurement, unless specifically excluded. It does not apply, however, to Procurement using funding from external funding agencies. Such agencies include the Caribbean Development Bank, the European Union, and the World Bank. Where external funding agencies stipulates their own procurement procedures, their procedures

shall apply. Do note that apart from the existence of approval authorities in the Public Procurement Act, the provisions of the Public Procurement Act are developed to be in harmony with the procedures of the international donors based on best practices hence following either ought to result in compliance.

## **2. Procurement Overview**

Public procurement is concerned with acquiring goods, works and services necessary to allow the effective and efficient delivery of public services.

Procurement proficiency is very important, since annual Procurement currently totals between 15% and 20% of overall government expenditure.

An effective procurement policy:

- Offers opportunities for major savings in financial and other resources
- Constitutes an integral part of program delivery of the government
- Generates economic and social benefits for the entire population
- Stimulates market innovation, both domestically and internationally
- Provides opportunities for expanded international trade by encouraging innovation and building capacity in our domestic markets.

### **2.1 Procurement Legislation**

The present Procurement Legislative framework for Saint Lucia consists of the Public Procurement Act No. 19 of 2015, the Public Procurement Amendment Act No. 13 of 2020.

The accompanying Public Procurement Regulations are still in draft, pending approval. This legislative framework for public procurement forms the basis for the content of this Public Procurement Manual, developed and published by the Ministry of Finance in Saint Lucia.

### **2.2 Stages of Procurement**

Procurement has three principal stages:

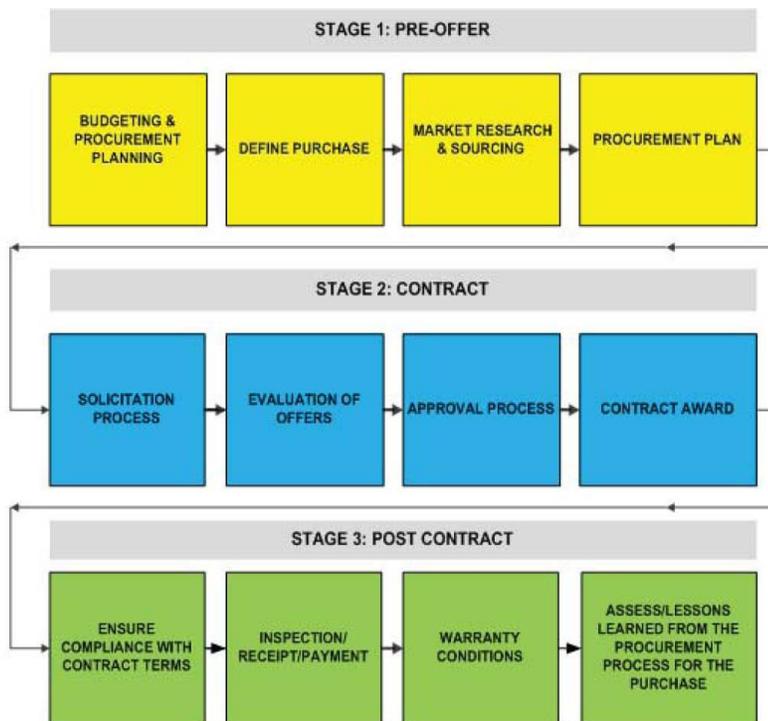
The Pre-Offer Stage concerned with planning the procurement to meet a defined procurement requirement.

The Contract stage concerned with engaging suppliers via a procurement process according to the determined procurement method resulting in a contract.

The Post Contract stage concerned with the implementation of the contract and ensuring the goods, services, works or services contract fulfill the procurement requirement.

Each stage requires careful attention to ensure the effectiveness of the whole process: from inception of the procurement to performance, completion or delivery and finally the assessment of the performance.

The process is outlined in the schematic below:



### 3. Objectives and Principles

#### 3.1 Procurement Objectives

The ultimate aim of public procurement is always the achievement of best value, taking into account these twelve guiding principles.

**Transparency:** Procurement shall be conducted with openness and clarity. Transparency is enhanced by access to information on all opportunities and allowing active participation of stakeholders.

**Accountability:** Effective mechanisms must be in place to enable Accounting Officers and their equivalents to be held responsible for issues of risk and expenditure.

**Competitive Process:** Procurement should be carried out by competition, unless there are compelling reasons not to do so. Special care and attention is to be given to domestic contractors, suppliers and small and medium sized enterprises (SME).

**Consistency:** Notwithstanding minor variations due to unique peculiarities of procuring entities, suppliers should expect the same practices and procedures from all our procuring entities.

**Effectiveness:** Procurement should meet the financial, regulatory, and socio-economic service delivery goals of the Government of Saint Lucia in a balanced manner.

**Efficiency:** Procurement should be carried out as cost-effectively as possible.

**Sustainability:** Procurement should always be conducted cognizant to minimize any adverse environmental impact arising from procurement performance; make efficient use of public resources; improve social conditions; and, stimulate the market to further innovate sustainable production.

**Fair Dealing:** Tenderers must be treated fairly. This includes the protection of commercial confidentiality, where required. The procuring entity should not unnecessarily burden or constrain tenderers. The treatment to all tenderers must be equitable in all circumstances.

**Integrity:** There should be no corruption or collusion with or amongst tenderers. Procurement personnel must adhere to the highest professional standards in conducting the affairs of the government.

**Informed Decision Making:** Procurement decisions should be based on accurate information, and monitored to ensure that goals are met.

**Legality:** Procurement must be in accordance with all legislation.

**Responsiveness:** Procurement should endeavor to meet the aspirations, expectations and needs of the community which it is designed to serve.

### 3.2 Procurement Ethics

Procurement is based on competition on an equitable and transparent basis. All staff associated with procurement are responsible for protecting integrity and maintaining fairness of all. Thus safeguarding against conflict of interest, which may compromise integrity and objectivity. This manual includes the ethical principles for procurement staff outlined in Schedule 2 – Ethical Standards for Staff.

## 4. Procurement Responsibilities

The procurement authorities in the administration of public procurement which govern its performance in Saint Lucia are outlined here.

**Minister of Finance:** Has the overall responsibility for Public Procurement Policy, including direct responsibilities for approving of direct public procurement and emergency procurement.

**Accounting Officer(s):** Defined as per the Public Finance Management Act.

- Head of a procuring entity hence signs all public procurement contracts and approves all payments pursuant to the Public Finance Management Act. (Accounting Officer)
- Responsible for ensuring that all procurement is conducted in accordance with the Public Procurement Act.
- Has authority for approving all procurement procedures and contracts of a minor value i.e. less than \$100,000
- Where tenders are requested, receives and appoints evaluation committees.

**Public Procurement Committee:** Appointed by the Director based on nominations received from the respective accounting officer within a procuring entity. The committee is constituted by a chairperson, a member appointed by the Ministry of Finance and 3 other members from the procuring entity.

Has overall authority for the management of all procurements of intermediate value i.e Greater

than 100,000 up to \$500,000 as follows:

- Approves all procurement procedures
- Approves all tender documents
- Receives tenders and appoints evaluation committees
- Reviews and approves recommendations for award of contract

**Central Procurement Board:** The Minister of Finance shall establish a Central Procurement Board and the following details are to be developed for the Procurement Board:

- Membership: P.S. Finance or nominee as chair, 2 vice chairpersons and 3 public officers as per section 14 of the Act.
- Authority over major value procurement i.e. \$500,000 and above
- Responsible for approval of procedures, contracts, amendments and variations
- Frequency of meetings: a set schedule and “as required” for urgent major decisions.
- Receives tenders and appoints evaluation committees

**Procurement Officer:** An officer appointed/assigned to the procurement functions within a procuring entity. This officer carries out the duties outlined for the procurement unit within a procuring entity.

- Prepare the annual Procurement Plan
- Ensure that funding is authorised and available for any procurement
- Assist in the preparation of the Specifications, TOR(s) or SOW(s)
- Prepare the procurement documents
- Ensure that procurements take account of the actual policy requirements
- Manage the tender process
- Ensure the necessary approvals are obtained from the relevant authorities
- Ensure compliance with relevant legal obligations relating to the procurements
- Be involved, as required, throughout the life cycle of the procurement
- Provide technical expertise and input in the evaluation of offers
- Manage contracts including ensuring the approval of payments to suppliers.
- Maintain all records required by the procurement legislation
- Provide all reports as required by the legislation and requested by the relevant authorities

The procurement officer, acting on the part of a procuring entity, should not deal directly with tenderers, prior to contract award, unless expressly provided for in the procurement law.

**External audit:** Examines and reports on the procuring entity’s performances, including arrangements to achieve Best Value and seeks assurances on compliance with Procurement legislation and regulations. External audit may examine and report on standards of risk management and governance with regard to Procurement. Additionally, performance audits may scrutinize and report on Procurement.

**Internal Audit:** Provides an independent and continuing appraisal of the procuring entities' procurement control system and continuing assurance that these systems are adequate and effective.

**Director of Procurement:** Regulatory authority to ensure compliance to provisions and provide oversight to ensure that the legislative provisions allow for the attainment of best value for acquisitions required for delivery of public services.

Provides Procurement expertise, advice, and services, including:

- Ensuring the procurement process is designed to improve attaining best value
- Advising, guiding, and supporting the development of Procurement policy, best practice and legislation
- Supporting sustainable Procurement policies.
- Developing, promoting and implementing Procurement strategies and procedures
- Ensuring that business needs are met through the procurement process
- Contributing to the procurement laws aims and objectives
- Proactively managing and developing the Tenderer Database

## **5. Procurement Appeals**

An important feature of the procurement regime is the complaints and review mechanism. This creates an avenue where participants and prospective participants can task procuring entities where it is perceived that a process is not being conducted in a fair manner or is not in accordance with the procurement law. The law allows for an easy means of rectifying perceptions of breaches in the procedures without incurring legal costs associated with invoking the courts in seeking justice.

A tenderer or prospective tenderer can file a complaint if there is reason to doubt the fairness and adherence to the procurement act as it pertains to procurement procedure being executed.

In the event that the response to the complaint filed is unsatisfactory, the complainant can file a review of the procedure in question with the Director. These provisions are documented in the instructions of every tender document issued.

This is an important feature in any modern procurement regime which aims at ensuring all participants feel empowered and fairly treated. The premise is that when participants feel confident in the procedures being performed it leads to improved chances of attaining best value in pursuing our procurement objectives

### **5.1 Procurement Complaints**

Any person may submit a complaint in writing to the Accounting officer of a procuring entity regarding a procurement procedure no later than 7 days after notification of an award has been made. The Accounting officer is required to assess the complaint within seven days of receipt and

provide a written response of its decision in writing.

The Procurement Unit will transmit the complaint and the draft response to the Accounting Officer, who will inquire all facts and circumstances of the complaint and there upon issue a decision.

## 5.2 Review of Complaint

Where a person who has filed a complaint is not satisfied that the complaint has been handled correctly or justly an application for a review of the procurement procedure can be filed with the Director of Public Procurement. This application must be made in writing and must be made within 30 days of the persons knowledge of the contravention which gave rise to the complaint.

The application for review must be accompanied by the prescribed fee of (XCD amount to be prescribed) payable to the Accountant General. This fee will be processed like all other revenues payable to the government

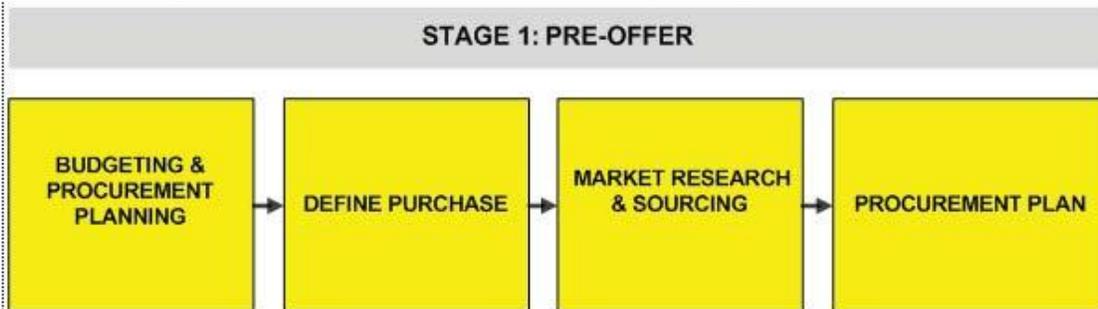
Following the review process outlined in the Act and Regulations the director shall provide a decision in writing within 60 days of the application

## 5.2 Judicial Review

Alternatively, the complainant can, should it wish, directly seek judicial review rather than progressing through the complaint and review appeal process.

## 6. Procurement: Pre-Offer or Planning Stage

The greatest potential for achieving Best Value occurs at the preparation stage of Procurement. The goal of this stage should be to minimize last-minute, emergency or ill-planned Procurement.



The Planning Stage, while shown here with activities sequentially ordered, is actually a dynamic process requiring concurrent action, and with some recurring activities depending on the nature of the Procurement. These activities are outlined below.

### 6.1 Procurement Planning

Procurement must start with the procuring entity developing annual plans, budgets and time schedules to execute an operational or capital activity. These plans are required to address, in detail, all required resources including those to be effected by procurement. The procuring entity should commence this activity at the time the budget is being set, and certainly before budgetary approval

by the Parliament. To ensure that procurement planning is institutionalized, the annual budget preparation guidelines issued by the Ministry of Finance must require the early involvement of the Procurement Unit.

The objectives of the procurement planning activities should include as follows:

- Analysing and documenting the needs of the procuring entity in order that it achieves its service delivery requirements
- Improved budgeting and program scheduling
- Effective and timely program and project implementation
- Attainment of best value
- Avoidance of unnecessary procurement urgencies and exceptions
- Packaging of procurement vis-à-vis existing market conditions, contractors, suppliers (e.g. attaining volume discounts, L.T.A.s)
- Supporting the analysis of options to acquire (e.g. leasing, adding to an existing contract, etc.).

Lack of Procurement planning, or ineffective planning, can lead to delays, loss of transparency, misprocurement, higher costs, and failure to deliver its services leading to damage to the procuring entity's reputation and by extension the Government of Saint Lucia.

Where possible, plans should be based on a three-year projection to match the medium term expenditure framework.

## **6.2 Level of Planning**

The level of effort expended on planning should be commensurate with the complexity of the procurement object. It is helpful to consider the matrix presented below when planning. Using the vertical axis to measure "risk" (from poor Contract performance) and the horizontal axis to measure the "\$ECD value of project"; the matrix classifies the procurement objects in four categories: Routine, Volume, Specialized and Critical.

While the process of planning for the four categories of procurement are similar, the amount of time, effort and documentation will vary amongst them – in some cases significantly. Procurement in categories 2, 3 and 4 are considered Significant Procurement, since they:

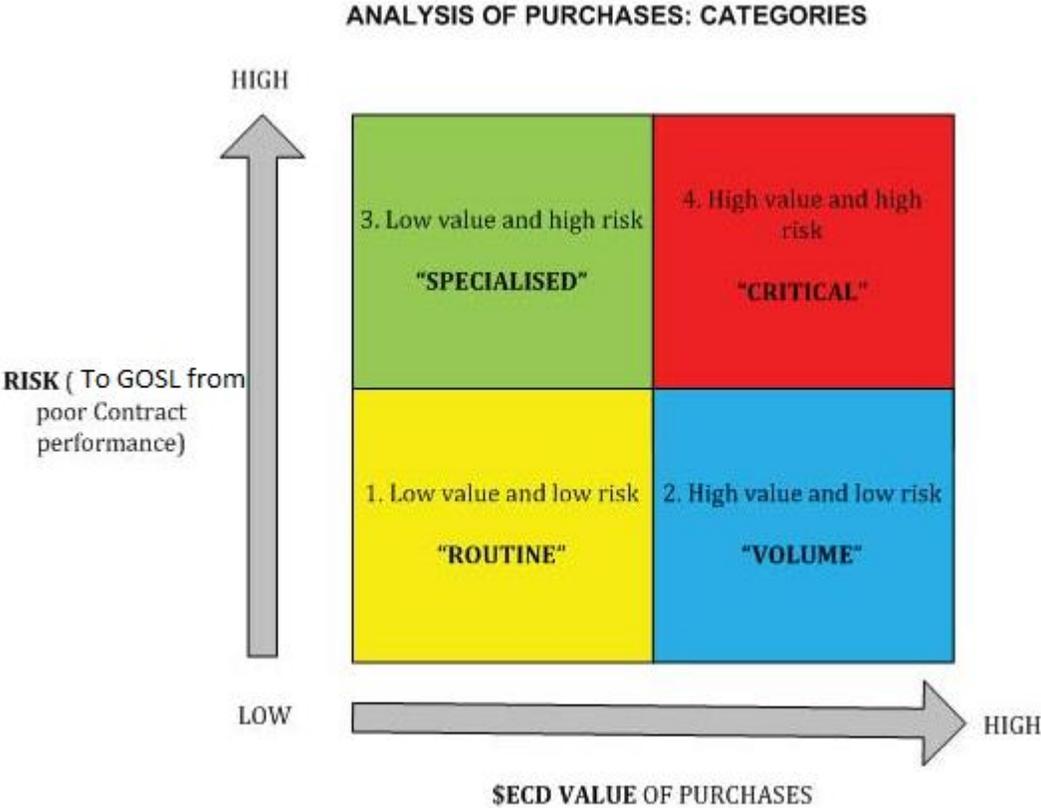
- Represent the majority of the procurement expenditure
- Are generally challenging to specify and source
- Can have a significant impact on Saint Lucia's operations.

For the categories comprising Significant procurement, planning must start at the budgeting stage (refer to [section 6.1](#) above). Routine procurements require less planning and are to be handled by less complex systems that reduce the transaction costs. These systems are outlined in sections that follow:

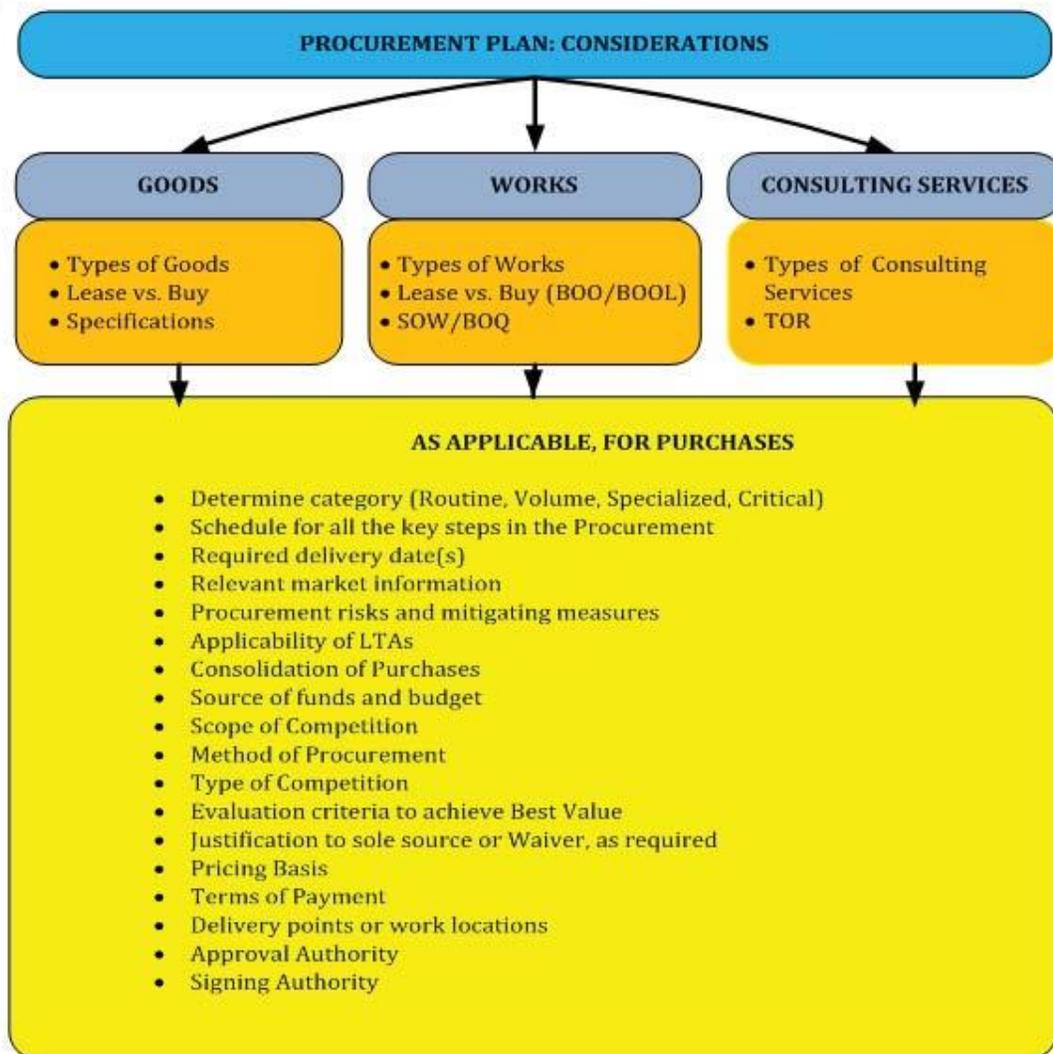
## **6.3 The Procurement Plan**

The Procurement Plan seeks to enable the procuring entity to identify, categories and develop a strategy for its intended procurements paying attention to the following matrix in the diagram below.

The plan would map out the desired time lines and most effective method and process to use when



consideration is given to the risk and value of the procurement.



## 6.4 Procurement Options

During the planning phase, attention should be given to examining options to acquire procurements. Options to be explored are outlined below.

<sup>9</sup>A template for procurement planning is included in Schedule 3. In addition, this template shall be used for periodic reporting on the actual progress of the Procurement vs. the Plan

### 6.4.1 Lease versus Buy

To improve the chances of obtaining Best Value, procuring entities should always consider the lease vs. buy option on a case-by-case basis for assets. At a minimum, the Procurement Unit should consider:

- Estimated useful life of the asset and the extent of use within that period
- Financial and operating advantages of alternative procurement

- Opportunities for re-deployment of the assets upon expiry of useful life
- Transportation and installation cost
- Maintenance and other service costs
- Potential obsolescence due e.g. to planned technological change(s).
- Total live cost of procurement
- Cumulative rental or lease payments for the estimated period.

It is important to consult with industry experts and end users in making these assessments.

The lease option is warranted where it is to the governments net advantage under the circumstances of the particular asset. The lease option may also serve as an interim measure when the circumstances require either immediate use of the asset to meet objectives, or do not currently support an outright buy.

Generally, an outright buy is warranted if the asset will be used beyond the point when cumulative leasing costs exceed the costs of an outright buy.

#### **6.4.2 Consolidation of procurement**

Procuring entities (category 2 of [Section 6.2](#)), should consider opportunities for consolidated procurement. As part of Procurement planning, the procuring entity should pay careful consideration to the possibility of combining procurements to and to develop an approach to reduce total costs, including the costs of processing a large number of low value transactions. Consolidated procurements increase buying leverage.

At the overall government level bulk purchases are identified by the Director and effected by the Ministry of Finance. Procurement planning allows for the identification within a procuring entity of where frequent and or similar procurements may be combined. Deferred delivery arrangements can also improve the prospects of consolidation of procurements.

**(NOTE:** The key point here is that procuring entities need to work towards standardizing their requirements. For example, all procuring entities should agree to accept furniture from one or two Suppliers, as opposed to sourcing their furniture requirements from different Suppliers each time. Also to be considered are LTAs that can be used to support consolidations.)

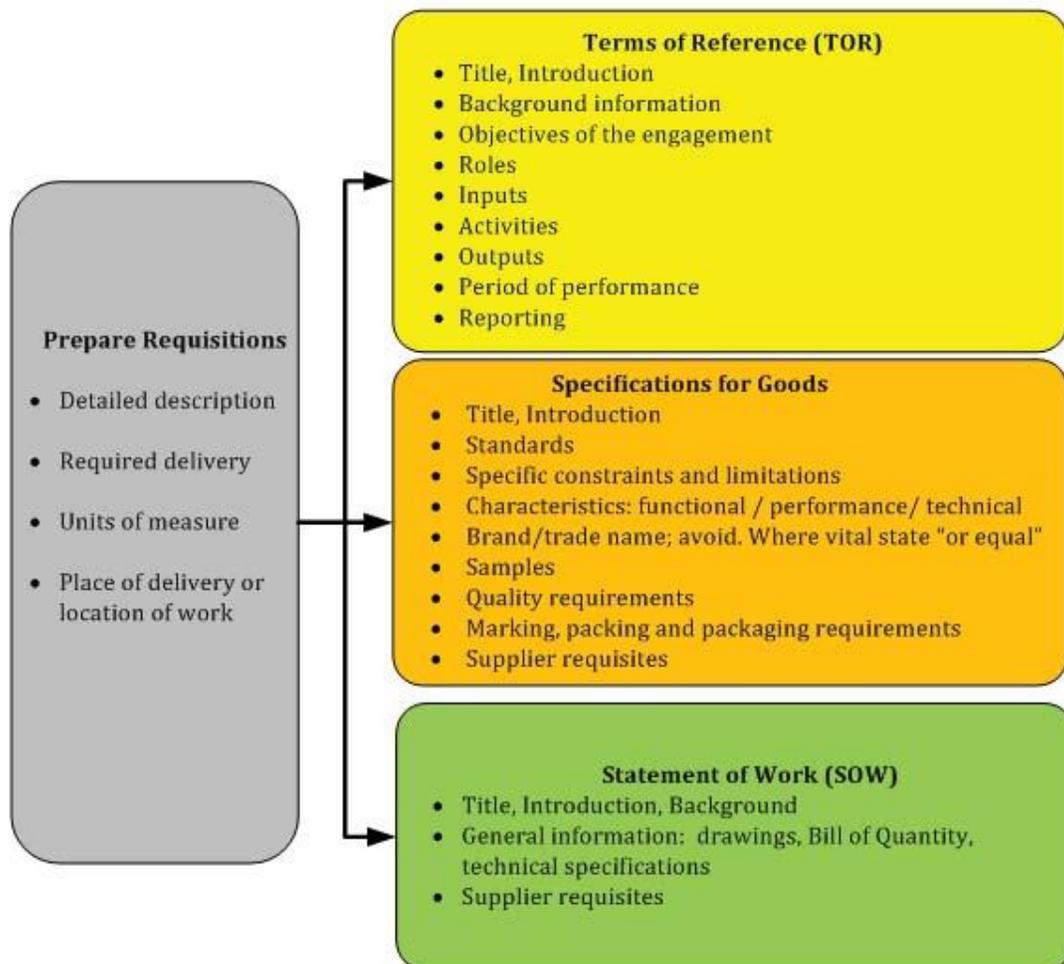
#### **6.5 Defining the procurement requirement**

It is essential that the procuring entities clearly define the required procurement objects. The degree of detail will vary, depending on the complexity of the procurement. Specifications are required for Goods, a Statement of Work (SOW) for Works and Terms of Reference (TOR) for Consulting Services. The requirement must describe the needs, specifications and minimum requirement that would satisfy the need. The statement of requirements must clearly identify the objective of the procurement i.e. what it is that the procurement seeks to accomplish.

## 6.5.1 Terms of Reference for Consulting Services

The Terms of Reference (TOR) define the work required and respective responsibilities of a Supplier to provide Consulting Services. A clear TOR is imperative for an understanding of the engagement, thereby minimizing risk of ambiguity in the preparation of Tender Documents, negotiations, and the subsequent Contract for the execution of the Consulting Services.

The TOR should include the following elements:



- **Title and introduction:** Summary overview of the engagement
- **Background information:** The context in which the Consulting Services will operate: a socio-economic context; an institutional and organizational framework; why the Consulting Services are required; and the rationale for the design of the engagement
- **Objectives of the engagement:** the procuring entity uses the mnemonic SMART: Specific, Measurable, Accurate, Realistic, Time-Bound
- **Roles:** Of the contractor, supplier, procuring entity and others
- **Inputs:** Resources to be used or consumed in the engagement
- **Activities:** The necessary tasks to be carried out to achieve the objectives

- **Outputs:** Intellectual or advisory services
- **Period of performance:** Specific decision points and the review and approval time required; completion time for engagement
- **Reporting:** Report parameters include: what must be submitted for approval; inception, mission, technical, draft and final; number of copies; medium of delivery (hard copy, electronic, etc.)

### 6.5.2 Specifications for Goods

Specifications define the procurement of goods. They should be:

- Generic in nature, to maximize the broadest possible competition
- Clear, concise, and logically stated in functional terms (unless specific technical requirements are needed)
- Provide equal opportunity for all potential Tenderers
- Not over-specified, nor written to include unnecessary features.
- Refer to sustainability as in 3.1

Items to be considered for inclusion in the Specifications are as follows:

- **Title:** Simple and broad description of the specified goods.
- **Introduction:** An introduction increases the market's interest in the Goods. An understanding on the part of a tenderer of the purpose for the Goods can ensure that offered goods are "fit for purpose."
- **Standards:** International (preferable). If a specific standard is not mandatory, specify "or equivalent standards."
- **Specific constraints and limitations:** e.g. max/min. temperatures; pressure humidity; altitude; compatibility with existing equipment; power supply availability.
- **Characteristics:** may be based on any or all three characteristics:
  - Functional: What the goods are to do vs. materials and dimensions.
  - Performance: What needs to be achieved, rather than how it should be done.
  - Technical characteristics: Physical attributes, e.g. materials to be used.
- **Brand or Trade name:** If it is necessary to cite a brand name, the words "or equal" shall be included. This indicates that the desired product is of comparable quality, and/or capable of performing the same function.
- **Sample:** When the above-mentioned approaches to describe goods are not feasible, Tenderers can be requested to submit samples for examination.
- **Quality requirements:** The adherence of Tenderers to ISO quality systems mitigates quality-related risks.
- **Marking and packaging:** Define how goods are to be protected for shipment and/or storage.
- **Supplier requisites:** Where required (for possible Post-Qualification), state in objective terms, the equipment, technical and managerial capabilities required of Tenderers to produce the goods.

### 6.5.3 Statement of Work

The Statement of Work (SOW) *including* designs and drawings, Bill of Quantity (BOQ) and material specifications should describe the Works in sufficient detail to identify the location, nature and any complexities involved, addressing, the following where applicable:

- **Title, introduction and background:** A description of the project, its purpose and functionality.
- **General Information:** Location of work, legal status, site ownership, topography, geotechnical conditions, project layout, designs and drawings, right of way, deadline, supervision, access to site, transportation and communications facilities, services to be provided by consultants and others, method of measurement and payment of completed work.
- **Supplier Requisites:** Where required (for possible Post-Qualification), state in objective terms the experience of construction methods, minimum number of personnel, and equipment and financial capacity, experience in similar projects.

## 6.6 Sourcing

Sourcing, including market research, is a key component of developing the Procurement Plan. Sourcing is an ongoing process to collect and analyze information about capabilities within the market to satisfy the procuring entity. The research includes obtaining updated cost information, identifying new Tenderers, identifying existing or new technology and alternative procurements. The information leads to a better understanding of the supply market which can be used by the procuring entity to:

- Assist in a buy or lease decision
- Determine when to buy
- Establish realistic delivery schedules
- Review Direct Procurement justifications
- Identify price and non-price evaluation factors
- Identify special terms and conditions for procurements
- Establish realistic budgets, Pricing Basis and economic ordering levels
- Increase level of competition and improve Best Live Cost Value.

In some instances, while the procuring entity or technical specialists are preparing Specifications, TOR or SOW, they may perform an informal process of market research by discussing upcoming procurements with prospective Tenderers and other informed market participants. This communication, although an important part of the process, is also a sensitive one, as it can give rise to genuine or perceived bias or favoritism. The Procurement Unit should be aware of the risks associated with this activity, and must ensure that no tenderer be given an advantage through advance information. Care should also be taken to ensure that no tenderer is under the impression that they have an increased opportunity of being awarded a Contract as a result of such research discussions.

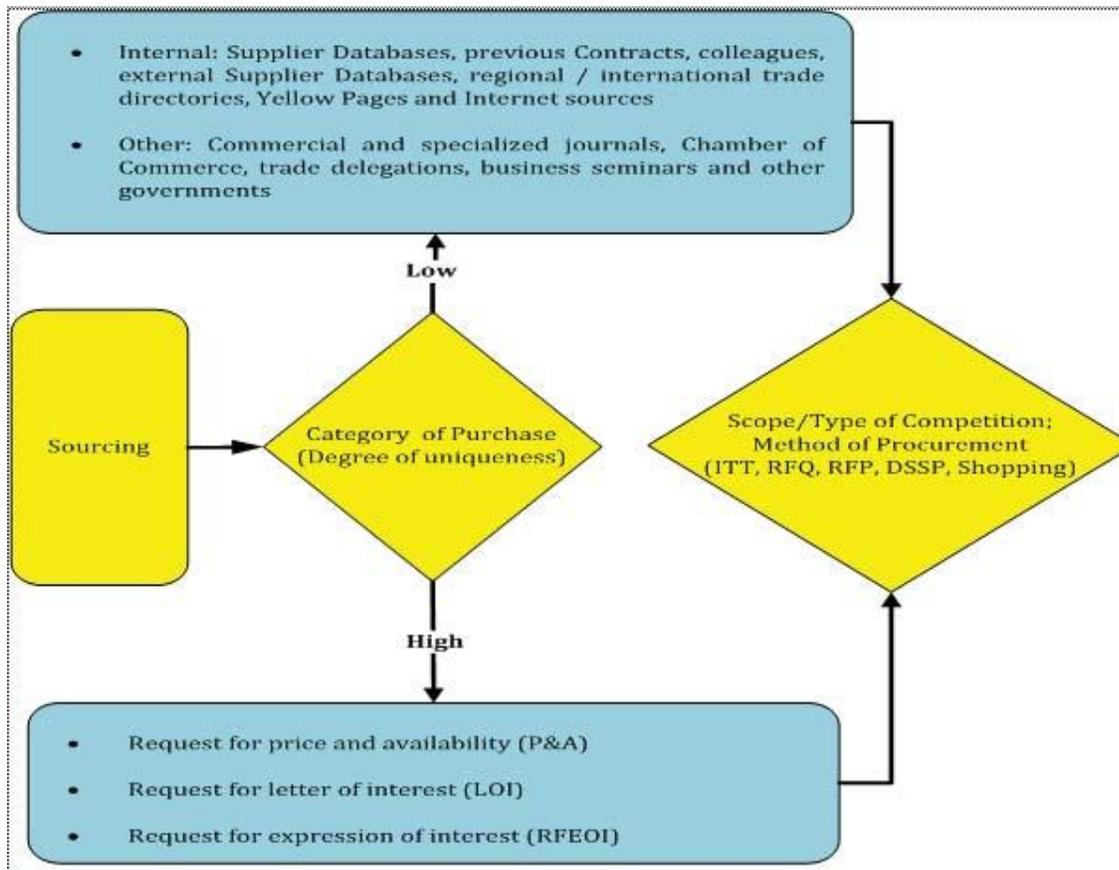
### 6.6.1 Sourcing: Basic Tools

For Routine procurements, market research may be limited to searching sources such as:

- Database of contractors and suppliers<sup>11</sup>
- Contractor and suppliers of previous contracts

- Procuring entity staff and staff of other procuring entities and governments
- Internet references
- Trade directories
- Commercial and specialised journals
- Chamber of Commerce
- Trade and professional associations and business seminars.

Sourcing is depicted in the schematic that follows:



In this diagram, shopping refers to minor value procurements using an LPO

### 6.6.2 Sourcing: Market Analysis

For Significant procurement, especially those with a high degree of uniqueness, tools to be considered include the following.

**Price and Availability (P&A):** A request sent to Candidates for information concerning approximate prices and availability of specific procurements. It is used when P&A information is needed for program planning or budgetary purposes. A P&A enquiry could be made directly to known Candidates or those selected from other sources, or it may be publicly posted on the procuring entity’s website or in national or international news media. P&A enquiries must clearly indicate the

request is not a Tender and there are no commitments with respect to future procurements.

**Request for Information (RFI):** Used when detailed information is required from Candidates regarding potential procurements. Candidates are requested to describe their ability to satisfy the procurement requirements and to provide ideas and suggestions on how the eventual Tender might be structured. Responses are used to assist the procuring entity in finalizing its Procurement Plan. RFIs can be posted on the procuring entity's website (or in national or international media) to obtain replies from a wide audience. Alternatively, for some procurement, only Candidates registered on the Database or other data bases may be approached. RFIs clearly state that they are not Tenders and that there are no commitments with respect to future procurements or Contracts.

**Request for Expression of Interest (REOI):** For some procurement, extensive effort may be required to identify and qualify Candidates. A REOI is a means used to broadcast the procuring entity's needs widely and allow Candidates to present details of:

- Technical capability and experience (similar assignments and work)
- Financial and administrative capability
- Systems and managerial capability
- Personnel (availability of appropriate experience and professional qualifications)
- Business and other organisational factors.

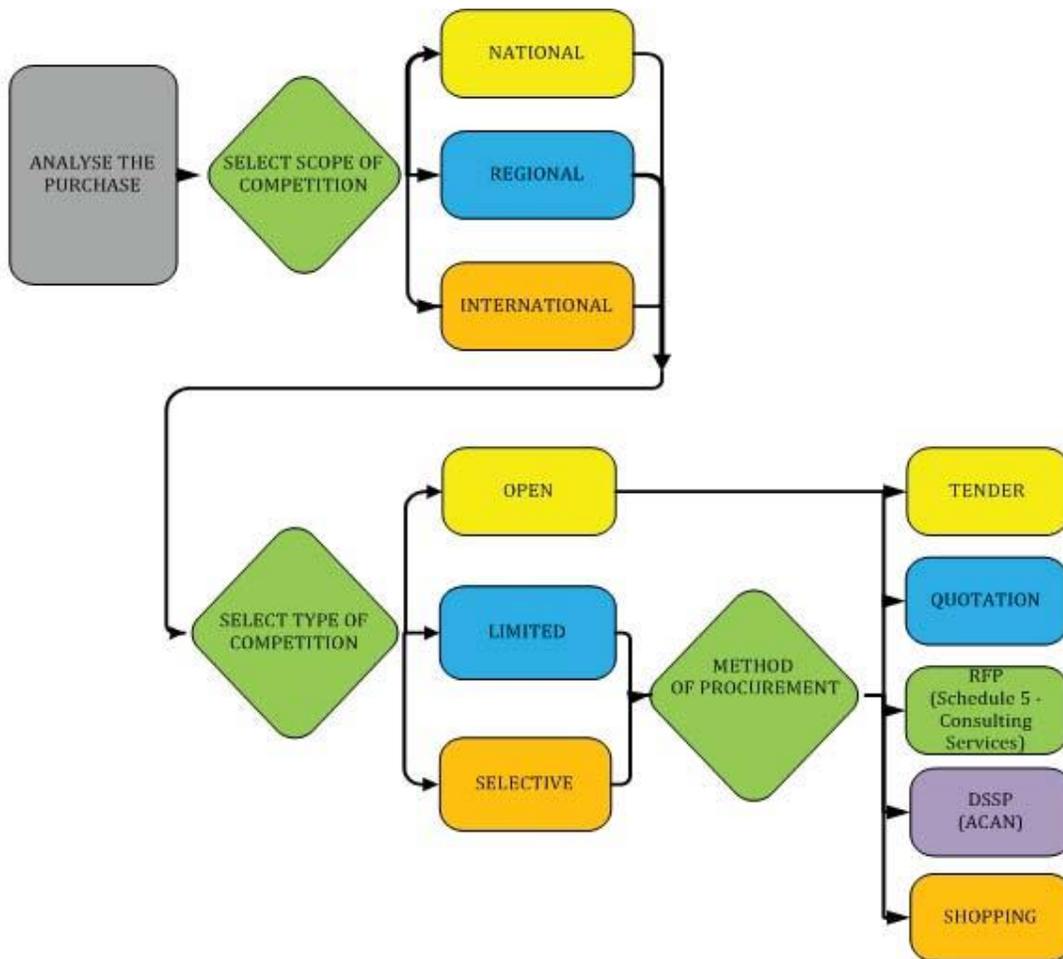
The REOI should contain clear criteria for assessing candidates. All those that meet the criteria, or else a specified number that best meet the criteria (generally not less than four, and not more than seven), are invited to submit tenders in response to a Selective Tender. The names of these Candidates should be communicated to any interested party, in the same manner used to advertise the REOI.

## **6.7 The Procurement Strategy**

A number of factors should become clear during the procurement planning process, including the scope of the procurement, its prospective value, the risks from poor contract performance, and the supply market conditions. All these form the basis of a Procurement strategy, which should address:

- Scope of Competition
- Type of Competition
- Method of Procurement
- Method of Supply
- Pricing Basis
- Best Value - evaluation criteria.

The schematic below depicts the various options for the Scope of Competition, the Type of Competition, and the Method of Procurement. (This information should be viewed in conjunction with Schedules 4 "Value Thresholds for Tender Methods")



As indicated in Schedule 4 “Value Thresholds for Tender Methods”, the total value of a Procurement determines the default option to be selected. Where the default option is NOT to be selected, a Waiver must be sought, in accordance with Schedule 5 “Procurement Approval and Signing Authorities”.

**Note that the dividing or splitting of Procurements to avoid the default option is strictly prohibited.**

### 6.7.1 Geographic Scope of Competition

For a variety of reasons, manufacturing in Saint Lucia is limited. Most goods are imported, generally through local agents and distributors. A reasonable level of domestic capacity exists for Works, Services, and Consulting Services. For specialised or major procurements, international organisations, partnering occasionally with national sources, must be invited to compete. Saint Lucia also has regional trade agreements (such as CARICOM) that affect sourcing strategies within the Caribbean. The impact of the foregoing factors, including national preferential Procurement policies, should be considered when planning and performing procurement projects.

This Manual cannot effectively address the conditions and constraints that determine the geographic scope of sourcing. Procurement officers are to be aware of local, regional and international policies when planning and executing procurement. Procurement officers also must be cognizant that under the CARICOM protocol on Public Procurement all procurement legislations of member states references to National, includes all member states.

## 6.7.2 Methods of Procurement

Depending on the nature, value, and other elements of the procurement, the Procurement Unit should select from the six methods of procurement as contained in the Procurement Act commonly used by the procuring entity that follow.

- Open Competition
- Restricted
- Direct Public Procurement
- Emergency Public Procurement
- Minor value Procurement

Processes:

- Invitation to Tender
- Request for Quotation
- Request for Proposal (Consulting Services)

These Methods of Procurement are outlined in detail below.

Public procurement in Saint Lucia has two main Types of Competition (as specified in Schedule 4 “Value Thresholds for Tender Methods”). A description of each Type of Competition, which is usually a function of the value of the procurement, follows.

- **Open Competition:** the procurement is publicly advertised, and any tenderer may submit a tender. Since Open Competition is the preferred approach, tenders are opened in public for maximum transparency.
- **Restricted Competition:** Applicable where the number of Tenderers is restricted and can take the form of any one of the two modes of Tender, as follows:
  - Limited Competition:** The selection of the limited number of tenderers must be fair and equitable and, where the market conditions permit, not always limited to the same tenderers. A rotational approach could be considered. The number of tenderers requested to submit offers should be consistent with the value of the procurement and the number of tenderers in the market. Suitable when only a few suppliers exist for the procurement required
  - Selected Competition:** The procuring entity may maintain lists of pre-qualified tenderers for a specific procurement. Only the tenderers from such lists are issued the tender documentation. Examples of the lists of Tenderers are:
    - Those pre-qualified by the procuring entity to conduct works of a certain scope or size.
    - Those approved by international health agencies for manufacture of pharmaceuticals.

- Those resulting from an REOI.

Any tenderer not currently on the list of qualified tenderers for selected competition (except resulting from an REOI) can request to be added at any time. The criteria for Tenderers being added to the list must be fair, open, equitable and transparent.

**Direct Public Procurement:** Direct Procurement is used in the following instances:

As per section 52 of the Act, circumstances which justify a waiver of the normal competitive tender process.

1. A supplier has an exclusive right to provide the goods works or services
2. Situations where a specific supplier has to be engaged in order to achieve the objective of the procurement. Typically due to the existence of a previous or existing contract. (Refer to Schedule 4 “Value Thresholds for Procurement Methods”),

A writing justification to the Minister of Finance seeking authority for direct public procurement must contain:

- The reason why the procurement cannot be done competitively
- The availability of financing in approved estimates
- The maximum expected value of the procurement
- The justification for the vendor proposed
- Detailed description of goods, works or services required

Upon receiving approval of the Minister, the procuring unit can then proceed to issue the tender document to the preferred supplier.

**Invitation to Tender (ITT):** Normally used whenever the tenderer must provide a price to meet the procurement requirements, which are expressed quantitatively and qualitatively and the procuring entity determines selection on the basis of lowest-priced tender that meets all requirements. This Method of Procurement can be used for Open or Restricted Competition. It is a more formal process hence it is most appropriate for Major and intermediate value procurements.

**Request for Quotation (RFQ):** The most flexible method, and less formal than an ITT. It can be used for procuring well-defined procurements, since it allows tenders to be evaluated and compared on the basis of price and delivery. It also enables the procuring entity to determine selection on the basis of the lowest-priced tender that meets all requirements. Because of its abbreviated nature, an RFQ may not contain all of the terms and conditions that are typically used in a Contract. Due to its less formal structure it is recommended for use in minor value restricted procurements. It can also be used for open tender minor value contracts as well.

**Request for Proposal (RFP):** Used when the inputs and/or outputs cannot be clearly defined at the time of the Tender – for example, when Consulting Services are required. An RFP may also be used for Procurement of complex Goods where functional specifications are not yet certain. The selection is made of the Offer that is most responsive to the specified requirements, including price and other factors. In certain cases, the RFP may state that the procuring entity may negotiate with one or

more Tenderers before awarding a Contract. This Method of Procurement is generally used for Restricted Tender.

These standard tender documents are subject to updates hence procurement officers must ensure that they use the most updated version. The most updated versions are available in the standard document sets from the electronic portal <https://in-tendorganiser.co.uk/goslprocurement/>

**From the main menu select Administration – Lookup tables – Standard Document Sets**

**Minor Value Procurement:** The selection of a Supplier should be based on technical competence and proven competitiveness to allow for obtaining best value. The Contract must be confirmed in writing by issuing the pertinent documentation to the supplier and a copy of the Contract kept on file.

Minor value procurements can be done via open competition in cases where the procurement unit has no information on the existing supply market and time permits. The procuring unit can restrict based on information from prior purchases and where open competition would not attract competition due to the value of the procurement. Additionally the savings to be derived at this level would not warrant the effort of a formal open competition.

Below a prescribed threshold (\$20,000) an LPO may be used as guided in circular dated August 11, 2021 from the Ministry of Finance. Where an LPO is used, the LPO and the vendors invoice would be deemed to constitute the contract terms.

### **Framework Contract**

This form of procurement contract is used in all cases of possible emergencies, where the exact date of the start of the procurement need is uncertain. It is mostly used for emergencies in infrastructures, i.e. a water pipeline breaks or a hospital needs urgently blood reserves. Here the contract is generally concluded with several contractors or suppliers for a period up to three years with prolongations and price adjustments. The start of the contract implementation is on a 24 h call basis. So no time is wasted. By a phone call the contractor is informed where to repair the broken pipeline and the road or the supplier is called to deliver a definite amount of blood capsules.

Procedures and guidelines for the use of this form of contract are to be developed by the director.

## **6.7.3 Methods of Supply**

Procuring entities can use two main Methods of Supply: Contracts, and Long-Term Agreements.

**Contracts** are typically used for unique Procurements for a particular procuring entity, though they may also be employed to meet the requirements of more than one entity's Procurements.

**Long Term Agreements (LTAs)** are made with Suppliers to provide Procurements as required, over a specified period, with the quantity to be determined at prescribed prices, or pricing provisions, on

agreed-upon terms and conditions.

An LTA can be used when a procuring entity requires Procurements (usually Goods) on a regular basis. The Procurement Unit may choose to establish an LTA with one or a number of Suppliers to simplify the process. All the necessary provisions still apply to LTAs, including selection of the Suppliers that offer Best Value.

The Method of Procurement and Approval Authority for LTAs is based on the estimated value of the Procurements.

#### **6.7.4 Pricing Basis**

A key factor of the Procurement Plan is the selection of the Pricing Basis, which should reflect the specifics of the Procurement, how the Procurement is defined, the duration of delivery, and the prevailing market conditions. (Several Pricing Bases may be used in a single Contract.) Those most often used by a procuring entity are:

Note: Depending on the reliability and penetration of computer based communications, this method could be reworked to encourage greater use of information technology and electronic media. If the procuring entity uses Force Account Rates as a Basis of Payment, then details of Rates should be included in this section.

**Firm price (lump sum or unit rate):** This provides a price that is NOT subject to economic adjustment. This method offers the advantage of maximum profit incentive to the Supplier for cost control, since the Supplier assumes full responsibility for all costs, whether greater or less than the firm price. In addition, a firm price Contract imposes the least administrative burden on both contracting parties. This Pricing Basis is used for well-defined Procurements, when a relatively certain estimate of costs can be made.

**Firm price (lump sum or unit rate) subject to economic price adjustment:**

When obtaining a relatively certain estimate of costs is not possible, it may be necessary to negotiate provisions for price adjustments. These provisions allow the firm price to be revised in case of certain contingencies. An example would be a price-adjustment provision for Procurements involving petroleum based products or commodities, which have a relatively unpredictable pricing structure. In a contract involving petroleum, neither the procuring entity nor the Supplier could be confident about accepting a Firm Price over an extended period without a provision for price adjustment.

Note that economic price adjustments are not normally included in contracts with delivery schedules of less than 12 months, or contracts with a value of less than \$ECD 100,000

When a competitive Tender is used to select a Supplier, the proposed economic price adjustment provisions must be considered in the Evaluation of the tender. Where DSSP is the Method of Procurement, economic price adjustment provisions must be agreed during negotiation of the contract terms. Adjustments to Firm Prices in a Contract will be allowed only if provided for in the Contract.

**Cost reimbursable with fixed time rate:** An agreed fixed time rate is paid to the Supplier for the actual time spent (as determined by the procuring entity) on the Contract. The fixed time rate usually includes direct labor rates, overhead rate, and profit.

This Pricing Basis is used when:

- It is not possible to estimate the extent or duration of the work in advance, but it is possible to reasonably determine the direct labor and overhead rates; and,
- Adequate controls are in place to ensure that the Supplier does not use inefficient or wasteful methods.

Contracts with a fixed time rate shall provide for a ceiling price, by which the contractor is bound to complete the prescribed work without additional payment, whether or not the actual costs exceed the ceiling price. If this method is used, there must be full agreement between the contracting parties as to the scope of the work. Conversely, if a fixed-time-rate contract does not include a ceiling price, some limitation of expenditure must be made a term of the Contract.

Method of Procurement	Best Value
<ul style="list-style-type: none"> <li>•→ ITT</li> <li>•→ RFQ</li> <li>•→ Shopping</li> </ul>	<ul style="list-style-type: none"> <li>•→ Lowest total cost</li> <li>•→ Lowest total cost</li> <li>•→ Lowest responsive/acceptable price</li> </ul>
<ul style="list-style-type: none"> <li>•→ RFP</li> </ul>	<ul style="list-style-type: none"> <li>•→ Lowest priced technically acceptable offer</li> <li>•→ Mandatory and/or Weighted criteria</li> </ul>

### 6.7.6 Best Value and Evaluation Criteria

The overarching aim of Procurement is to achieve Best Value, and so establishing the criteria to assess Best Value for Procurements is a fundamental element of the Procurement Plan. Normally, price is the deciding factor for most Procurements. Best Value is, however, a relative concept, and the deciding factors may change with time and from one Procurement to another.

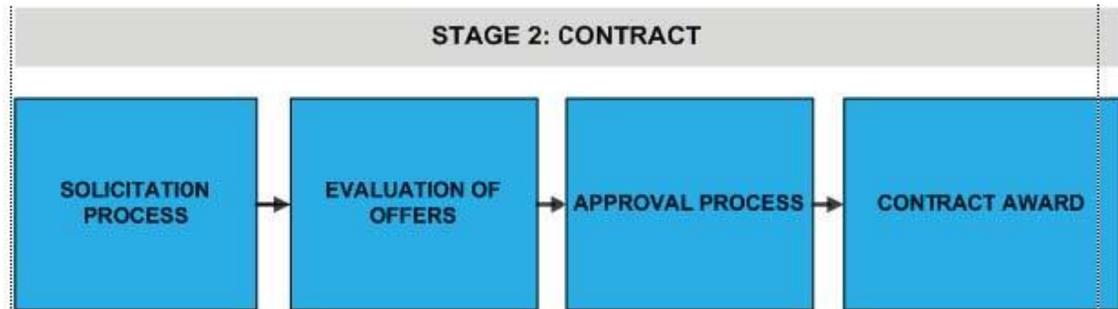
The table below shows the relationship between the Methods of Procurement and the factors that typically produce Best Value.

**Lowest total cost:** Commonly used for ITT and RFQ where other costs must be considered in addition to the procurement price. Examples of other costs are: transportation arranged separately

by the3 procuring entity; operational and disposal expenses.

**Lowest responsive/acceptable price:** Commonly used for Procurement of standard Procurements under ITT and RFQ where a pass/fail criterion is sufficient, and where post-Procurement costs (e.g. operating costs) are not considerable. This method considers the lowest priced Offer that meets all the technical, quality, and delivery requirements.

The determination of Best Value takes into account not only the price of the Offer and its conformity



to Specifications, SOW or TOR, but also the GOSL assessment of the Supplier. Where warranted, Post Qualification may also be a condition of the Procurement.

**Mandatory/Weighted criteria:** In a competitive Tender, where the relative importance of a number of evaluation factors must be assessed, mandatory and/or rateable criteria are used to provide a more objective method of assessing Offers. This method is used mainly for RFPs, especially for Consulting Services. This situation is changing, however, and a weighted scoring system can also be used for ITTs and RFQs.

Offers can be assessed on a pass/fail basis against mandatory criteria, and possibly also on a basis of required minimum points, plus points awarded for exceeding the minimum.

Rate-able criteria are assessed by weighted scoring. The weighted scoring quantifies the quality of the Offers, and the extent to which each meets the rate-able criteria.

This method of Evaluation is more fully described in Schedules 5, 7 and 8.

## 7. Procurement: Contract Stage

With the completion of the Procurement Plan, the end of the Pre-Offer stage is reached. The Contract stage now commences, as outlined below.

### 7.1 Tender Documents

Procuring entity has standard Tender Documents (refer to Schedule 3 -"Procurement Forms") and their use is mandatory. Although the details and complexity of the Tender Documents vary according to the nature and value of the Procurements, they contain all the information necessary for Suppliers to prepare tenders to achieve Best Value. The use of these standard documents also

supports:

- Consistency from one transaction to another
- Firm definitions of the responsibilities of the procuring entity and the Supplier
- The avoidance of repetition and omissions
- A streamlining of the process.

The general terms and conditions (GT&Cs) of a Contract are intended to secure satisfactory performance by both parties: the Supplier and the procuring entity. In addition, there may be specific terms and conditions (ST&Cs) pertaining to an individual Contract (or a particular type of Contract, such as Goods, Works or Consulting Services). In such a case, they may replace, complement, supplement or amend the GT&Cs.

### 7.1.1 Selecting Tender Documents

The Tender Documents selected are to be consistent with the Method of Procurement developed for the Procurement (such as ITT, RFQ, RFP). Depending on the nature of the Procurement, the elements to be addressed in the Tender Documents are:

- Invitation to tender
- Deadline for submission of tenders
- Information about a pre-bid conference (site visit), if applicable
- Instructions for preparation and submission
- Date, time, and location for public opening of tenders, if applicable
- The procuring entity's contact person
- Currency for the tender
- Offer validity period (e.g. 60 days)
- Method of evaluation, and evaluation criteria
- Pricing Basis, if to be other than the current market practice
- Terms of Payment
- tender and/or performance security requirements, if applicable
- Evaluation type (e.g. one or two envelopes – refer to Schedule 7)
- A schedule of requirements
- Specifications/TOR/SOW
- Time of performance or delivery date
- Destination or location
- Mode of transport (goods) and delivery terms
- GT&Cs, or ST&Cs or possibly a sample Contract
- A price schedule form.

### 7.1.2 Other Aspects of Tender Documents

**NOTE:** Many of the provisions set out below are usually part of either the GT&Cs or ST&Cs templates. Therefore, it is expected that much of the detail could be eliminated, or at least treated more briefly, by cross referencing this Manual with the applicable GT&Cs and ST&Cs, once these are developed for the procuring entity.

**Alternative Offers:** The Tender Documents shall stipulate, whether alternative tenders are allowed. If so, the alternative tender should include detailed Specifications, where applicable, and associated costs, to allow Evaluation.

**Tender security:** A tender security may be required for complex high-value Tenders. Its main purpose is to protect the procuring entity in the event that the selected tenderer fails to enter into a Contract; a lesser function is to discourage unqualified Tenderers. Typically about 2%, the security should not exceed 5% of the Contract value. The recommended validity period for the security is the period of validity for the tender, plus the time necessary for Evaluation and Contract award. Tender securities are to be released to all tenderers

once the Contract is signed with the successful tenderer. In the event that the successful tenderer withdraws before signing the Contract, the procuring entity redeems the tender security. (A model tender security can be found in Schedule 3.)

### **Tender Securing Declaration**

The use of tender security declarations are quickly becoming the preferred means of securing tenders. It is a sworn statement which binds the tenderer to sign the contract if awarded. In the event the tenderer does not sign a contract when awarded the supplier may be suspended from participating in public procurement for a specified period.

**Cancellation of Tender:** The procuring entity may reject all tenders received in respect of a specific Procurement prior to Contract award.

**Changes in Quantity:** Where the exact quantity required is not known, an estimated quantity may be indicated in the Tender. The estimate must be accompanied, however, with a provision that the procuring entity reserves the right to increase or decrease the indicated quantity prior to Contract award. Price adjustment formulae can be included in the Pricing Basis if the variations could be significant.

**Changes to Submitted Offers:** Tenderers should be informed of the right to modify or make corrections to tenders submitted to the procuring entity prior to the due time for submission of tenders, provided that any such modification or corrections are received by the procuring entity in writing, prior to the actual due time specified for submission of tenders. The original tender thus modified or corrected would then be considered as the official tender.

**Currency and Payments:** The Tender Documents should stipulate the acceptable currency/currencies for the Pricing Basis and payment. For Evaluation purposes, the Procurement Unit shall convert prices to a single currency (as stated in the Tender Documents) using the official Eastern Caribbean Central Bank exchange rate.

**Disqualification/Rejection/Return of Offers:** The Tender Documents should stipulate that tenders may be returned for any of the following reasons:

- A tender received late, after the due time
- A tender not complying with key Tender requirements – i.e. non compliant
- A tender from a debarred Supplier
- An unsolicited tender in response to Restricted Tender
- Financial tender (unopened) for RFPs, where the technical tender is non-compliant.

In addition, all tenders may be rejected, as further detailed in [section 7.5.2](#)

**Language:** Tender Documents, Offers and Contracts shall be prepared in English.

**Liquidated Damages:** Where time is of the essence, and when any delay by the Supplier in the

delivery or completion of Procurements would result in extra cost, loss of revenue, or loss of other benefits to the procuring entity, provisions for liquidated damages shall be included in the Contract. These should stipulate the exact amount for Liquidated Damages, such as one or two percent per day (or per week, as required) of the total Contract amount – up to a maximum amount, usually 10 percent. In situations where the maximum amount has been incurred, the procuring entity may consider terminating the Contract (Refer to [section 8.3](#)). Generally the GT&Cs or ST&Cs should not limit the procuring entity's right of recourse to only Liquidated Damages.

The same applies if a guaranteed technical output is not reached 100 %. A turbine of a power station produces only 98 % of guaranteed electricity, then for the missing percentage liquidated damages up to 5 % of the contact price may be agreed upon.

**Logistics:** Clear responsibility for transport and any related customs clearance must be defined in the Tender Documents. Where required, Incoterms are to be employed.

**(NOTE:** For imported Procurements, Best Value may be achieved by the procuring entity arranging freight instead of the Supplier. Similarly for certain Procurements, pre-shipment inspection should be considered by the procuring entity through a reputable neutral inspection agency, as part of the Contract for the Procurement or directly via a Contract between the procuring entity and the inspection agency.

**Modifications to the Tender Documents:** When required, additional information, clarification, correction of errors or modifications of Tender Documents will be distributed to Tenderers prior to the tender due date to enable Tenderers to respond accordingly.

**Performance Security:** This security is normally required for all high-value (that is, above \$ECD ) or high-risk projects, to secure the performance, including any ensuing guarantee period, of the contract. The security shall be returned to the supplier upon successful completion of the contract. (A model for a performance security, in a form of a bank guarantee at 10 % of the contract amount, is provided as part of the standard Tender documents and is included in Schedule 3)

**Price of Tender Documents:** Where permitted, the procuring entity may charge tenderers a nominal fee for copies of Tender documents.

**Public Opening of Offers:** The date, time, and location must be stipulated in all Tender Documents.

**Taxes and Duties: Note:** the procuring entity will need to develop policies on which taxes and duties are applicable or not applicable to its Procurements and reflect same here.

**Terms of Payment:** These are to be specified in the Tender Documents and are to be either as stipulated by the procuring entity or as provided by Tenderers. Where Terms of Payment are to be part of the Evaluation they can be specified in the Tender Documents so all tenders can be evaluated equally. Alternatively, each tenderer can propose Terms of Payment. The procuring entity should convert the differences between the Tenderers' proposed Terms of Payment to a cash value

for consideration in the Evaluation. Details of the types of Terms of Payment are contained in [Section 8.1](#).

**Time to Submit a tender:** The Central Procurement Unit must ensure that adequate time is allowed for Tenderers to prepare their tenders, taking into account the size and nature of the Procurement. Normally, the period is from one week to six weeks, depending on the complexity of the Procurement (e.g. standard off-the-shelf goods vs. custom-built).

**Withdrawal of a tender:** Where any tenderer wishes to withdraw its tender, this can only be permitted by the procuring entity before the due time and only then upon the written request of the tenderer. Tenders are retained until formal opening and withdrawal status recorded and the tender then returned unopened to the tenderer.

A number of suppliers have indicated that changes are made to Terms of Payment, to the detriment of the Supplier, at or after Contract award. This practice should be assessed against the principles of equity and fairness. Depending on the scope of the changes and amount of money involved, these changes could be construed as post tender negotiations of price which is unacceptable. An alternative approach would be to request tenders based on long term financing of the Procurement by the Tenderers and take financing costs into consideration to establish Best Value.

## 7.2 Distributing Tender Documents

Documents may be distributed by post in hard copy; electronically via e-mail, or posted on websites; or advertised in international, national or local publications. When electronic distribution is used, Procurement Units should format the documents using PDF (or equivalent) to protect against revision.

To support the success of Tenders, the recording of interest by Tenderers can be achieved by:

- **Open Tenders:** Details of prospective Tenderers to whom the Tender Documents are issued (use Form xxx).
- **Restricted:** For certain major Procurements, Tenderers may be requested to indicate their intention (or not) to submit an Offer by completing and returning Form.

## 7.3 Clarifications During Tender

Tenderers' queries are to be dealt with as follows:

- **Pre-Offer Conference Method:** When the Procurement is complex (e.g. renovation of historical buildings) and queries from prospective Tenderers are anticipated, the procuring entities may consider holding a pre-Offer conference. Representation from each tenderer should be limited to two persons at the conference. Oral responses shall be given by GOSL during the conference. Within a reasonable time after the conference, the GOSL/Central Procurement Unit should

forward to all Tenderers, whether present at the conference or not, a full set of minutes, recording all queries and formal responses provided at the conference. The minutes shall state that they prevail over any oral responses provided to Tenderers during the conference.

- **Correspondence Method:** Any tenderer requiring clarification of the Tender Documents should submit the queries to the Procurement Unit in writing. The Central Procurement Unit shall prepare a response to such query and together with the text of the query, issue it via regular post, fax or electronically to all Tenderers or via the same public media as was used for the Tender. The response will not reference the particular source of the query. In some instances a cut-off date for queries can be specified in the Tender Documents. This can prevent last minute queries being raised by Tenderers that require an extension to the Offer closing date to permit Tenderers time to accommodate clarification issued by the procuring entity.
- **Amendments to Tender Documents:** At any time before the deadline for submission of tenders, GOSL may, for any reason, whether on its own initiative or following a request for clarification by a tenderer, modify the Tender Documents.
- Amendments to Tender Documents should be made in sufficient time before the due date for tenders so Tenderers can address any resultant changes. In certain cases amendments will justify an extension of the due date for tenders, however, this should be assessed on a case-by-case basis. Amendments of Tender Documents containing changes, or providing clarifications, or additional information, should be made available in writing to all invited Tenderers or in the case of Open Tenders, via the same public media as was used for the Tender, to concurrently provide all Tenderers with the same fact base.
- Substantial changes to the scope of the Procurement may require cancelling the Tender and re-issuing a new Tender.
- Significant amendments to Tender Documents should be subject to approval by the same Approval Authority as the original Tender Documents.

## 7.4 Receiving and Opening tenders

The process for receiving and opening tenders must be conducted in strict accordance with GOSL policies, as outlined below.

**Invitations to Tender** All Tenders shall be in writing, signed and submitted in a sealed envelope marked as instructed in the tender documents, and delivered only by hand or mail (including courier services), before the due date and time, to the place(s) set out in the tender document (or amendments thereof). Tenders sent electronically, shall comply with the relevant electronic tender instructions.

On receipt, all Tenders will be date and time-stamped on the outer envelope. If a Tender is delivered by hand, GOSL will issue a receipt stating the name and address of the Tenderer, and the date and time of receipt. All Tenders shall be stored in a secure place, such as a locked tender box or cabinets, until the time of opening.

The procurement unit is the custodian of all tenders, and may not open them before the public opening time. In the case of tenders to the central procurement board, the secretary shall be the recipient and custodian of submissions to the central procurement board.

In the event that a Tender is inadvertently opened before the deadline, the Chairperson of the Procurement Board shall decide whether any disclosure of information has taken place that is likely to corrupt the integrity of the Tender process. If there is a risk to the integrity, then the Chairperson will rule on the course of action to resolve the matter.

With the introduction of e-Procurement, and secure electronic “tender boxes” this would change.

**Opening of Tenders:** Unless there are extenuating circumstances, all tenders should be opened immediately after the deadline has passed. A Tender Opening Committee (TOC) (appointed by the Relevant Authority) shall be responsible for the process, and shall ensure that a suitable location is reserved and equipped in advance for opening the Tenders. Space should be adequate for the number of Tenderers and others expected to attend. All attendees must sign the Attendance Register (Form xxx), which must then be counter-signed by members of the TOC.

A Tender Opening Sheet (TOS) (Form xxx), upon which to record the opening, shall be prepared to enable the committee to record the information announced at the opening.

The following information, at the minimum, shall be read out from the original version of each Tender and recorded on the Tender Opening Sheet (TOS):

- name of the tenderer
- withdrawal or modifications, if any
- the Offer price
- discounts, if any
- presence of tender security, if required.

Tender modifications or discounts, which are not read out at the Tender opening or recorded on the TOS, shall not be considered in the evaluation of the concerned Tender. No Tender shall be rejected at the Tender opening except for late Tenders.

Upon completion of opening of the Tenders, all members of the TOC and the Tenderers or their representatives who attended the Tender opening shall sign the TOS. Copies of the TOS shall be retained by the Chairman of the Procurement Board.

**Request for Quotation:** The process for receiving and opening Quotations is identical to that of Tenders, except that this process is not conducted in public. Rather, it is performed by a Quotation Opening Committee (QOC), which comprises representatives of the Procurement Unit, the End User, and the Office of the Accounting Officer. Records similar to those used for Tender openings are produced.

(**NOTE:**, the above is a preliminary suggestion, to be further developed).

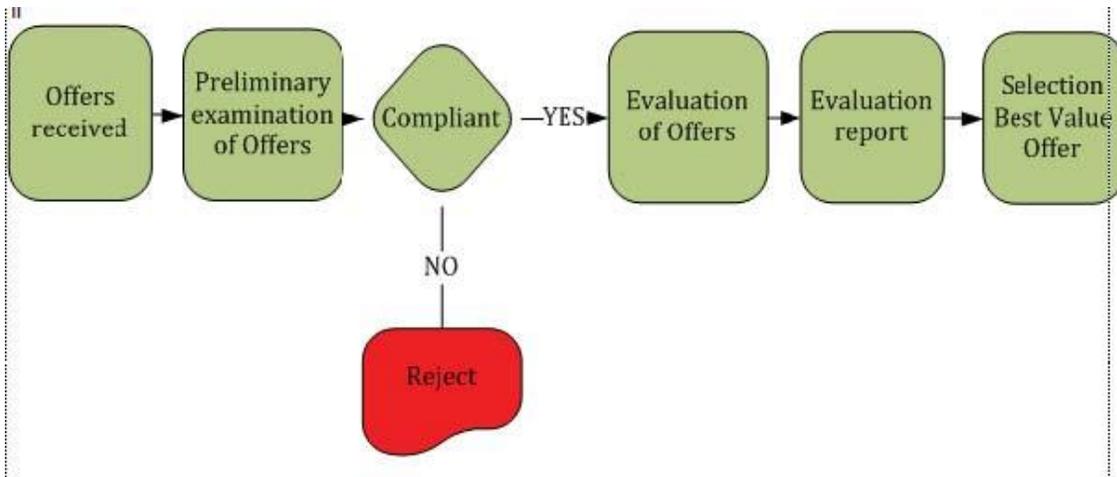
**Shopping:** In the process, the GOSL actively solicits Offers from one or more Tenderers, either in person, or via phone or email. Written confirmation from the tenderer is required for verbal tenders.

Depending on the reliability and penetration of computer-based communications, this could be

reworked to encourage greater use of ICT media.) In addition, GOSL may wish to set a value level (e.g. Procurements of less than \$ECD 100) where it is not required for verbal quotes to be confirmed and/or only one Offer is needed (i.e. level of micro procurement that can be sole sourced.

**Direct Procurement:** Offers must be in writing, and received in a timely manner (as evidenced by the date-of-receipt stamp), but are not subject to formal opening procedures.

**Request for Proposals:** The receipt and recording procedures are the same as those detailed above for Tenders. An important aspect of this Tender is the Two-Envelope procedure, further details of which (including the opening requirements) are contained in Schedule 7 “Tender Methods:



Envelopes”.

## 7.5 Evaluation

The evaluation process identifies the tender with the Best Value, by considering the nature, value, and significance of the Procurement. Price alone is rarely a reliable indicator of Best Value, especially for Significant Procurements. Sometimes Routine Procurements can, however, be substantially evaluated on price. Even when Evaluation is relatively straightforward, it should still follow the main steps outlined in the schematic below.

### 7.5.1 Preliminary Examination of Offers

The initial review of Offers is to verify that all Tenderers meet the eligibility requirements. An Offer is disqualified if it contains significant<sup>23</sup> deviations from the terms and conditions specified in the Tender Documents. In such a case, **once an Offer has been opened the Tenderer is not permitted to withdraw the Offer or modify it.** In addition, Offers may be rejected in accordance with conditions outlined in [section 7.1.2](#).

### 7.5.2 Rejection of All Offers

The procuring entity is at liberty to reject all suitable Offers for the following three reasons: This procedure excludes contracts let pursuant to LTAs. Significant deviations would include: Tender states that Contract award will be for 100% of scope. Offer received for 50% only. Or specified required delivery is 10 weeks – Offer for 20 weeks – in both cases Offers are not acceptable.

- The price of the lowest Offer substantially exceeds prevailing market prices and/or the GOSL budget
- There is evidence of lack of competition<sup>24</sup>
- Rejecting all Offers is in the best interest of GOSL.

If all tenders are rejected, the Central Procurement Unit shall advise the Tenderers, reassess its Procurement Plan, and make whatever revisions are necessary to the Tender (including conditions, design, specifications, scope) before inviting any new Offers.

### **7.5.3 The Evaluation Plan**

This plan is an internal document that helps to conduct an Evaluation for Significant Procurements. Although not released to Tenderers, the plan must reflect the same Evaluation criteria as the Tender Documents. The plan sets out responsibilities, a timetable, and detailed procedures for the Evaluation.

### **7.5.4 Evaluators**

To ensure broad and balanced perspectives on Offers, especially for complex and Significant Procurements, GOSL should consider forming an Evaluation committee. When evaluating non-complex Procurements, the usual evaluators would be a member of the Procurement Unit and the End User. A report must be prepared for all Evaluations (using form xxx), which becomes the basis of the approval process for Contract award. Evaluation reports must be retained on the Contract file.

### **7.5.5 Clarification of Offers**

Occasionally an Offer may require some clarification, and the evaluators may seek the information provided the clarification does not in any way have the effect of revising the original Offer. This would be substantially the same as accepting an amendment to a closed Offer, which is forbidden by GOSL regulations. Any clarification sought from a Tenderer should be recorded in writing.

### **7.5.6 Evaluation Criteria**

The criteria for Evaluation are the same as those outlined in the Tender Documents.

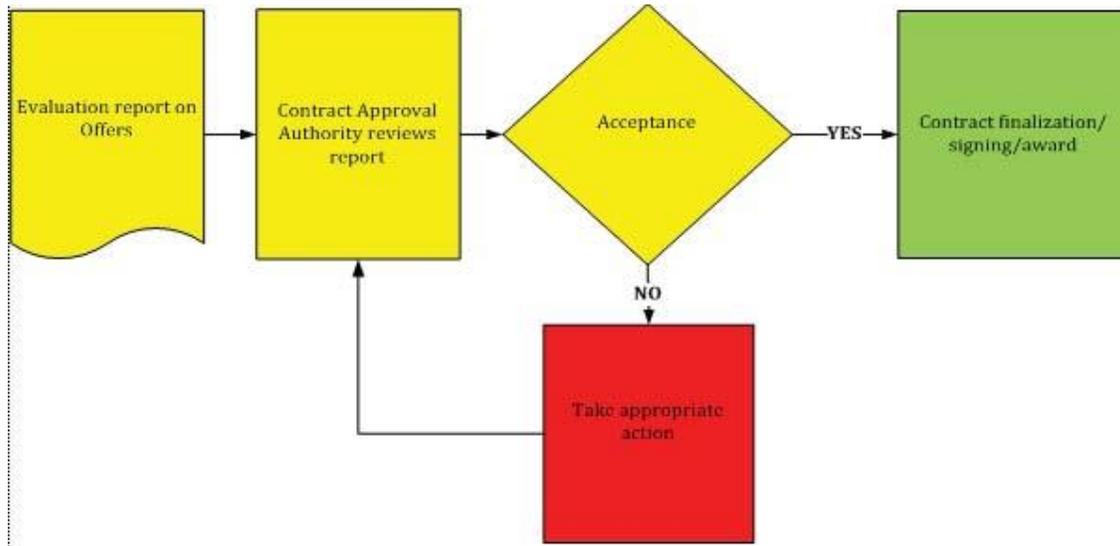
How is “bid-rigging” to be addressed in GOSL legislation? <sup>25</sup> The membership and reporting relationship of this committee needs to be further discussed.

## **7.6 Awarding Contracts**

Once the Procurement Unit determines the Offer that presents Best Value, the process begins to award the Contract to the successful Tenderer, as outlined in the schematic on the following page. Contracts must always be awarded within the validity period of Offers.

GOSL' Tender Documents must be complete, including standard Contract templates. Offers to be accepted must comply with the terms of the Tender Documents, and any deviations must be addressed as part of the Evaluation. Consequently, few if any negotiations should be required before the Contract is awarded. That said, some negotiations may have the potential to improve Procurement outcomes by reducing uncertainties, risks, and costs.

### 7.6.1 Contract Negotiations



Negotiations should take place after the Evaluation has been successfully completed, and a Supplier has been selected – but prior to the awarding and signing of the Contract. Negotiations should not address issues that were agreed during Tendering; no significant change to Specifications, TOR, SOW, or quantities should be made, since this would require that the Process be cancelled.

Negotiating can be an effective tool, and is recommended in situations where competition has been waived. Similarly, when only one acceptable Offer is received from a competitive Tender, negotiations to ensure competitive price, terms and conditions are permitted.

**Note that during any negotiations, staff must ensure that there is no appearance of impropriety or conflict of interest.**

Where negotiations are planned, in some instances the approach may require discussion and/or review with the Contract Approval Authority prior to commencing negotiations and/or sending Supplier the draft contract

– policy on this to be developed.

### 7.6.2 Basis of Contracts<sup>27</sup>

Contract documents should be based on:

- Tender Documents and subsequent clarifications/amendments to them
- Offer from Supplier and any subsequent clarifications
- Award recommendation

- Recommendations of the Contract Approval Authority

### **7.6.3 Main Elements of Contracts**

With the exception of low-value Procurements<sup>2s</sup> (that is, those below a threshold of \$ECD xxx), a written Contract is required. It should contain, as applicable, these key elements:

- The identification of parties to the Contract (Government and Supplier)
- Reference to all contracting documents
- The responsibilities of the Contractor and Government
- A full description of the Procurement (Specification, TOR, SOW)
- A schedule of activities and delivery dates
- Pricing Basis
- Terms of Payment
- GT&Cs or ST&Cs
- Signatures.

### **7.6.4 Contract Review**

For complex Contracts, a draft copy of the Contract should be forwarded to the Supplier for review. The Supplier should be given sufficient time to review the draft, and to request, in writing, any changes or modifications the Supplier may wish. If the Supplier raises a legal issue at this stage, the Procurement Unit must ensure that the GOSL Legal Advisor is consulted.

**The Procurement Unit should always prefer Governments' Contracts (and its GT&Cs or ST&Cs).**

In certain situations, especially in the case of DSSPs, the Government may have to agree, however, to the exception, if for any reason the standard Contract is not acceptable to the Supplier. In such cases, the Procurement Unit should amend the Contract as needed, to ensure that Governments interests are protected and Best Value is obtained and to otherwise comply to the greatest extent possible with Procurement policy.

The role of the Attorney General in vetting of contracts is to be reflected here. It may be that in the case of low value contracts the proforma invoice and the purchase order would suffice as containing the terms of the agreement.

This decision might also include the possible use of P-Card procurement – Section 8.1.7.

Once the Procurement Unit has agreed with the Supplier in principle on GT&Cs or ST&Cs, the Contract can be prepared for final approval.

### **7.7 Contract Approval**

The formal decision to establish a Contract with a successful Supplier is based on independent review of the Procurement, within the limits of the Approval Authority. Schedule 6 defines the

delegation of Approval Authority to implement Procurement. All those delegated to approve Contracts are responsible to ensure compliance with GOSL Procurement and financial legislation. To obtain Contract approval, depending on the Contract value and the level of Approval Authority, the nature and extent of the documentation to be submitted will vary. In general, however, it includes and should be summarized on form xxx:

- A copy of the Tender Documents and (in the case of a Restricted Tender) the list of Tenderers to whom they were sent.
- The record of the opening of the sealed Offers.
- • The Evaluation report, consisting of:
- Technical Evaluation of Offers received showing compliance of the Offer with the Specifications, SOW or TOR, as outlined in the Tender Document. Exclusion of Tenderers from further evaluation as a result of the technical Evaluation must be justified.
- The financial schedule of Offers showing for each Tenderer the Pricing Basis and total cost for the Procurement, as well as other comparable factors such as earliest starting date or delivery date, duration of the warranty period, requirement for regular local maintenance or after sales service and any other Evaluation criteria. Where pre-estimates of Procurement cost have been developed by GOSL (e.g. for Works), this is to be included and any significant variances between the GOSL estimate and the price of the Procurement explained.
- For DSSP where Offers have not been invited, a statement of Best Value supported by analysis, as warranted, including cost comparisons and such other factors determined by GOSL for similar Procurements.
- Confirmation of budget.
- The draft Contract, including information on the scheduling of foreseen expenditures.

The Supplier may request the use of its own contractual template, and/or additional or different Contract terms and conditions. As a general rule, the acceptance of Suppliers'

## **7.8 Contract Signature**

Once the Contract is approved, the Central Procurement Unit should obtain (using form xxx) the signature of the applicable Signing Authority (refer to Schedule 6 "Procurement Approval and Signing Authority"). All those delegated to sign Contracts are responsible to ensure compliance with GOSL Procurement and Financial legislation.

Each page of major Contracts should be initialled by GOSL staff, usually the Procurement Unit, and signed by an authorised signing officer of the Supplier. In the case of low value Contracts, such as procurement orders, the Supplier should return to the Procurement Unit the acknowledgement copy to establish acceptance of the Contract.

## **7.9 Publication of Award**

To support transparency, all Contract awards of \$ECD xxx and above, and all awards resulting from publicly opened Offers, must be posted on the GOSL website (or at least in other media, until websites are operating). The Contract award notice shall cover the following:

- Contract reference and brief description of the Procurement
- Value of Contract
- Date of Contract award
- Name of Supplier and Supplier location (country).

(NOTES: The process to be used to publicize awards of all other Contracts is to be discussed by GOSL. A possible approach may be the publication (quarterly or semi annually) of the value and name of Suppliers for all other Contracts.

For more details on the timing and content of award notifications, see [section 7.11.](#))

### **7.10 Debriefing Unsuccessful Tenderers**

To comply with transparency principles, and to help Tenderers improve their capabilities, a written or verbal debriefing should be provided to any unsuccessful Tenderers requesting it. The intent of the debriefing is to explain the reasons why the Offer was not selected.

**Only the Offer of the Tenderer can be discussed and not those of competitors.**

The Procurement Unit is responsible for arranging debriefings. The End User and/or other specialists should be involved where there are technical issues. If the Tenderer is not satisfied with the explanation, the appeal process outlined in Section 5 should be explained.

### **7.11 Contract Appeals**

Tenderers may appeal aspects of the Procurement, as outlined in Section 5. For ease of updating, this threshold value could be defined in Schedule 4, “Value Thresholds for Tender Methods”

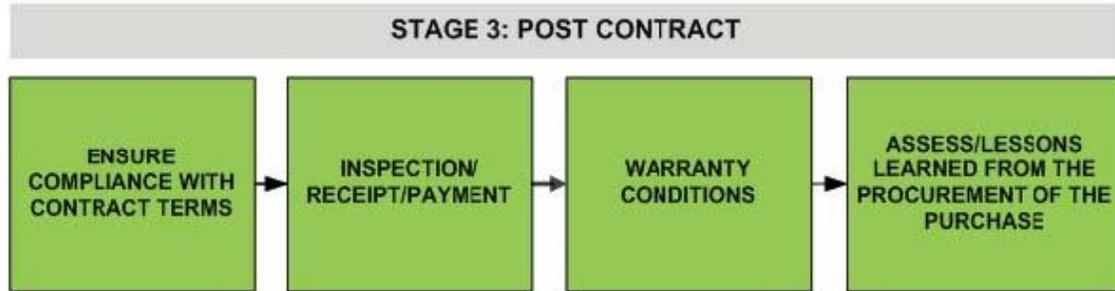
(**NOTE:** Once the roles, responsibilities, and remedies for Appeals are defined in the legislation, Section 5 should be amended accordingly. Also, any aspects of legislation that affect the Contract award process or timing, etc., should be reflected here. For example, is there is to be an “appeal” period before a Contract becomes effective?)

## **8. Procurement: Post-Contract Stage**

Once a Contract has been awarded, the process of managing it begins. Resources devoted to ensuring that all parties meet their respective obligations depend on the nature, size, and complexity of the Contract and the likelihood of risks and their impact on government activities.

The primary responsibility for managing a Contract normally rests with the End User. 30 Elements to be managed include:

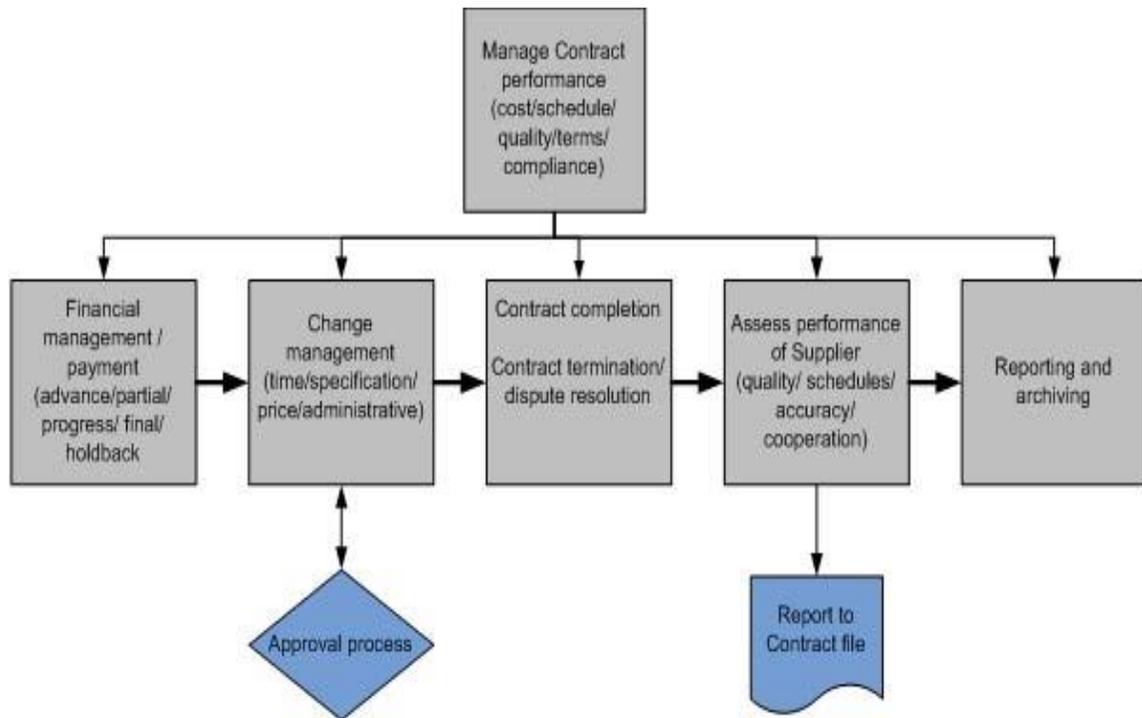
- Cost control
- Schedule control
- Compliance with Specifications/TOR/SOW (quality assurance)
- Acceptance of Procurement upon completion
- Approving payment
- Initiating Contract changes
- Orderly resolution of any disputes



- Compliance with post completion and residual obligations (e.g. warranties)
- Supplier performance assessment.

All these items fit together as depicted in the flowchart on the following page.

The responsibility for managing Contracts to be discussed – in some instances, the Procurement Unit would have the responsibility.



## 8.1 Financial Management<sup>31</sup>

Before effecting payment against a Contract, the End User should ensure the Supplier is complying with (or has complied with) the terms for payment. Payment may be any of five types:

- Advance
- Partial
- Progress
- Final
- Holdback/retention (withholding payment).

### 8.1.1 Advance Payment

An advance payment is a sum of money, usually paid upon the execution of the Contract, in anticipation of identified early expenses on the part of the Tenderer. Examples of activities that may justify advance payment might be mobilisation costs for Works, or immediate procurement of raw materials. When an advance payment is made that exceeds \$ECD xxx shows here or in Schedule4, an Advance payment bond (refer to Form xxx) must be obtained.

### 8.1.2 Partial Payment

A partial payment is based on the documented acceptance of a part of the Procurement. Generally, the amount of the payment should be commensurate with the value of the Procurement accepted.

A partial payment can only be made if the Contract specifically provides

Signing/approval authority for payments, to be further defined in Schedule 4 “Value Threshold for Tender Methods” for it.

For example, a Contract may have 100 units, of which 50 are accepted. A partial payment can then be made for the 50 units.

### **8.1.3 Progress Payment**

A progress payment (also referred to as an installment or milestone payment) is a prepayment before the Procurement is accepted. This type of payment is usually applicable to Procurements with a long delivery period, such as Works.

Progress payments are normally tied to a performance milestone stipulated in the Contract. Acceptance of a draft report or preliminary designs is an example of a Contract milestone against which progress payment might be paid. Generally, the amount of the payment should be commensurate with the value of the milestone. Progress payments can only be made if the Contract specifically provides for them.

The government must obtain security commensurate with the progress payments to be made. Security for progress payments includes performance bonds, taking title to the property for which progress payments were made, letter of Credit (refer to Form xxx), or equivalent means.

### **8.1.4 Final Payment**

Final payment is a payment made on completion of the Contract. Payment is made by GOSL against the Supplier’s final invoice and on confirmation of completion of the Contract by the responsible party (i.e. the Warehouse manager, the End User, etc.).

### **8.1.5 Holdback**

Holdback payments are mainly used to ensure completion of the Contract. They include an applicable warranty period and, in certain instances, to ensure payment by the Supplier of its subcontractors (if any). Holdback payments are retained by THE GOVERNMENT until the Supplier has proven that it has discharged all its obligations under the Contract. A holdback payment can be the last payment in total, or a portion of each previous payment – usually 10% to 15% withheld of each of the Supplier’s invoices. A holdback can only be made if the Contract specifically provides for it.

### **8.1.6 Payment Process**

Invoices are approved, and payment requests prepared and certified (using form xxx), by the Accounting Officer<sup>32</sup> in accordance with the provisions of Public Financial Management Act, or other relevant financial regulations.

All Suppliers have the right to be paid in a timely matter, according to the terms of the Contract, Government’s policy to be included on interest payment where the government is late in paying

Suppliers.

### **8.1.7 Procurement Card**

(**Note:** For Procurements valued at less than \$ECD xxx, a Procurement card (P-card) may be used by the approved users to make Procurements and remit payment. The P-card simplifies the payment process; its use is informal, and replaces petty cash. Can We use this application?)

## **8.2 Change Management**

Changes to the existing terms and conditions of the Contract may be required, and may cover aspects such as:

- Extension of time to complete the Contract
- Change to Specifications, TOR, SOW
- Change to price
- Administrative changes such as a change of name, legal status, address.

Contract changes are usually achieved by Contract amendments. While amendments can be initiated by either GOSL or the Supplier, the parties to the Contract must agree to the amendment for it to have effect.

Only the original Approval Authority can approve an amendment to a Contract that changes terms or conditions including price. Reduced quantities or an over-delivery of up to 10% in money value of the total price would not normally constitute grounds for an amendment to the Contract.

The Signing Authority for the amendment, regardless of impact, must be the same as for the original Contract.

In some instances, changes can be better handled by GOSL by initiating a new Procurement rather than amending a Contract. This would be warranted in circumstances when, for example, the magnitude of additional quantities is such that Best Value may not be achieved by adding them into an existing Contract.

## **8.3 Contract Completion**

Contracts are usually completed by both parties fully meeting their obligations under the Contract.

In some instances, Contracts are terminated by one of the parties due to a material breach or default of the Contract by the other. Similarly, GOSL may wish to cancel a Contract before completion due, for example, to changed priorities. There are other situations where termination of contracts can be effected.

(**NOTE:** The material here should be fully consistent with GOSL' GT&Cs and ST&Cs. Once these are available, this section of the Manual should be completed. Another element to be included is the invoking of the Performance Bond, as a factor in the process leading up to Termination for Default.)

## **8.4 Dispute Resolution**

(NOTE: Material should be included here, based on Procurement Legislation that includes the use of Arbitration and Judicial Rulings.)

## **8.5 Supplier Performance Assessment**

The government should only enter into Contracts with qualified and competent Suppliers. A key measure of such competence is our own assessment of a supplier's performance. In addition, we can assist in building the capacity of the supply community by providing Suppliers with objective assessments of their strengths and areas for improvement.

Prior to making final payment against any Contract of a value of \$ECD xxx and above, or otherwise where warranted, the Procurement Unit together with the end user of the object of the procurement, should assess and document the Supplier's performance of attributes as follows.

- Quality of deliverables
- Compliance with delivery times/deadlines
- After-sales service
- Accuracy of the documentation and reports
- Speed of response and general cooperation.

Supplier performance assessments are formalised using form xxx. These provide the government with valuable information about Suppliers for future Contracts. Assessment records shall be retained in GOSL' Supplier Database.

The performance assessment process must also observe standards for transparency and fairness.

- If a Supplier fails to fulfill its contractual obligations, the procuring entity must make the Supplier aware (in writing, in most cases) of the situation, thereby allowing the Supplier the opportunity to respond.
- In cases where the performance assessment of a Supplier is particularly negative, and would influence future selection of the Supplier for Tenders and Contracts, a copy of the assessment must be provided to the Supplier for comment before it is finalised.
- When the response from a Supplier to a negative performance assessment is unsatisfactory, the procuring entity should formally warn the Supplier that corrective steps must be taken, otherwise, the Supplier could be suspended from future tenders.
- Following a formal warning, if a Supplier continues to receive negative assessments, the Procurement Unit has to refer the matter to the Director Procurement with a recommendation for debarment of the Supplier from future Tenders for a specified period.
- The debarment decision will be communicated to the Supplier, who will also be advised that reinstatement, at the end of the debarment period, will only take place once the government is satisfied that the original deficiency that led to the debarment has been corrected by the Supplier.

Should any Suppliers wish to appeal their contract performance assessment, they are advised to submit the appeal to the procuring entity in writing as a complaint against the assessment process.

This shall be treated similar to a complaint against any procurement process. If the Supplier is not satisfied with the response from the procuring entity, an application for a review of the assessment can be made to the Director.

Care has to be taken to ensure negative assessments are not used to unfairly debar Suppliers. For instance, staff must guard against relying on rumor in their assessments, or faulting Suppliers for the transgressions beyond their control.

If the process of contract assessment, warning and debarment is too onerous, then poor supplier performance may simply be accepted – since challenging it is likely to be too demanding.

**(NOTE:** The above should be reviewed in the context of the Procurement legislation (and of Freedom of Information acts, where existing and/or applicable), to consider all aspects of both assessing the performance of Suppliers, recording those assessments and the open or limited access of these assessments to interested parties.

## **8.6 Miscellaneous**

### **8.6.1 Guarantee Performance**

**(NOTE:** Once GT&Cs and ST&Cs are developed, this section should be modified accordingly.)

All warranties must be fully and clearly specified in the Contract. Certain Supplier warranties specify strict conditions (such as servicing frequency, qualifications of operating or maintenance staff) that the procuring entity must follow. Failure to comply could mean that the Supplier may not be obliged to honor the warranty terms.

### **8.6.2 Liquidation of Securities**

Performance bonds and other guarantees must be stored safely by the Procurement Unit. The bonds and guarantees must then be returned to Suppliers at the time, and in the manner, described in the Contract, once the Supplier has fulfilled its contractual obligations.

## **8.7 Reporting and Archiving**

All Procurement must be fully and transparently documented. Contract files must be kept in the GOSL archives for xxx years after the last action of material consequence.

A typical Contract file would contain some or all of the items listed below, in the order shown, depending on the nature of the Procurement. Routine and small Procurements generate less documentation than large Procurements.

- Requisition
- Procurement plan
- Waiver/Approval of Procurement Method (if there is any deviation from policy)
- Copy of Tender Documents
- Requests for clarification of Tender Documents

- Minutes of pre-bid conferences
- Modification(s) and/or amendments issued to Tender Documents
- Copies of all Offers
- Reason(s) for rejection of any or all Offers
- Evaluation report
- Record of negotiations
- Contract approval documentation
- Contract, as issued
- Complaints, resolution decisions and appeals
- Contract amendments
- All correspondence pertaining to the Contract
- Acceptance and/or receipt for the Procurement
- Original invoice(s)
- Original shipping document(s)
- Record of all payment
- Copies of insurance claims and related correspondence
- Supplier performance assessment form and any related correspondence

(**Note:** This list may be revised based on the financial/accounting systems, etc., of the GOSL. Another issue to consider is the retention of data in electronic format vs. “hard copy.”)

## Schedule1 Definition

The key terms or phrases, the first letter of each of which is capitalised when used throughout the text in this Manual, are defined hereunder.

(**NOTE:** All definitions and terms in the Manual will need to be reviewed and updated to be consistent with those in the Procurement legislation that may be enacted).

**Accounting Officer(s):** Refer to Procurement Roles and Responsibilities, [Section 4.](#)

**Approval Authority:** Refer to Procurement Roles and Responsibilities, [Section 4.](#)

**Best Value:** The optimum combination of whole-life costs including price, delivery time, quality (or fitness for purpose) to meet the GOSL' requirement. Depending on the nature of the Procurement, whole-life cost may include implementation costs, ongoing operating costs and end-of-life disposal. Best Value may also involve due regard to other GOSL policies, such as those dealing with environmental sustainability and socio economic matters.

**Candidate:** A natural or juridical person seeking to become pre-qualified in response to an invitation for Pre-Qualification, Price and Availability request or Request for Information.

**Procurement Officer:** Refer to Procurement Roles and Responsibilities, [Section 4.](#)

**Consolidated Procurements:** Procurements that have principally the same characteristics (e.g. stationery, ICT equipment, courier services) and similar quantities, are combined for a number of End Users (usually at the Procurement planning stage) to increase Best Value including reducing the transaction costs.

**Consultant:** A natural or juridical person who is an expert in a specialised field and using their professional skills for GOSL to study, design and/or organise specific projects, advice, conduct training and transfer knowledge.

**Consulting Service:** An intellectual or advisory service provided by a Consultant.

**Contract:** The collective term for Procurement agreements (formalized and pre-printed Contracts, procurement orders, local procurements and service orders) with specific terms between or among two or more parties in which there is a promise to do something in return for a valuable benefit known as consideration.

**Days:** Calendar days, unless otherwise defined in the text.

**Direct Procurement:** A Method of Procurement, used in accordance with guidelines in the Manual, where competitive Offers are not solicited and the Procurement is sourced from only one Supplier.

**Eastern Caribbean Dollar:** XCD The unit of currency of the GOSL.

**End User:** Refer to Procurement Roles and Responsibilities, [Section 4](#).

**Evaluation:** The process by which Offers are assessed against specific criteria outlined in the Tender Documents to determine the Offer that achieves Best Value.

**Goods:** Raw materials, products, equipment, and commodities in solid, liquid or gaseous form, and electricity; also services (excluding Consulting Services) such as transportation, maintenance, and warehousing.

**Incoterms:** Standard trade definitions commonly used in international sales contracts. Devised and published by the International Chamber of Commerce (ICC), they are at the heart of world trade. ICC is currently revising Incoterms 2000. The new edition, Incoterms 2010, is expected to come into effect on 1 January 2011.

**Invitation to Tender:** Initiating the process of competitive Tender, in which Tenderers are invited to submit sealed Offers for clearly defined Procurements. The invitation may be either Open to all interested Tenderers, or Restricted.

**Limited Tender:** A form of Restricted Tender where the number of Tenderers to be requested to submit an Offer is restricted (refer to [Section 6.7.2](#)).

**Long Term Agreement(s):** Also known as a supply arrangement or standing offer, LTAs usually have a clearly defined duration, such as one year. The arrangement is between GOSL and a Supplier, selected in accordance with the procedures detailed in this Manual. GOSL may lease, rent or buy Procurements at a predetermined price or rate on an “as and when required” basis. To effect a particular transaction pursuant to the LTA, a Contract is struck between GOSL and the Supplier.

**Method of Procurement:** The collective term for methods used by GOSL to solicit Offers to make Procurements i.e. ITT, RFP, RFQ, Shopping and DSSP.

**Minister or Ministry:** The Minister or the Ministry of Finance. Refer to Procurement Roles and Responsibilities, [Section 4](#).

**OECS<sup>34</sup>** : The Organisation of Eastern Caribbean States was formed in 1981 under the Treaty of Basseterre, and is a nine-member grouping comprising Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia, and St. Vincent and the Grenadines.

**Offer:** A submission from an Tenderer to supply Procurements to GOSL and includes Tender, Quotation, and Proposal.

**Tenderer:** A natural or juridical person submitting an Offer to the Government.

**Open Tender:** A form of Tender for which all interested Tenderers may submit Offers. **Post-**

**Qualification:** A process undertaken by the procuring entity, prior to award of a Contract, to verify that the selected Tenderer meets the qualifications on which it was pre-qualified, and/or set out in

the Tender Documents. The verification may include physical inspection of site and/or plant.

**Pre-Qualification:** A pre-tender selection process by which a Candidate is invited by the procuring entity to submit documentation and/or other items that show the Candidate's capability in meeting the requirements of a Procurement.

**Pricing Basis:** The monetary basis against which a Supplier is paid for the Procurement. One or more bases of payment (lump sum, unit rate, and cost reimbursable) may be in one Contract.

**Procurement:** The process of acquisition (by purchase, rental or lease) of required goods, works or services from Suppliers using Public Funds.

**Central Procurement Board:** Refer to Procurement Roles and Responsibilities, [Section 4](#).

**Procurement Plan:** Refer to Contents of a Procurement Plan, [Section 6.3](#).

**Procurement Unit:** Refer to Procurement Roles and Responsibilities, [Section 4](#).

**Proposal:** A type of Offer usually associated with complex Procurements, especially Consulting Services, made by an Tenderer in response to an RFP.

**Public Funds:** Monies so defined under the GOSL Public Financial Management Act.

**Procurement(s):** The collective term that includes Goods, Works, and Consulting Services.

**Quotation:** A type of Offer usually associated with medium-to-low value, off-the-shelf, standardized Procurements, submitted in response to an RFQ.

**Request for Proposal:** A procurement procedure used for obtaining Proposals, usually from a restricted number of Tenderers.

The term "Public Funds" should be changed where/if parastatals are governed by Procurement legislation.

**Request for Quotation:** A Procurement procedure for obtaining Quotations from a restricted number of Tenderers.

**Restricted Tender:** The collective term for a Tender, using either a Limited Tender or a Selective Tender, where Tenderers to be requested to submit an Offer is confined to specific Tenderers.

**Routine Procurements:** Refer to Level of Planning, [Section 6.2](#).

**Scope of Competition:** The geographic area for soliciting Offers.

**Selective Tender:** A Restricted Tender where the number of Tenderers (to be requested to submit an Offer) is restricted to Tenderers that have been prequalified.

**Significant Procurements:** Refer to Level of Planning, [Section 6.2](#)

**Signing Authority:** Refer to Procurement Roles and Responsibilities, [Section 4](#).

**Single Stage, One Envelope:** Refer to Schedule 7.

**Single Stage, Two Envelope:** Refer to Schedule 7.

**Tendering:** The process of requesting tenders

**Tender Documents:** Documentation prepared and issued by the Procurement Unit to obtain Offers.

**Specification:** A document specifying the quality, type and standard with which the required Goods should comply.

**Substantially Responsive Offer:** An Offer that, on Evaluation, complies with the critical aspects of a Tender.

**Supplier:** A natural or juridical person under Contract with GOSL to furnish Procurements. **Supplier**

**Database:** A compilation of information usually in electronic medium, of key information, including names and addresses, products and services, about prospective Suppliers. The Supplier Database may be used by GOSL to record Supplier Performance Assessment – refer to

### Section 8.5.

(**NOTE:** The conditions for Tenderers to be registered on the GOSL database, and the precise information to be recorded there, should be further developed.)

**Tender:** An Offer submitted in response to an ITT.

**Terms of Payment:** Conditions under which the Pricing Basis will be paid. May include one or more terms including: advance, partial, progress, holdback, and final payments.

Two-Stage, Two-Envelope: Refer to Schedule 7.

**Type of Competition:** The method selected to solicit Offers from Tenderers. The competition may be Open or Restricted.

**Waiver:** Documentary evidence provided by the Approval Authority to accept a deviation from the Scope of Competition, Type of Competition, or Method of Procurement, as prescribed in this Manual.

**Works:** All activities associated with the construction, demolition, repair, or renovation of a building, road, or structure. May include materials, installation of equipment, and services incidental to Works, provided that the value of those services does not exceed the value of the Works themselves. Includes also Build-Own-Operate or Lease (BOO/BOOL) and Build Own-Operate-Transfer (BOOT) Contracts.

## **Schedule 2 Ethical Standards for the procuring entity Staff**

Procurement is based on competition, and must operate on a fair, equal, and transparent basis. GOSL staff are responsible for protecting the integrity of the process, and for ensuring fairness in GOSL treatment of all parties. To safeguard against conflict of interest, certain principles should guide the conduct of GOSL staff. These principles include the following.

- Developing the highest possible standards of professional competence.
- Using funds and other resources to provide the maximum benefit to the GOSL.
- Respecting the confidentiality of information gained in the course of duty; and not using such information either for personal gain, or to promote the unfair benefit of any Candidate, Tenderer or Supplier.
- Giving information that is true, fair, and not designed to mislead.
- Treating all Candidates, Tenderers, and Suppliers with fairness and impartiality, and avoiding any business arrangement that might prevent or be to the detriment of fair competition.
- Not accepting any gift from Candidates, Tenderers, or Suppliers (except those of a purely nominal value, such as calendars, key chains, pens, etc.).
- Avoiding any hospitality that might be viewed as influencing a business decision.
- Reporting to their superiors, oversight agencies, or auditors any observed unethical conduct by a colleague, Candidate, Tenderer, or Supplier.

Other examples of unethical conduct on the part of GOSL staff include:

- Disclosing confidential “inside information,” either directly or indirectly, to anyone not authorised to be privy to it.
- Discussing a Procurement with any party outside the official Procurement circle.
- Favouring, or discriminating against, any Candidate, Tenderer, or Supplier during the process of preparing Specifications, TOR, SOW or developing criteria for such.
- Destroying, damaging, hiding, removing, or changing any Procurement document.
- Requesting or accepting any benefits, such as money, travel, meals, entertainment, gifts, favours, discounts, or anything of material value, from Candidates, Tenderers, or Suppliers.
- Discussing or accepting future employment with any Candidate, Tenderer, or Supplier.
- Suggesting that any other person violate Procurement legislation, policy, or procedures.
- Ignoring any illegal or unethical Procurement activity observed on the part of anyone else, including any offer of personal inducements or rewards.

As well, all staff who have any financial interest in the case of Tenderer(s) responding to a Tender are prohibited from any involvement in the particular Procurement. Financial interest can mean anything of monetary value, and may also include matters such as:

- An interest in a business consisting of shares, share options, or similar ownership interest. (This excludes, however, interest that arises solely by reason of investment in a business by means such as mutual funds, a pension, or any other institutional investment over which the staff member does not exercise control.)
- Receipt of, or the expectation of, any income in the form of consulting fee, honorarium, salary, allowance, forbearance, forgiveness, interest in real or personal property, dividend, rent, capital gain, or royalty (such as derived from the licensing of technology or other processes or products).

Staff who have personal or professional interests in and/or with an Tenderer, or any direct or indirect influence, are prohibited from any involvement in that particular Procurement. Such interests include, though are not limited to:

- Any organization, or enterprise over which the staff member exercises a controlling interest (either alone, or together with a family member such as a spouse, domestic partner, or children).
- Any corporation, partnership, sole proprietorship, firm, franchise, association, organisation, holding company, joint stock company, receivership, business or real estate trust, or any other nongovernmental legal entity organised for profit, non-profit, or charitable purposes.
- Any executive position or membership on the Tenderer's Board of Directors, regardless of compensation.
- Any position that includes responsibilities for a significant part of the Tenderer's operation or business management.

In addition to all the above, GOSL staff must also observe the following rules.

- Staff may not disclose proprietary or source-selection information, directly or indirectly, to any individual other than those authorised to receive such information. This applies before, during and after Procurement.
- Any staff who become aware of an actual or potential conflict of interest concerning a Procurement should immediately notify their immediate supervisor.
- All GOSL staff are responsible for their actions in the course of their official duties. Any person who acts in a manner that is contrary to these guidelines may be held both personally and financially responsible for the consequences of such action. Staff members who contravene these express rules may be subject to sanctions, in accordance with GOSL legislation.

## **Schedule3 Procurement Forms**

(**NOTE:** When GOSL forms are available, this section should be completed with listings, form numbers, and dates. Where required, guidance regarding use of forms can be included in this section. Either now or in future, this Manual can be supplied in electronic format, including hyperlinks between its different sections, and links to most standard forms. In this way, users of the Manual could always access the most current version of forms.)

#### **Standard Tender Documents**

- Request for Quotation – Goods
- Request for Quotation – Services
- Request for Quotation – Works
- Request for Proposals for Consulting Services
- Invitation to Tender – Goods
- Invitation to Tender – Services
- Invitation to Tender – Works

#### **Standard Procurement Documents**

- Procurement Planning Template
- Request for approval of Procurement Procedure
- Evaluation report
- Tender opening sheet
- Notification to Successful Tenderer
- Notification to Unsuccessful Tenderer
- Certification of Completion and Acceptance

### **Schedule 4 Value Thresholds for Procurement Methods**

### Relationship between Methods, Categories and Thresholds

		Procurement Methods					
		Open Tender	Restricted	Direct *	Emergency *		
Procurement Categories	G/W/S	ITT	ITT	ITT	ITT	Major value	Thresholds
		ITT	ITT	ITT	ITT	Intermediate value	
		ITT/RFQ	ITT/RFQ	ITT/RFQ	ITT/RFQ	Minor value	
	Consultancy Services	RFP	RFP	RFP	RFP	Major value	
		RFP	RFP	RFP	RFP	Intermediate value	
		RFP/RFQ	RFP/RFQ	RFQ/RFP	RFQ/RFP	Minor value	

ITT                    Invitation to Tender  
                           Request for  
 RFQ                    Quotation  
 RFP                    Request for Proposal

\* subject to directions by the Minister