

REPUBLIC OF RWANDA



RWANDA PUBLIC PROCUREMENT AUTHORITY (RPPA)

INTERMEDIATE LEVEL TRAINING MODULE IN PUBLIC PROCUREMENT

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LIST OF ABBREVIATIONS

CB : Competitive Bidding

CV : Curriculum Vitae

EOI : Expression of Interest

E.g : Example

Etc : et caetera

GMS : Grams

ICT : Information Communication Technology

i.e :That is.....

ICB : International Competitive Bidding

IFB : Invitation for Bids

INCOTERMS: International Commercial Terms

IP : Integrity Pact

ITB : Instructions to Bidders

ITC : Information to Consultants

ITC : Internal Tender Committee

ITT : Invitation to tender

LED : Local Economic Development

Kms : Kilometres

Ltd : Limited

LOI : Letter of Invitation

MW : Megawatt

MINECOFIN: Ministry of Finance and Economic Planning

N.B : Nota bene

NCB : National Competitive Bidding

NGOs : Non-Governmental Organizations

OCB : Open Competitive Bidding

PE : Procuring Entity

PP : Public procurement
Pg : Page
RFP : Request for proposal
RPPA :Rwanda Public Procurement Authority
SBDs : Standard Bidding Documents
TD : Tender Document
TI : Transparency International
TN : Tender Notice
ToR : Terms of Reference
USD : United State Dollar

Objective of this module

After covering this module, participants will:

- Have understood the importance of conducting government procurement in accordance with the Rwandan Procurement Law and other international practices,
- Be aware of the instruments constituting the legal and regulatory framework of Public Procurement in Rwanda,
- Have understood the institutions that are involved in public procurement and their roles and responsibilities,
- Have understood how sound public procurement principles are incorporated in the Rwanda Public Procurement Law and Regulations and will be able to select the most appropriate procurement method for compliant acquisition of goods, works and consultancy services,
- become more familiar with the use of the standard bidding documents for goods and works and with preparation of Request for Proposals for consultancy services,
- be able to describe the general process and the procedures for the opening and evaluation of bids and contract award for the procurement of goods and works,
- be familiar with the meaning and provisions of the different INCOTERMS as defined by the International Chamber of Commerce (ICC), and be able to select the most appropriate terms in the preparation of specific bidding documents,
- have understood the scope of contract negotiations with the selected consultant and the contract award process,
- be able to identify the scope of contract administration tasks,
- have understood how to implement a contract administration plan, monitor performance and adhere to payment procedures,
- have understood the procedures for resolving contract performance problems and implementing contract remedies.

INTRODUCTION

The establishment, maintenance and improvement of sound public procurement systems are critical responsibilities of governments throughout the world. Public procurement in modern times is an engine for economic growth and development as it stimulates domestic, regional and international trade. Procurement is a crucial factor in good governance. Well-functioning, competitive, transparent and fair public procurement systems give satisfaction to suppliers and contractors, encouraging them to participate in procurement opportunities, and yield value for money to the procuring entities and taxpayers that support them.

Public confidence in government administration generally depends upon the reality and perception that procurement procedures and actions are responsibly undertaken by public officials, both technical and political, who are committed to procurement efficiency and integrity with a conviction that public procurement policies, procedures and practices ensure good governance and value for money.

Therefore the challenge for the Rwanda Public Procurement Authority (RPPA) as regulatory body, with the main focus on regulatory measures, monitoring and building capacity in public procuring entities, has been to create a critical mass of trained staff involve in procurement activities to fill the skills gaps in the public service, effect changes in management practices and ensure effective implementation of approved government programs and strategies through procurement operations.

RPPA has the mandate to prepare or to validate training materials to be used as references when training in PP being conducted at national level. For this regard RPPA prepared an introductory training module in public procurement designed for staff without any background in public procurement. This is an intermediate training module designed to procurement practitioners who wish to get a subtle understanding on theories and practices of public procurement activities so as to ease their work. RPPA is convinced that training people involved in public procurement operations is a continuous process basing on the following factors:

- Skills deteriorate and can become obsolete,
- There is a big gap between practitioners and researchers in the area of procurement than in any other fields. This means lack of theoretical knowledge.
- Procurement remains a young profession in Rwanda therefore uplifting capacities of people involved in PP is very important and need to be strengthened substantially to ensure that the procurement laws and institutions become effective tools in the efficient and transparent management of public funds.

The content of this module is useful to tackle the skill gap that can impede the smooth running of procurement operations undertaken by procuring entities.

The course is non-examinable but, where applicable, during the course, assignments in the form of exercises or case studies will be provided which will be discussed in groups and/or in plenary sessions. This will again provide an opportunity for the trainer and participants to share experiences and debate further on the subject as needed. At the end of the course, participants will fill a course evaluation form to determine whether the intended aims have been achieved.

CHAPTER ONE: NATIONAL PROCUREMENT LEGAL FRAMEWORK

1.1 DEFINITION AND INTERPRETATION OF KEY TERMS IN PUBLIC PROCUREMENT

The following are key terms often used in public procurement:

Accounting officer (Chief budget manager): Means an official empowered to approve reports of the Tender Committee and sign the contract on behalf of the procuring entity. This official must be empowered by Law to act as a Chief Budget Manager within the public entity in which he is employed.

Addendum: Means any changes, modifications or amendment made in the bidding document by the procuring entity at any time before the deadline for submitting tenders.

Procuring entity: Means Central Government authority, Local Government authority, public institution, commission, Government project, parastatal, agency, or any specialized institution engaged in procurement process and entering in contract with a successful bidder.

Bid: Means a tender, an offer or a proposal given in response to an invitation to supply goods, works or services;

Bidder: Means a natural or legal person submitting or seeking to submit a bid;

Bidding documents: Means the tender solicitation documents or other documents for solicitation of bids on the basis of which bidders are to prepare their bids;

Bid evaluation: Is the review and ranking by an evaluation committee of the bids submitted on a timely basis to the procuring entity in accordance with the evaluation criteria set forth in detail in the bidding documents.

Bid Security: means any guarantee by a bank or other relevant financial institution to allow the prospective bidder to participate in tendering;

Bid submission: The preparation and transmission to the procuring entity of the bids or proposals prepared by bidders in response to the invitation to bid or request for proposals

Bid validity: Is the time that bidders remains committed to their bids. During the bid validity period, a bidder may not withdraw or modify her/his bid. The procuring entity is

obliged to award a contract during the bid validity period. A procuring entity may request bidders to extend their bid validity periods. If a bidder refuses to extend the bid validity period, she/he cannot be forfeited with bid security.

Contract: Means an agreement between the procuring entity and the successful bidder. This agreement contains rights and obligations for both the procuring entity and the successful bidder.

Consultant services: Refers to an intellectual activities or activities of an intangible nature. Consultant services are provided by consultants using their professional skills to study, design, and organize specific projects, advise clients, conduct training, and transfer knowledge.

Conflict of interest: Is a situation in which a party to a procurement proceeding behaves in a biased manner in order to obtain undue benefit for itself or its affiliates or acquaintances.

Corruption

Corruption is defined as: impairment of integrity, virtue, or moral principle, depravity, decay, decomposition, inducement to wrong by improper or unlawful means (as bribery), a departure from the original or from what is pure or correct". Procurement officials must reject corrupt practices, which are contrary to good practice in the procurement profession.

Corrupt practice: includes the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in the execution of a contract;

Day: Refers to every weekday including holidays unless stated otherwise.

E-procurement: Means the process of procurement using electronic medium such as the internet or other information and communication technologies;

Framework agreement: Means an agreement between one or more procuring entities and one or more bidders, the purpose of which is to establish the terms governing procurement contracts to be awarded during a given period, in particular, with regard to price and where appropriate the quantity envisaged;

Fraudulent practice: Includes a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract to the detriment of the procuring entity, and includes collusive practices among bidders, prior to or after bid

submission, designed to establish bid prices at artificial or non-competitive levels and deprive the procuring entity of the benefits of free and open competition;

Goods: Are objects of every kind and description, including raw materials, products and equipment, supplies, automated data processing hardware and software, objects in solid, liquid or gaseous form, electricity and works and services incidental to the supply of the goods if the value of those incidental works and services does not exceed that of the goods themselves;

Procuring entity: Means – (a) any entity which uses public funds to procure goods, services and works including a ministry, department, agency or an organ of any statutory body, public enterprise or parastatal; and (b) a private entity acting for the state or using public funds, except that any procurement by a private entity using public funds shall be restricted to those public funds.

Public funds: means – (a) any fiscal resources appropriated to procuring entities through budgetary processes; (b) aid, grants and credits made available to procuring entities by local and foreign donors (c) revenues of procuring entities or other extra-budgetary funds;

Public procurement: Means the acquisition, by any procuring entity, of goods, works or services or any combination of goods, works or services, by contractual means, in accordance with the Regulations relating to public procurement;

Public procurement contract: Means a contract or agreement between a procuring entity and a successful bidder resulting from public procurement procedures;

Competitive bidding means any public procurement procedure that is within the threshold set by the government.

Threshold: Means standards or limits set by the public procurement law.

Contractor, Consultant or Supplier: Means any physical or legal person under procurement contract with a procuring entity.

Services: Means any services other than consultant services.

Works: Works means all activities related to the realization of building or engineering works upon the request by the client .It is all works associated with the construction, reconstruction, rehabilitation, demolition, maintenance or renovation of a building or structure, including – (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing; (b) services incidental to works comprising drilling, mapping, satellite photography, seismic investigations and similar

services provided following the public procurement contract, if the value of those services does not exceed that of the work itself; or (c) building altering, repairing, improving, extending or demolishing any structure, building or highway, and any drainage, dredging, excavating, grading or similar works on real property; (article 20 of public procurement law).

Successful bidder: means a bidder whose offer has been accepted after being considered the most competitive both technically and financially. It also refers to one who has concluded a procurement contract with a procuring entity without having been subject to tendering proceedings;

Terms of reference: Means the document prepared by the procuring entity defining the requirements for an assignment and means to be made available, concerns to be taken into account as well as the expected results.

1.2 PRINCIPLES GOVERNING PUBLIC PROCUREMENT

The fundamental principles governing public procurement in Rwanda are outlined in article **four** of **law n° 12/2007 of 27/03/2007 on public procurement**. In establishing this law, one of the main objectives of the Government of Rwanda has been to create a market that eliminates barriers to trade in goods and services. Creating a procurement market means removing any barriers to trade arising from the public procurement context.

- **Transparency**

Transparency refers to the principle that is central to a modern public procurement system, that gives to the public generally, and to the bidders community in particular, information concerning and access to the law, regulation, policies and practice of procurement by government Procuring Entities PE.

- **Competition**

From an economic perspective, "competition" operates as a discovery procedure by allowing different bidders to communicate the prices at which goods and services are available on the market. Those prices act as guideposts and reflect the demand and supply conditions at any given moment. They also reflect the differences in quality and in terms and conditions of sale of the different (non-homogenous) products available.

This is why the advertising provisions are so important, as they guarantee the widest possible competition, enabling bidders from all over the Community to communicate their prices to a given procuring entity, thus ensuring the greatest possible choice. Procurement legislation seeks to prevent any distortions or restrictions of competition within the Community, and any attempts to prevent bidders from being able to tender will be prohibited. Such attempts can take many forms and can affect the products or services or the economic operator itself.

- **Economy:**

This is a principle that is often used to describe the technical efficiency of the procedure itself, *i.e.* whether the planning has been appropriate and carried out on time; whether the various responsibilities have been engaged; whether sufficient time has been given to all bidders to prepare suitable tenders; whether the procurement is made in a timely manner.

At a more “economic” level, the principle can also be used to identify whether the correct or best contracting strategies have been used to minimize waste and benefit from economies of scale.

At a policy level, the principle may be used to analyze the allocative efficiency of transactions and of the system as a whole to determine whether this can be optimized further.

- **Efficiency**

Efficiency to speed up procurement functions is of high essence so as to avoid bogging down implementation of public programs at the expense of transparency. This means that through standardized procedures and consistent application of best selection practices minimize delays to the procurement process.

- **Fairness**

This is the principle of equality of treatment which requires that identical situations be treated in the same way or that different situations not be treated in the same way. It does not depend on nationality (as with the principle of non-discrimination) but is based on the idea of fairness to individuals. Thus treating two bidders from the same country differently could be unequal treatment but, since they are of the same nationality, there would be no discrimination (on grounds of nationality).

- **Accountability:**

Accountability is defined as: “the quality or state of being accountable, especially an obligation or willingness to accept responsibility or to account for one’s actions”.

In accordance with this definition, it is said that public officials have the obligation and must be willing to accept responsibility for their actions. Accountability has a literal meaning related to counting and accounting for items of monetary value, but as a concept its expanded meaning covers ethics and corporate social responsibility. Procurement officers and procuring entities need to demonstrate:

- Good governance and a structure that encourages good governance
- Enforcement of internal and external legal regulations
- An absence of corrupt practices
- Accountability for their actions

In this context procuring entities are spending public money, generally derived from taxation imposed on citizens. It is therefore fundamental that Procuring Entities are made for the money spent on their behalf. Procuring Entities must therefore have structures and processes that allow them to ‘account’ for actual expenditure.

1.3. LEGAL AND REGULATORY FRAMEWORK

The basic objectives of any public procurement legal and regulatory framework, regardless of the country's level of development, are to reduce costs and improve efficiency by promoting fair competition and streamlining procedures, to ensure accountability by increasing transparency in the process and reduce corruption. The legal and regulatory framework should however be tailored according to the specific problems and constraints of a country's legal system and traditions. The Rwandan legal and regulatory framework is designed to address specific country problems and constraints while at the other hand being consistent with the international public procurement standards.

Table 1: Instruments and documentation constituting the legal and regulatory framework

No.	Instrument	Important Issues Addressed by the Instrument
1.	Law No. 12/2007 of 27/3/2007 on Public Procurement	<ul style="list-style-type: none"> -General provisions; -Organization of public procurement organs; - Procurement methods; - Ways and organs for administrative review; - Contract execution /management; -Penalties/sanctions for the violation of procurement rules; -Transitional and final provisions.
2.	Ministerial order n°001/08/10/min of 16/01/2008 establishing regulations on public procurement and standard bidding documents	<ul style="list-style-type: none"> -Guide on specific application of the legal provisions. -Procurement planning and advertising guide; -Guide on functioning of internal tender committees; -Thresholds on particular methods of procurement ; -Guides on appeal mechanisms;

		<ul style="list-style-type: none"> -Guides on bids evaluation and award of contract; -Guides on functioning of independent review panels;
3.	Standard bidding documents and Request for proposals	<ul style="list-style-type: none"> -Instructions to bidders; -Bid data sheet; -Technical schedules and specifications; -Scope of work/ToRs -Evaluation criteria; -General conditions of contract; -Specific conditions of contract.
4.	Circulars	<ul style="list-style-type: none"> -Specific pronouncements meant to continually improve public procurement operations.

1.4 INSTITUTIONAL FRAMEWORK

The institutional architecture of public procurement is in place. This architecture provides for the Rwanda Public Procurement Authority (RPPA), Procurement Units or procurement officers in Procuring Entities, Internal Tender Committees in procuring entities, and Independent Review Panels.

Table 2: The institutional frame work & functionality

No.	Institution/entity	Key roles and responsibilities
1.	Rwanda Public Procurement Authority (RPPA)was established by - law no. 63/2007 of 30/12/2007 now replaced by Law n°25/2011 of 30/06/2011 establishing	<ul style="list-style-type: none"> To ensure organization, analysis and supervision in public procurement matters; - To advise the Government and all public procurement organs on the policies and strategies in matters related to the organization of public procurement;

	<p>Rwanda Public Procurement Authority and determining its mission, organization and functioning.</p>	<ul style="list-style-type: none"> -To control activities of awarding public contracts and their execution; -To develop professionalism of the staff involved in public procurement ; -To provide technical assistance as needed and develop teaching material, organize trainings and lay down the requirements which must be met by public procurement officers; - To collect and disseminate on a regular basis information on public procurement; -To put in place standard bidding documents, bid evaluation reports and other standard documents for use by public procuring entities; -To sensitize the public on matters related to public procurement; -To draw up and publish the list of bidders suspended or debarred from participating in public procurement; -Procurement capacity building; -Technical support to procuring entities
<p>2.</p>	<p>Procurement units/procurement officers in procuring entities</p>	<ul style="list-style-type: none"> -Procurement Planning; -Preparation of bidding documents and related documents; -Publication of invitation for bids -Safe keeping of bids; -Obtaining necessary approvals; -Ensuring effective contract management in collaboration with the user department; -Keeping procurement records. -Participate in contract management.
<p>3.</p>	<p>Internal tender committees</p>	<ul style="list-style-type: none"> -Opening and evaluation of bids;

		-Recommendation of award of contract.
4.	Procuring Entity Accounting Officer(Chief Budget manager)	<ul style="list-style-type: none"> -To appoint all the members of the Tender Committee; -To dismiss members of the Tender Committee; -To approve bidding documents; -To approve the procurement evaluation reports and contract award; -To sign the contract; -To appoint a contract/project manager; -To provide overall management of the contract.
5.	Independent review panels	<ul style="list-style-type: none"> -Receive complaints that have not been resolved by the procuring entity; -Take and communicate decisions on bidders complaints.

CHAPTER 2: THE CHOICE OF PROCUREMENT METHODS AND CONDITIONS OF THEIR USE

INTRODUCTION

The choice of procurement method is a critical issue to the success of procurement process; the differences between the methods are significant in terms of formality, level of competition, duration and complexity for bidders and the procuring entity. The choice should be made with the following factors in mind, with a view to maximize competition to the greatest extent possible.

However the main challenge in selecting a procurement method is to consider what method will maximize competition, given the nature of what is being purchased, and obtain a large participation of qualified bidders. The risk of choosing a method lacking competition is that premium prices will be paid without assurance that the best bidder has been selected.

Legal provisions on methods of procurement: Chapter III, article 23 to article 59 lays down procurement methods. It is important to note that Open Competitive bidding method is the procurement method by default. The procurement law also clearly indicates the conditions under which other procurement methods are used(art.45 of Rwanda procurement law).

2.1. OPEN COMPETITIVE BIDDING

This method should be considered as the preferred method of procurement for procurement of goods, works, and non-consulting services designed to attract the widest possible participation of eligible and qualified bidders and suppliers the method is most suited to obtaining value for money in the public interest

Exceptions to the use of open competitive bidding should be carefully considered and based only on compelling circumstances established in procurement **Law N° 12/2007 of 29/03/2007 on Public Procurement, article 23**, which makes open competitive bidding a procurement method by default. However, the method of procurement that the procuring entity chooses to use for a particular requirement depends on the nature, size and the urgency with which the works, goods or services to be procured.

The purpose of Open Competitive Bidding (OCB) is to give all eligible and qualified prospective bidders adequate and timely notification of a procuring entity's requirements and to give them equal access and a fair opportunity to compete for contracts for required goods and services. Bidding opportunities must therefore be advertised in media outlets of wider circulation and all eligible bidders given reasonable possibilities to participate.

OCB requires formal bidding documents which are fair, non-restrictive, clear and comprehensive. The bidding documents and technical specifications relating to the requirement should clearly describe the criteria for evaluation of bids and selection of the successful bidder.

National Competitive Bidding (NCB): Means the bidding which focus to nationals and local bidders or suppliers. NCB must be used when the estimated contract value(s) are below the threshold set for ICB and above the threshold set for shopping. It is advertised as ICB except that it needs only to be advertised in a national newspaper of wide circulation. All contractors both foreign and national are eligible to bid, however no domestic preference is applicable. The minimum period for the availability of documents (publication) is 30 days and the document (Bidding document) cannot be sold on the day of Bid submission. The threshold to be considered National is ABOVE 5 MILLIONS RWF, (art. 23 public procurement law).

International Competitive Bidding: Means bidding open to all bidders, including nationals, local and foreign bidders or foreign suppliers.

In most cases, ICB properly administered, and with the allowance for preferences for domestic bidders for works under prescribed conditions is the most appropriate method. ICB is the preferred method of procurement as it will provide users a wide range of choices from competing contractors and potential contractors adequate, fair and equal opportunity for the works being procured. Its use is mandatory when the estimated contract value(s) exceed the appropriate threshold stated in the national regulations in the ministerial order **N° 001/08/10/Min of 16/01/2008**, article **13**.

ICB is advertised both nationally and internationally and is open to all who need to purchase the bidding document.

2.1.1 Types of Open Competitive Bidding Methods

Procurement using open competitive bidding (OCB) method can follow either a **one-stage and two-stage bidding process**.

In **one-stage tendering process**, the procuring entity prepares a bidding document with, among other things, detailed functional and technical requirements. In response, bidders submit bids containing their technical and financial proposals at the same time. The procuring entity then evaluates each of the bidders' proposals and awards the contract to the lowest evaluated bidder, according to the method and criteria specified in the bidding documents.

Article 49 of the Law on Procurement gives explanations of a two-stage tendering. In a **two-stage tendering process**, the procuring entity prepares a first stage bidding document with functional performance specifications, rather than detailed

technical specifications. In response, bidders offer non priced technical proposals (i.e., no financial proposal is submitted at this time).

The procuring entity then:

- assesses the suppliers' qualifications and
- evaluates the technical proposals;

Following the first stage evaluation, the procuring entity may prepare addenda to the bidding documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage bidding process. During the second stage bidding process, bidders offer amended bids containing their final technical proposal and a financial proposal. The procuring entity then evaluates the combined proposals (technical and financial) according to the method specified in the bidding documents.

The advantages of the two-stage process include the ability of the procuring entity, during the first stage, to interact extensively on technical matters with bidders than is permissible in a one-stage process. In this way, a procuring entity can learn from the market and adopt its requirements. In addition, a two stage process allows a procuring entity to, in the first stage, state its requirements in more general functional terms than the detailed functional and technical requirements necessary to carry out a one-stage process. By knowing the bidders and their technologies prior to the second stage, this reduces the burden of preparing detailed functional and technical requirements which are so comprehensive that they can accommodate the entire universe of potential technical proposals.

Time for preparing bids/tenders- Article 29 of the procurement law stipulates that the time allotted (agreed) to the preparation of tenders for open competitive bidding must not be less than thirty (30) calendar days from the time the notice is published through a newspaper.

If the bidding document is amended, when the time remaining before the deadline for submitting tenders is less than one third (1/3) of the time allotted to the preparation of tenders, the procuring entity extends the deadline in order to allow the amendment of the tender documents to be taken into account in the preparation of tenders.

In case of an international tender, the period of its publication in an internationally most widely read newspaper is between forty five (45) and ninety (90) calendar days from the day on which the newspaper is issued, depending on interest and importance of the tender. The bidding documents are drafted both in French and English in case of international tenders (**ref: Article 47 of the same law on public procurement**).

2.2. OTHER PROCUREMENT METHODS

2.2.1 Restricted Tendering

(Ref: Articles 51-52 of the public procurement law).

Restricted tendering is another variation of formal bidding in which only those issued invitations from the procuring entity's restricted list of potential bidders are permitted to submit bids. With these variations in mind, the procedures to be followed for each of these methods of procurement are essentially the same.

Restricted tendering (also known as limited bidding) is essentially competitive bidding by direct invitation, without open advertisement. Restricted tendering is an option generally where there is a limited number of possible potential bidders or where contract values are small or other special circumstances that may justify departure from competitive bidding.

Where the procuring entity uses restricted bidding as the method of procurement, bids should be solicited from a list of potential bidders broad enough to ensure competitive prices, including all known bidders if their number is small. Under restricted tendering two bidders may not be shortlisted from the same country if international sourcing is done. The shortlisted bidders must be at least three (3) selected in a fair and non-discriminatory manner from a list of prequalified bidders.

An invitation to apply for inclusion on the prequalified list must be advertised, at least annually, in at least one newspaper of the largest nationwide circulation.

Article 16 of the ministerial order N°001/08/10/Min defines a threshold for use of restricted tendering by stating that any procurement contract of which value is LESS THAN FIVE MILLION RWANDA FRANCS (5.000.000) may be awarded using the restricted tendering method if the time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of goods, works or consultancy services to be procured.

2.2.2 Request for Quotations

Request for quotations (sometimes referred to as "**shopping**") is a procurement method used for small and routine purchases. It is also defined as a method of procurement used primarily for procurement of goods or low value procurement in which the procuring entity evaluates and makes award to the winning bidder submitting a quotation on the basis of price alone.

Article **53 to 54 of procurement law** explains request for quotations as an appropriate method for procuring readily available off-the-shelf goods or standard commodities in quantities of small value and in some cases, small simple works. Request for quotations does not require formal bidding documents, and is carried out by requesting written

quotations from several local or foreign suppliers or contractors -- usually at least three -- to ensure competitive prices. Telephone or verbal quotations are not acceptable.

In evaluating quotations submitted by bidders under request for quotations, price and ability to meet required delivery requirements are usually the main selection considerations for these simple purchases. However, the procuring entity may also take into account, things such as the availability and costs of maintenance services and spare-parts over a reasonable period of use. The terms of the accepted offer are incorporated in the purchase order and/or contract.

Article 16 of the ministerial order N° 001/08/10/Min of 16/01/2008 clearly specify that a procuring entity may resort to the request for quotations for the procurement of goods or construction works readily available on the market and have standard specifications and their cost is BELOW ONE MILLION RWANDA FRANCS (RW F 1.000.000). Such a tendering method cannot be used more than once within three months for a tender of the same category.

N.B: procuring entities must not split their tender into separate contracts for the purpose of using request for quotations. Quotations should be requested from as many bidders as possible and not less than three (3) — article 53 of the law on public procurement.

2.2.3 Single Source Procurement/Direct Contracting

Single Source (Also known as **Direct Procurement** or **Direct Contracting**) is a method of procurement in which the procuring entity determines not to use competitive procurement on grounds of urgency or some other legal principle and negotiates a contract with a single qualified bidder. Article **55 of procurement law** affirms that this method can be used and **article 56** specify under which conditions it is allowed to be used.

Direct contracting without competition is the method of procurement open to procuring entities in a limited number of circumstances. In all cases where direct contracting is proposed, procuring entities must ensure that it would not be feasible to apply a competitive bidding procedure. The contractors or suppliers hired by direct contracting must be qualified to perform the works or supply of goods on time, meeting specifications and fulfilling the special requirements of the sole source contract. They should also be required to meet any performance security and warrant conditions that would normally apply in a competitive bidding situation.

Single source method is used when the total cost does not exceed the total amount which is determined by an order of the Minister in charge of public procurement **Article 16 of the ministerial order N°001/08/10/Min of 16/01/2008** indicates the threshold for direct contracting where it states that any tender whose value does not exceed one hundred thousand Rwanda francs (100.000frw) may be awarded without tendering.

In other way, single source is applied when additional works that cannot be technically separated from initial tender. The value of additional works shall not exceed twenty per cent (20%) of the initial tender value. The additional works shall be subject to additional contract,

When there is a case of force majeure. The circumstances giving rise to the urgency should not be neither foreseeable by the procuring entity nor the result of dilatory conduct on its part.

The procurement shall only be in respect of those goods, works or services that are necessary to cater for the emergency

It is applied also for procurement related to items that are available only from a monopolist. Single source procurement shall not be justified on the grounds that only one bidder has the capacity or the exclusive right to manufacture or deliver goods, works or services if functionally equivalent goods, works or services from other bidders would meet the needs of the procuring entity.

2.2.4 Force Account

This method refers to the government's own workforce, equipment and resources, used to complete a works project. Refer to the **Law N° 12/2007 of 29/03/2007 on Public Procurement article 57.**

It may be suitable when:

- The quantities of works cannot be defined in advance;
- The works are small and at scattered locations that competent construction firms are unlikely to bid at reasonable prices;
- The works need to be undertaken without interrupting ongoing operations;
- The risk of delay is better borne by the government rather than an individual contractor;
- There is a natural disaster or similar emergency that need immediate attention.

After reviewing all options, the use of force account is decided upon, it should be managed so as to introduce productivity controls approximating those of commercial contracting.

2.2.5 Community Participation

In the interest of providing employment to local communities, the PE may decide to execute small construction works, including maintenance and repair, through local User Committees. The applicable maximum threshold value, the procuring entity's obligation to

provide design and technical inputs, responsibilities for supervision and quality control and other related matters shall be specified by the PE in consultation with the representatives of local User Committees. Refer to **article 58** of procurement law where this method shall be used if it is established that, it will contribute to the economy, create employment and involvement of the beneficiary community.

Threshold for using community participation (Article 21 of the regulations):

A procurement contract may be awarded to the beneficiary community if its value does not exceed TWENTY MILLION RWANDA FRANCS (RWF 20, 000, 000). However, the value of the contract may exceed TWENTY MILLION FRANCS (FRW 20,000,000) if the contract is for making terraces, anti-erosion trenches or planting trees. In such a case, the procuring entity shall hire an expert, to support the community in the particular activity, in accordance with procurement regulations.

NB: Use of procurement methods

Competitive bidding is the procurement method by default. This means that procuring entities must strive to the extent possible to use open competitive method rather than other methods. Other methods should only be used under circumstances laid down in the procurement law and guidelines. But these circumstances should not be created by the procuring entity, there should be circumstances that arise out of the procuring entity's control.

Time limits for bid submission under other methods (Article 59 of procurement law): For restricted tendering, the time limit for the preparation of tenders shall be as provided in article 47 of this Law. Such time limit may be reduced but shall not be less than twenty-one (21) calendar days for an international restricted tender and fourteen (14) calendar days for the national restricted tender.

The time limit given to the bidders for them to request for quotations shall be at least three (3) working days. Such time shall be counted from the date of receipt of the invitation to tender by the bidder.

N.B: There are other kinds of procurement methods which are close to types of Contracts

2.2.6. Turnkey contracting

Turnkey is a contract type rather than a method of procurement in itself and can be either ICB or NCB. Turnkey is a method of contracting by which a works contractor is made responsible for the **design, supply** and **installation** of a complete facility or works. This type of contract will only be used on an exceptional basis when the facility or works involved are both of high value and high complexity.

2.2.7. Framework Agreements

A method of procurement in which contractors compete on the basis of qualifications for inclusion on a list of stand-by eligible contractors who later may submit bids or proposals against a specific order by the procuring entity for goods or services.

A) Framework Agreements Defined:

Framework agreements, sometimes called **Indefinite Quantity Contracts**, are two-phase procurement instruments, in which the first competitive round generates sometimes one but often multiple awards to contractors generally able and available to perform specific tasks yet to be ordered by the procuring entity under the framework arrangement. The second round of competition, between one or more of the contractors now in the qualified pool, yields a specific contract with one of them to supply the particular goods or services required. The second round or phase may or may not be competitive, depending upon the number of suppliers in the framework arrangement and the terms of the arrangement.

B) Appropriate Use of Framework Agreements

Use of framework agreements is appropriate when the procuring entity intends to acquire a series of similar goods or services, but before the particularities of time and place have been identified. One or more procuring entities/end-users may be involved if the procurement concerns common-use supplies or services.

A good example is the engagement of a series of contractors to provide lodging and logistic services for foreign diplomatic or business visitors. If a number of firms are able to provide those services, it may be desirable for a government entity to use Framework Agreements to select, during an initial round of competition, a pool of those contractors, with established rates and basic contract terms. Then, when the visits are scheduled, a second brief round of competition is used to choose one of the contractors to handle each specific visit. Procurement for maintenance and repair contracts is another typical use of such framework arrangements.

The first round will generally include most of the features of the open tendering method of procurement. The second round will generally resemble request for quotations from the qualified group of contractors. Variations on this approach are possible, depending on the number of contractors awarded a framework agreement.

C) Competitive Aspects of Framework Agreements

Framework agreements are sometimes criticized as anti-competitive, because the first round of competition, which yields no specific contract, resembles a pre-qualification and not a full and open round of competitive proposals. It should be noted, however, that the first round may establish a contract price with reference to the catalogues of the suppliers who receive awards. If not, the second round will involve price competition but it is only limited to the pre-qualified suppliers and contractors. Sometimes, in fact, procuring entities will only involve one or two or three contractors in the second round on the premise that full competition has already taken place in the first round.

On the other hand, there are significant gains in cost and efficiency in the use of framework agreements from the perspective of the government. Much of the preliminary work of the procurement process is accomplished during the first round, at little cost to the government. The second round, focused on specific tasks or orders, is likely to generate substantially competitive prices.

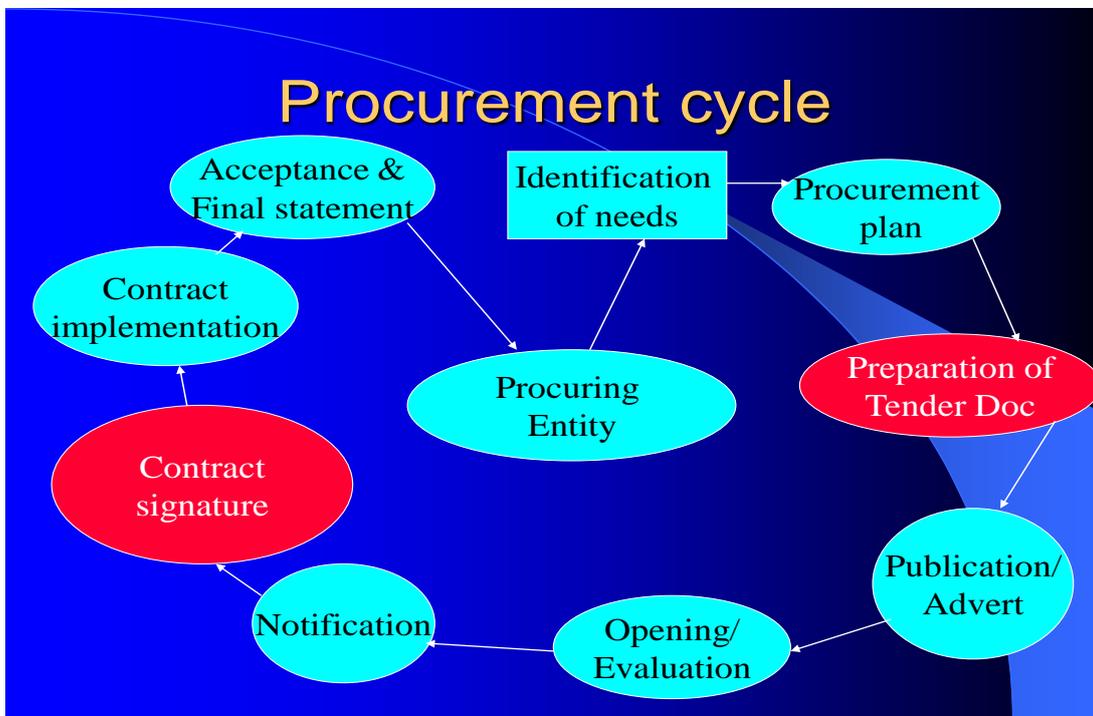
Record keeping in this method of procurement is particularly important, but complicated because of the two rounds of competitive action.

CHAPTER 3: PROCUREMENT CYCLE

INTRODUCTION

The procurement process follows steps that are arranged in a determined order, these steps can be explained here under as procurement cycle comprises three main phases namely **Pre-tendering** including needs assessment, planning and budgeting, definition of requirements, determining priorities and choice of procedures, **Tendering**, including the invitation to tender, evaluation and award; and **Post-tendering**, including contract management, order and payment.

Figure1. Procurement cycle-key steps



3.1. DETERMINING /IDENTIFYING THE NEEDS

This is the very first stage in the actual procurement process where departments/ services identifies their needs and send them to the procurement officer where they are unified to produce procurement plan. Here the basic need of the stakeholder(s) is explored, options considered, and the requirements briefly described as the basis for a plan and a specification. Procurement officers should not take the initial need for granted, but rather they should engage in a process that evaluates the needs and considers alternative cost-effective solutions.

Some 'needs' may already have been met by a previous and or by a current contract, the item sought may already be in stock from an alternative economic operator, or a potential purchase could be aggregated with other forthcoming purchases so as to present a more attractive supply opportunity to the supply market. Good practice by ensuring that there is a need that a procurement officer should not simply be a rubber stamp, Auditors will want to understand that there is a clear need.

3.2. PROCUREMENT PLANNING

3.2.1. Procurement Planning

Procurement planning is a key function in public sector organizations. Its objective is to provide the PE with continuity of inputs (procurements) to enable it to achieve strategic objectives.

It refers to the setting of procurement targets and activities by a PE in a manner that spreads them out in an annual calendar in accordance with the availability of resources and needs.

Within the framework of the annual procurement plan, this is the stage in the process when the objectives of making procurement are considered in relation to stakeholder needs and when a planned approach to the procurement is set out. This process is vital to the success of the procurement, although it may be executed in parallel with or immediately after the specification. Where a sample procurement plan is provided. Auditors will want to see a clear procurement plan signed off by key stakeholders, as it represents a decision to proceed. Procurement level plan could also involve co-operation with other procuring entities.

3.2.2. Pre-planning and the annual procurement plan

This process will ideally take place during the year, before the procurement needs to be made. Procurement people will sit down with user departments and key stakeholders and discuss their procurement requirements and budgets for the next year, giving advice on likely costs based on their market knowledge and deciding which items to include within a Prior Indicative Notice ,this process is vital in helping to inform procurement officers about what they may be expected to purchase during the following year, and it should be part of the annual engagement process between stakeholders and procurement.

Once procurement officers have been given the information about what they may be expected to purchase during the coming year, they can then be alerted to what is happening in the relevant supply markets, and that knowledge can be fed into subsequent processes.

Whilst pre-planning is acknowledged as 'good practice' everywhere, it is recognized that in some countries the procurement plan that results from the process described above can be: The plan that has been, or has to be, adopted by the contracting authority, a document that has to be published, a document closely linked to budgets and financial plans The annual plan, which forms the only basis on which procurement can be carried out in the year concerned localization here ,the annual procurement plan may also

indicate those cases where a contracting authority(PE) intends to collaborate with other contracting authorities.

3.2.3. Why Procurement Planning

Harvey Mackay said, "Failures don't plan to fail; they fail to plan." Planning is a vital part of the procurement officer's activity. The amount of planning undertaken is one of the distinguishing characteristics between good procurement professionals and others.

Procurement planning is defined both as a process used by contracting authorities to plan contracting or purchasing activity for a specific period, as well as a plan for the purchase of a specific requirement. To achieve both definitions procurement officers need to be closely involved with budget managers and user departments.

A Procurement plan is a requirement under the Rwandan public procurement laws and regulations. An annual procurement plan is also the first step in the procurement planning process. Ideally, the relationship that procurement officers have with user and budget departments should be so close that they are involved at an early stage of the budget cycle, where departments are identifying their needs in the respective budget year.

The Rwandan financial year begins from July and ends in June. According to the budget calendar, Budget estimates and the Budget Framework Paper are submitted to Cabinet in March. This means that by the month of March, procuring entities have a fair view of their budgetary allocations. The mistake that most procuring entities commit is that they begin the procurement process in July when the budget financial year begins. Actually from July, payments for any procurement can be done, but the process of procurement can begin before the financial year starts.

3.2.4 Process and Timeline Linked to Budget Cycle

In Rwanda where the financial year runs from July to June, the process for planning would work like this:

- February: procurement officers work with user department heads to determine procurement proposals and make initial list.
- March: procurement officers put together a draft procurement plan.
- April: a final list of procurement requirement and procurement plan is agreed upon.
- May: the process of procurement can begin so that by July when the financial year begins, some contracts are almost or ready for signature and execution.

3.2.5 Procurement planning stages

1. Identifying the needs (listing of needs);
2. Determining the priorities;
3. Determining the required budget;

4. Determining the different lots (packaging) ;
5. Determining the procurement methods;
6. Determining the deadlines for starting and the duration of every activity;
7. Determining a general procurement plan;
8. Determining a specific procurement plan.

3.2.6 Advantages of Procurement Planning

- Links are forged between the user unit, the finance unit, and the procurement unit from the earliest notion of there being requirement/need;
- Economies of scale are gained by uniting the requirements of different areas;
- There are no surprises when requirements manifest themselves in later months;
- Everyone can plan and schedule resources for the coming year more effectively;
- The procurement plan is linked to the national plans and strategic plan of the procuring entity.

3.2.7 Consequences of not undertaking procurement planning

By not undertaking such a planning process:

- Stakeholders, the finance department and the procurement team would work in isolation, unaware of each other's' needs.
- Requirements received by the procurement team would be surprises, for which no pre-planning would have been possible.
- Procurement officers would miss information on the potential requirements because they would not know they existed.
- Economies of scale would be lost because the requirements of different areas would be processed separately.
- Requirements would not be timed to the year-end of potential economic operators and so better deals could not be achieved.
- Resource scheduling would be difficult. Periodic indicative notices would not be published as easily.
- Co-operation with other contracting authorities would be more difficult as visibility of future needs would be limited.
- There would be no procurement plan linked to the strategic plan of the contracting authority.

Table.4 Specific Procurement Plan

N°	Title of tender	Estimated cost	Source of funds	Tendering method	Required resources	Preparation of tender document (study)				No objection on the tender document	Advertisement	Bid opening		Bid evaluation		Expertise required	No objection				Notification and contract signing	Recruitment of the supervising mission	Contract management			
						S	E		Financing																	
						TD	ED	TD	ED	TD	ED	TD	ED	TD	ED		TD	ED	TD	ED			TD	ED	TD	ED

KEY:

S: Start

E: End

TD: Tentative date

ED: Effective date (to be filled in at appropriate time)

3.2.8 Planning Exercises

Exercise 1: Planning for procuring a radio station

You are a procurement officer for a certain District. The District Executive Committee has promised citizens a community radio to facilitate communication, consultations, and provide a channel where citizens can voice their concerns. This is announced in March 2011 during the presentation of "Imihigo"-performance contracts to the public. The Committee promises to have the radio commissioned by end of financial year 2011-2012

Tasks:

- Develop a general and specific procurement plan for this procurement need
- What procurement method have you chosen and why do you think it is appropriate?

Exercise 2: Planning for procurement of a mini-hydro energy project

The District is indeed in a hurry. On top of promising commissioning a radio as in exercise 1, the Executive Committee also promises to build a 2 MW mini-hydro power plant along the river to supply its upcoming urban centers by end of the financial year 2011-12. You are in March, 2011. The District has no in-house capacity to draft detailed bidding documents, as well as specifications for works and equipment.

Tasks:

- Develop a detailed specific procurement plan for this operation showing each step and its timing;
- What lessons have you learned from the plan in relation to the Executive Committee promises on the energy project

3.3. PREPARATION OF BIDDING DOCUMENT /TENDER DOCUMENT

Bidding document is the tender solicitation document for solicitation of bids on the basis of which bidders are to prepare their bids. This document contains; invitation to tender, Instruction to Bidders, The Bid Data Sheet, Evaluation and Qualification Criteria, The General and Special Conditions of Contract, Schedule of Supply, Bidding Forms, Technical Specifications and drawings.

Procuring entities are expected to prepare bidding documents for each proposed procurement operation, both to inform and instruct potential bidders, suppliers and contractors of the requirements expected from them in particular procurement opportunities. Bidding documents should be drafted so as to permit bidders to submit responsive bids. Bidding documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the procuring entity and of suppliers and contractors, and the conditions to be met in order for a bid to be declared valid and responsive. They should also set out fair and non - discriminatory criteria for selecting the winning bid.

Bidding documents are supposed to:

- encourage eligible potentially qualified firms to bid.
- not discriminate against any potential bidder; and
- provide a clear, objective means of evaluating the bids.

The detail and complexity of bidding documents vary according to the nature and size of the contract and the sections are explained as follows:

- ***Invitation to tender (invitation for bids)***; It is necessary to create an ITT that will be available for dispatch to potential bidders , using formats that have been approved by RPPA and that in all cases are required by law. The invitation to tender is normally used by the procuring entity to invite potential bidders to present their bids for the requirement at hand, and it describes the procuring entity and source of financing and indicates the goods, works or services to be procured.

- **Importance of invitation to tender**

Advertising is a foundation of public procurement.

Full and open advertising helps in the following:

- ***facilitates appropriate competition*** – by informing as many potential bidders as possible about tender opportunities and thereby enabling them to compete, which leads to the best value-for-money outcomes for PE
- ***Develops markets*** – by showing potential bidders that tender opportunities are available, encourages the development of the marketplace with new and more diverse entrepreneurs and a wider source of bidders at local, national and international levels.
- ***helps in the battle against corruption*** – by increasing transparency and ensuring that bidders, the public, the press and other stakeholders are aware of

tender opportunities and have the opportunity to find out more about the tender opportunities that are available and to whom contracts have been awarded.

- ***Instruction to Bidders***

This helps bidders to submit bids that conform to the information that is specified in the TD by providing information to bidders regarding the form, procedure and timing of bidding. This is a set of instructions that informs bidders of the procedures that regulate the bidding process and gives the prospective bidders general information on how to proceed in preparing and submitting their bids. The ITBs contain standard provisions that have been designed to remain unchanged and to be used without modifying their text for each type of tender (goods, works and services). The ITB clearly identify the provisions that may normally need to be specified in bid data sheet.

Conventionally the ITBs contain information and data relating to the procedure for bidding and evaluation up to the point of contract award. These instructions and information cover the following aspects:

- 1. Scope of Bid**

ITB indicate the subject of the procurement whether goods, supplies or services, which are specified in the Statement of Requirements. The subject and procurement reference number, the number of lots, etc.

- 2. Source of funds**

The PE should state the sources of funds and indicate in the bidding documents that there is an approved budget from government funds or otherwise.

- **The Bid Data Sheet;** specifies the parameters of the Instructions to Bidders for the particular procurement including source of funds, eligibility requirements, procedure for clarification, bid preparation form, number of copies to be submitted, language of the bids, pricing and currencies and currency conversion mechanism, instructions on modification and withdrawal of bids, bid submission procedures, closing date, bid validity period, opening, evaluation and award of contract procedures, procedure for correction of mathematical discrepancies in bids, procuring entity's right to accept any bid and reject any or all bids; award criteria; notification of award and procedures for signing of contract.
- **Evaluation and Qualification Criteria;** this section specifies the criteria that the procuring entity will use to evaluate the Bids and to determine the lowest evaluated Bidder.
- **The General Conditions of Contract;** setting out the general provisions of the contract between the procuring entity and the bidder awarded the contract.
- **Special Conditions of Contract;** which modify the General Conditions of Contract for the particular procurement.

- **Schedule of Supply;** which specifies the quantities, delivery locations and dates for the items required by the purchaser.
- **Technical Specifications and drawings;** which detail the characteristics of the technologies and technical services required (as well as specifying the common format of which bidders must present their materials, including a technical responsiveness cross – reference form).
- **Bidding Forms;** which include the Bid Submission Sheet and Price Schedules, the Bid Security Forms, the Contract Form, the Performance Security Form, the Bank Guarantee Form for Advanced Payment and the Manufacturer’s Authorization Form.

Note: Use of standard bidding documents.
The procuring entities are required to use Standard Bidding Documents (SBDs) issued by the Rwanda Public Procurement Authority (RPPA). No changes should be made to the Instructions to Bidders and the General Conditions of Contract, however, if changes are necessary to address requirement specific issues they may be introduced only through bid data sheets or through Special Conditions of Contract.

Guiding Principles for the Design of Bidding/Tender Documents

It is the responsibility of the procuring entity to:

- prepare thoroughly drawn up tender document that would allow optimal competition and make it possible, generally, to make an award decision without prior negotiations;
- ensure that all legal formalities in connection with the tender proceedings will be met; invitation to tender/for bids, submission and opening of bids/tenders, presentation of award criteria and recording of the process;
- include technical, commercial, environmental and other requirements that correctly will balance and optimally reflect the character and size of the contract.

In particular, the following areas are important in the preparation of the tender documents:

- Based on the size and duration of the contract, determine the qualification or selection criteria for participation in the tender, which shall be disclosed in the

bidding documents;

- Determine how qualifications shall be evidenced by bidders/tenderers without imposing unnecessary formal conditions that could negatively affect the participation;
- Decide on the appropriate packaging of the tender and whether to allow tendering for lots or variants;
- Decide whether groups or joint ventures will be required to take a specific legal form for performance of the contract;
- Decide on the award criteria;
- Determine and indicate all important aspects of the bid/tender evaluation methodology and procedure, including the rules regarding minor and major deviations, correction of arithmetical errors, and rules for rejection of tenders
- Decide on instruments for the invitations to tender or for bidders in addition to the publication of an invitation, such as the procuring entity website or dg-Market
- Determine the appropriate time limits for the preparation and submission of Bids/tenders, which shall respect the minimum time limits but be sufficiently extended when required in order to correctly reflecting the size and complexity of the tender;
- Indicate the rules and procedure for submission and opening of tenders
- Determine the length of the tender validity period, which should be set to enable an effective and correct tender evaluation, including the award and conclusion of contract, but not so long as to affect prices and costs negatively.
- Consider the need for a pre-bid conference, which could be necessary in the case of complex technical specifications or contract conditions
- Indicate the procedure and rules for clarification of the bids/tenders submitted;
- Indicate the rules for cancellation of the tender procedure
- Decide on the need for requesting tender and performance securities

- Determine the appropriate contract model, taking into account the size, type and duration of the contract
- Indicate the procedures for debriefing and lodging of a complaint.

The bidding documents shall contain enough information to allow fair competition among those who may wish to submit tenders. The bidding documents shall set out the following **(article 26 of Rwanda public procurement law)**.

- the specific requirements relating to the goods, works or services being procured and the time limit for delivery or completion
- if works are being procured, relevant drawings and bills of quantities;
- the general and specific conditions governing the contract, if the performance security is provided
- the tender number assigned to the procurement proceedings by the procuring entity.
- instructions for the preparation and submission of tenders including
 - a) The bid form
 - b) The number of copies to be submitted with the original bid
 - c) Any bid security required, the form and amount of such security
 - d) Any proof evidencing the bidder's qualifications.
 - e) A statement of where and when tenders shall be submitted
 - f) A statement of where and when the tenders shall be opened
- A statement of whether those submitting tenders or their representatives shall be allowed to attend the tender opening session
- A statement of the period during which tenders shall remain valid
- the procedures and criteria for bid evaluation and comparison
- A statement that the procuring entity may cancel the bids at any time before the signing of the contract
- Anything else as may be provided for by the bidding document in accordance with this Law or public procurement regulations.

In international tenders, administrative documents required for foreign bidders shall refer to the Laws in force in the bidders' home countries.

3.3.1. General Obligations of Bidders

While preparing a bidding document as well as for the successful bidder when executing the contract, they are required to comply with the tender documents as well as any other procurement regulations and instructions given to them by the supervising official.

3.3.2. Qualification of Bidders

This is a step in the process that seeks to confirm whether potential bidders are qualified to perform the contract that is to be awarded. This qualification will refer to the pre-established selection criteria set out and may include an examination of the potential bidders accounts and performance with other customers. If the restricted procedure, the negotiated procedure or the competitive dialogue procedure is used, this qualification step is part of the process of selecting the economic operators who are to receive the contract. Qualification can be confirmed on the basis of financial, legal and technical (experience) assessments.

3.3.3. Tender advertisement

The procuring entity shall bring the invitation to tender to the attention of those wishing to submit tenders as provided for by the Law. The procuring entity shall advertise the invitation to tender in at least one newspaper of nation-wide circulation and if the procuring entity has a website, should also be published on its own website.

In practice, the advertisement should only be dispatched once the PE has undertaken all of the necessary preparatory work. Some documents are required under the provisions of the law and regulations and must be complete and comprehensive. If a PE rushes to advertise without undertaking a full and thorough preparation, the process is likely to fail.

3.3.4. Possible Amendment of Bidding Document

At any time prior to the deadline for submission of bids, the PE may amend the bidding document by issuing addenda. Any addendum issued shall be part of the bidding document. Addenda shall be communicated in writing to all who have obtained the bidding document directly from the PE. Prospective bidders must be given reasonable time in which to take an addendum into account in preparing their bids. Such an amendment may be made on the procuring entity's own initiative or in response to the bidders' concerns (refer to Rwanda law on public procurement art.27)

3.3.5. Receipt of Bids

This is the process in which the procurement officer receives offers to deliver/perform the specified requirement from bidders. Tenders must be held in a secure location once they have been received and, depending upon the process used, tenders may not be opened until the time prescribed as the final date and hour for receipt of a tender. The tender opening process may in many cases be a public event, where the bidders can visit the PE and see that initially all of the tenders are unopened and then that they are opened in the same way at the same time. A senior official in the PE may be asked to open the tenders, and therefore the procurement officer must ensure that time is set aside in the senior official's agenda and that a suitable venue is booked in advance. Once opened, tenders should be stored in a secure place and transmitted via a secure means of transfer to the persons who will evaluate them (The tender committee).

On some occasions two separate envelopes from each bidder may be requested. One envelope will contain the bidders' responses with costs included and the other envelope will contain the bidders response without costs. The objective of this method is to allow technical specialist stakeholders to evaluate the response without considering the cost. In these circumstances the responses with costs included remains with the procurement officer and the responses without costs are passed to the technical stakeholder. Late tenders must not be accepted and must be returned unopened to the bidders concerned.

3.3.6. Bids opening (Opening of tenders)

All bidders or their representatives are invited to attend the bid opening session, where bids are read-out and recorded along with a list of bidders or their representatives. The record is prepared and filed. Bid opening procedures are described in the Instructions to Bidders (ITB) contained in the bidding documents.

Failure to read out important information as specified in article 34 of the law on public procurement may result in denial of its inclusion in bid evaluation.

If a bid has been withdrawn, it should nonetheless be read out and should not be returned to the bidder until the authenticity of the withdrawal has been confirmed.

No bid should be rejected at the bid opening except those received after the deadline for submission of bids. Such bids shall be returned unopened to the bidder. A summary of the read out prices should be provided in a table and make a report using a standard format for bid opening provided by RPPA.

The rule in paragraph is intended to prevent time gaps between the deadline for submission of tenders and the opening of tenders. Such gaps may create opportunities for misconduct (e.g., disclosure of the contents of tenders prior to the designated opening time) and deprive successful bidders and PE of an opportunity to minimize that

risk by submitting a tender at the last minute, immediately prior to the opening of tenders. The procuring entity must permit all bidders that have submitted tenders, or their representatives, to be present at the opening of tenders.

This rule contributes to transparency of the tendering proceedings. It enables bidders and PE to observe that the procurement laws and regulations are being complied with and helps to promote confidence that decisions will not be taken on an arbitrary or improper basis. For similar reasons, the names of bidders that have submitted tenders, as well as the prices of their tenders, are to be announced to those present. With the same objectives in view, provision is also made for the communication of that information to participating suppliers or contractors that were not present or represented at the opening of tenders.

3.3.7. Evaluation of bids

This phase addresses the important subject of evaluation of bids, assuming that the bidding documents prepared by the procuring entity have been issued to interested suppliers, contractors and service providers, and that those suppliers, contractors and service providers have submitted bids to the procuring entity in accordance with the instructions to bidders contained in the bidding documents.

The evaluation of bids in a fair and careful manner to determine the lowest evaluated responsive bid is a fundamental feature of a modern procurement system and critical to the establishment of transparency. Procedures for bid evaluation must be described in the procurement law and regulations and spelled out in detail in the bidding documents.

The law on public procurement in its article No 39 and the ministerial order No 001/08/10/MIN of 16/01/2008 in its article No 7 address bid evaluation in the context of determining a responsive bid.

This part lays out the procedures for the evaluation of bids in formal bidding proceedings (formal competitive bidding procedures). All the bid evaluation steps in this most formal and comprehensive procurement method is laid out in this part. For other procurement methods, such as the request for quotations, the evaluation procedures are less formal and less extensive. Still, the fundamental notion applies to all methods of procurement: bid evaluation criteria must be objective, carefully drawn, and set forth clearly in the bidding documents.

The purpose of the topic on evaluation of bids is to raise the awareness of the participants of the fundamental importance of fair and transparent bid evaluation procedures.

The session is designed to give participants a full understanding of the applicable principles, standards and procedures and to assure, through the review and discussion of case studies, that the participants have useful experience in applying these principles to concrete situations similar to those met in their institutions.

Specific objectives of the session include giving the participants a working knowledge of how to organize a bid evaluation committee, how to protect the confidentiality of bids submitted, how to avoid the pitfalls of actual or perceived conflict of interest between bidder and evaluator, how to prepare and inform the bidders of the relevant and objective bid evaluation criteria, how to apply those criteria to the bids submitted, and how to record the conclusions of the bid evaluation committee and communicate them to the responsible officials in the procuring entity.

3.3.8. Procedures for Bid Evaluation

After receiving and opening the bids for goods, works and services the PE must determine the lowest evaluated responsive bid. This examination is carried out by a nominated bid evaluation committee consisting of at least three experts found in the tender committee. The process of bid opening, preliminary examination and evaluation of the bids resulting in identifying the lowest evaluated responsive bid is described hereafter.

3.3.9. Principles of Evaluation

After the public opening of bids by a Bid Opening Committee, information regarding the examination, clarification and evaluation of bids by a distinct Bid Evaluation Committee shall not be disclosed to the bidders or other persons not officially concerned with the bidding process until the successful bidder is notified of the award of contract.

The Bid Evaluation Committee members should work in a secure office where all the bidding documents can be kept.

There may be a considerable advantage to the process if the same members participate in the bid evaluation that participated in the preparation of the bidding documents.

On this occasion the bid evaluation committee may decide to request, as stipulated by article No 38 of the law on public procurement, clarification of bidders concerning ambiguities or inconsistencies of the bid. Such requests shall be in writing, and no change in the price or scope of the original bid shall be sought or accepted, except for the correction of an arithmetic error. The responses of the bidders shall also be in writing. No circumstances during the evaluation process shall justify meetings or conversations between the bid evaluation committee and other persons officially concerned with the process. The Evaluation Committee should at the end of the

evaluation sign an impartial and confidential report preferably using a standard document for evaluation.

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

- Preliminary examination;
- Determination of bid responsiveness;
- Correction of arithmetic errors;
- Conversion to common currency;
- Quantification of omissions and deviations;
- Application of evaluation criteria;
- Comparison of bids; and
- Preparation of evaluation report.

The Internal Tender Committee is responsible for the evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report.

3.3.10. Bid Validity

The duration of the validity of each bid should be the one specified in the bidding documents and should be confirmed in the signed bid.

If exceptional circumstances occur in which the award cannot be made within the validity period, extensions in writing should be requested of bidders (on a voluntary basis) in accordance with the bidding document. Extensions to the validity of the bid security should also be requested, if needed. Particular attention must be taken in cases where the deadline for submission has been extended. The procuring entity shall give notice of such an extension to each person or firm that submitted a bid. The bid validity period shall not exceed one hundred and twenty (120) days unless accepted by the bidder. (*Ref. article 35 of the law on public procurement*).

3.3.11. Preliminary Examination

The bid examination phase begins during the public bid opening with a preliminary examination of the bids. Except for decisions about rejecting bids received after the closing time, which is mandatory for all late bids, other decisions about whether a bid is compliant with bid document requirements should not be made during the bid opening. Errors may be made based on an incomplete reading or wrong interpretation of a bid,

and a mistaken decision taken hastily in the presence of the bidders is awkward to correct later. Instead, after the bid opening has been completed, as its first step in the evaluation, the committee should make a thorough examination of all bids received before the deadline for submission.

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

- The Bid should be signed properly by an authorized party, including the Power of Attorney if stipulated and are generally in order;
- Bid securities should be in acceptable format, for suitable amount and duration;
- Bid packages should contain all required documents including supporting evidence of bidder eligibility and qualifications. This includes administrative requirements such as Rwanda Revenue Authority Clearance, Rwanda Social Security Clearance, Trade license, and other certificates if the bidding documents requires so;
- Changes should be initiated;
- The mathematical calculations should be properly computed - if not, corrections should be made; and
- Bids should be complete and quote prices for all items in the lot or package if so stipulated in the bidding document.

The purpose of this examination is to eliminate any bids from further and more complicated consideration if they do not meet the minimum standards of acceptability as set out in the bidding documents and are therefore not substantially responsive. However, the procuring entity should exercise reasonable judgment in applying these tests and should avoid rejecting bids on trivial procedural grounds.

3.3.12. Correction of Arithmetic Errors

Bids should be checked carefully by the evaluation committee for arithmetic errors in the bid form to ensure that stated quantities and prices are consistent. The quantities should be the same as stated in the bidding document. The total bid price for each item should be the product of the quantity and the quoted unit price. If there is a

discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over numeric quotations in case of differences. The Procuring entity should correct all arithmetic errors and notify each bidder of the detailed changes. The Bidder must accept such arithmetic corrections or its bid will be rejected.

3.3.13. Application of Evaluation Criteria-Detailed Evaluation

The preliminary examination stage of bid evaluation described above is aimed at making sure that the bids received are substantially responsive. A substantially responsive bid is one that conforms to all the terms, conditions and specifications in the bidding documents without material deviations, reservation or omission. After the preliminary bid evaluation stage, the bids are taken through a **detailed evaluation** in order to select the bidder whose bid not only complies with the technical requirements in bidding documents, but also offers the procuring entity the lowest price for the goods, works and/or services to be procured. During bid evaluation, the following principles must be adhered to:

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

3.3.14. Conversion to Common Currency

In order to minimize the foreign exchange risk for bidders, the Guidelines allow every bidder to express her/his bid price in the currency or currencies of any member country (normally up to a maximum of three currencies in most cases). This provision effectively causes the procuring entity to carry the exchange risk rather than bidders and eliminates disadvantages some bidders would otherwise experience because of differences in strengths of bidders' currencies. However, it results in bids being presented in a wide variety of currencies which must be converted to a single common currency before they can be compared.

In order to compare bids for goods contracts, the most common practice is to convert all bid prices in Rwanda Francs at the selling rate established for similar transactions by the National Bank of Rwanda.

The Bid Data Sheet in the bidding document will specify a calendar date which may be anywhere from 30 days before bid submission until the final date of the original bid

validity period as the reference date for currency conversions. These published rates for each currency of bid are applied to the quoted prices of each bidder to calculate the equivalent common currency figures for bid comparison purposes.

3.3.15. Local Preference

(Ref Article 41 of procurement law)

Local preference not exceeding 10% may be granted to companies registered in Rwanda or to Rwandan nationals and bidders in regional economic integration bodies member states. Such local preference should be indicated in the bidding documents.

3.3.16. Reasons for Rejection of Bids

In some situations the procuring entity may reject all bids submitted in response to an invitation for bids. However, this has to be provided for in the bidding documents. The procuring entity may reject all bids under the following circumstances:

- When the price in the lowest evaluated bid exceeds the budget by a substantial margin;
- When all the bids received are not responsive to the requirements in the bid documents;
- When the procuring entity after receiving bids reasonably concludes that there is lack of competition; and
- When the procurement requirement has been overtaken by events and it is no longer required.

Where all the bids are rejected, the procuring entity should review the bidding documents and make any appropriate revisions. If substantial changes are made to the bidding documents, the procuring entity should then invite new bids on the basis of the new bidding documents.

3.3.17. The Bid Evaluation Report

After the completion of the evaluation process the evaluation committee (Internal Tender Committee) prepares an evaluation report. This report covers among other things:

- Key dates and steps in the bidding process;
- bid prices, corrections, discounts and currency conversions;
- Additions, adjustments and price deviations;
- Domestic preference if any;
- Technical evaluations if any;

- post qualification results;
- Names of bidders rejected and reasons for rejection of bids; and
- The proposed contract award.

3.3.18. Award and Signing of the Contract

Once the evaluation committee has evaluated the bids and made a determination on the lowest evaluated responsive bid, and a decision has been made about the award, the procuring entity should:

- Send a provisional notification of award to the successful bidder as well as notifying the non-successful bidders giving them opportunity to raise any challenge within seven (7) days if any;
- If no un-successful bidder has raised any challenge during the stipulated time, invite the successful bidder for contract negotiations.
- Request the bidder to return the signed contract after furnishing performance security within the time specified in the bidding documents.

Note: Standard documents issues by Rwanda Public Procurement Authority
The Rwanda Public Procurement Authority issues standard documentation used in procurement. In addition to the standard bidding documents, there are standard minutes of bids opening and standard evaluation reports formats. Procuring entities are required to use the standard formats of documentation.
Good Practice Note-Procurement File: All the actions in procurement proceeding must be documented and filed. Each procurement operation should have its file maintained by the procuring entity. This file should have all the information from the planning of the operation to the completion of the procurement process and contract execution.

The Winner's Curse-Be Aware!

Winner's curse refers to the prospect of a bidder bidding less than the true cost. The causes for this are diverse but at least three are common: (i) lack of knowledge of the market by the bidder, (ii) poor understanding of the specifications, and (iii) fraudulent practices where the bidder only wants to win a contract hoping to cause the revision and increase of prices to the true market costs during execution. Either way, winner's curse is disastrous to the performance of the contract. Consequences for the winner's

course include: (i) poor execution of contract, (ii) substandard work, (iii) extra costs through price revisions, (iv) delays, and sometimes abandonment.

Can winner's curse be avoided? Yes! Winner's curse can be avoided. It starts from making sure the requirements are very well specified to ensure there are no ambiguities and the evaluation criteria is clear to ensure no possibilities of un-objective interpretations. The mistake most evaluation committees commit is equating the "**lowest evaluated bid**" to the "**lowest bid**". These are two different things. The lowest evaluated bid means a bid that has substantively responded to the bid requirements including technical and commercial aspects of the bid requirements. It is encouraged especially where a winner's curse is potentially possible to do a post-qualification of the winning bid to ensure the bidder has capacity and resources to execute the contract. Post-qualification refers to going into details verification of the winning bid including review and originality of documentary evidence and information provided by the bidder.

Best practices require that National Procurement Authorities such as the RPPA to keep a record of market practices in different trades. Records of market practices including prices provide a useful basis upon which to detect a possibility of a winner's curse in the bid. Exercise 2 below illustrates how a winner's curse can be objectively avoided.

3.3.19 Exercise-Bids Evaluation

Exercise 1: procurement of works

Procuring entity Alpha of the Government of Utopia is in the process of procuring works for the construction of Mars-Jupiter road (500Kms). The project is politically strategic because the government of Utopia will hold presidential elections and the project was part of the incumbent government's campaign manifesto in the last elections. The project is complex because it involves crossing hilly terrain where 5 tunnels will be constructed. The longest tunnel will 2 kms. The road will have about 30 bridges the longest being a 500 meters span bridge, crossing the Venus river. Because the project is complex, Alpha first conducted a pre-qualification process. The following were the key aspects of the pre-qualification process:

- *27 international companies applied for pre-qualification;*
- *Only 7 companies were pre-qualified.*

The pre-qualification process was completed only 3 months to the elections. Alpha asked the Utopia public procurement authority to waive the requirement of allowing at least 30 days preparing bids and instead giving bidders only 20 days. Utopia public

procurement authority accorded the waiver. Alpha sent bidding documents to the pre-qualified bidders. Only 2 bidders, namely: (i) Earth Movers, and (ii) Heaven and Hell Contractors submitted bids. The price quoted by Earth movers was 813 million Dollars while Heaven and Hell quoted 811 million Dollars.

Evaluation criteria (section III) as laid in the bidding documents on personnel and equipment were as follows:

Personnel: *Bidders must demonstrate that they have qualified personnel for the listed key position. The determination of qualifications is based on education, general and specific experience.*

Equipment: *The bidder must demonstrate that it possess or has access (owned, leased, rented, or superficially manufactured) to the minimum key equipment listed in the bidding documents.*

Earth movers bid had all the documentary evidence to the personnel qualification and access to equipment. Heaven and Hell contractors showed that it has all the key personnel included their CVs but did not attach degree certificates. In the list of key equipment, Heaven and Hell did not indicate the status of the stone crusher (ie whether it owns, will lease, rent, or have it manufactured).

Result of evaluation:

The evaluation team concluded that all bidders were substantially responsive Heaven and hell was recommended for award as the lowest evaluated bidder.

Earth Movers, in accordance with appeal procedures, appealed the decision to award the contract to Heaven and Hell.

Earth movers protest was worded as follows:

EARTH MOVERS would like to state the following grounds of discontent in regard to the evaluation and award of the contract for construction Mars-Jupiter road (500KMs)

Ground one

*Considering the merits of our own bid, considering the size of the construction industry where actors know each other and basically outsource capacities from similar sources, we highly suspect that the so called Best Evaluated Bidder **Heaven and Hell** lacked in material the required number of core minimum equipment capable of executing works of such magnitude thereby contravening the requirements laid in the Bidding documents. It is our contention that our array of equipment was the best and it is our*

high suspicion that our competitors could have by no means been in position to raise all the required machinery.

Ground two

*Considering the nature of our industry and the sources where we outsource personnel, it is also our contention that the so called Best Evaluated Bidder **Heaven and Hell** could not have been in position to provide key qualified personnel who possess recognized Diplomas or Degrees as required under Section III of the Evaluation & Qualification Criteria specifically paragraph 2.4 which states that the bidder **must** demonstrate that it has key personnel and these key personnel are to have a recognized appropriate diploma or degree & ITB 36.2 which states that "the determination shall be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder, pursuant to ITB 17.1"*

Ground 3

*While we recognize that our bid was 2 Million Dollars higher than our competitor (**Heaven and Hell**), it is our contention that such a difference is immaterial considering the nature of assignment, size, and the facts laid bare in grounds (1) and (2) above because if grounds (1) and (2) were followed to the letter, our competitor, should in our view not have merited procession to the stage of financial comparison. As you are aware, a bidder that does not meet the technical requirements is by law barred from being allowed to the financial comparison stage.*

Ground 4

*The evaluation criteria were very clear and lacked any ambiguity. On key personnel and minimum key equipment, bidders were required to demonstrate that they fulfill the requirements. According to the Chambers 21st Century Dictionary (Revised Edition) pg355, to **demonstrate** means to show or prove something by adducing evidence. It is our contention that our competitor (**Heaven and Hell**) did not demonstrate to have qualified personnel and minimum key equipment required in the bid documents.*

*Furthermore, the evaluation criteria uses the word "**must**" on the requirement for personnel and equipment. It is our contention that the phrase "**must**" was in the context of the bid document not used casually. According to the Chambers 21st Century Dictionary (Revised Edition) pg902, "**must**" is used to express necessity, obligation, certainty or inevitability. In essence, the bid document was uncompromising on the requirements of personnel and equipment, which in our view **Heaven and Hell** did not satisfy.*

In conclusion, and in accordance with accordance with Utopian procurement law and guidelines, EARTH MOVERS prays for a quick administrative review with emphasis on the re-evaluation of the two firms that participated in the procurement process so that fairness and transparency can prevail.

Task:

You are the Accounting Officer of Alpha, and according to the appeal procedures the discontented bidder must first appeal to the procuring entity. Failure to get remedy, the bidder proceeds to appeal to the Utopia Public Procurement Authority.

How would you handle such an appeal? What are the issues in this procurement process? What are the issues in the evaluation process? Would you uphold or dismiss the challenge by EARTH MOVERS? Explain your decision.

Exercise 2: Bids Evaluation-Winner's Curse

National Roads Authority of the Utopian Government invited bids for the construction River road (97kms) to bitumen standard. Five international companies responded. Two companies were disqualified at the technical evaluation stage and did not make it to the financial comparison/evaluation stage. Three companies that made it to financial comparison quoted as follows:

- (i) Rocks construction Ltd-80 million US\$*
- (ii) Highways construction Ltd-120 million US\$*
- (iii) Valley construction Ltd-125 million US\$*

The evaluation committee recommends that Highways construction Ltd be awarded the contract. The contract approval committee refused to approve the award and requested the evaluation committee to re-evaluate the three companies using the objective criteria as laid down in the bidding documents.

The evaluation committee did re-evaluation and came to the same recommendation. But it accompanied its recommendation with an explanatory note on the basis of its recommendation. Key aspects in the note were:

- The engineer's estimates which were done a year ago estimated that the road would cost 100 million USD\$.*
- Rocks construction Ltd is 20% below the engineer's estimates.*

- *The Utopian National Bank publishes price indexes. The indexes show that key inputs for the project such as cement, bitumen, and diesel have increased between 18-21% since the engineer's estimates were made.*
- *Whereas Rocks construction ltd had constructed roads of similar length, on detailed review of information provided, it was found that the characteristics of the roads constructed by Rocks construction Ltd were different from the Rivers road project. The roads constructed by Rocks construction Ltd before were in flat terrain with less earth works and few bridges with narrow span. On the contrary, the Rivers road project passed through hilly terrain crossed rivers with big spans and there were some tunnels to be built.*

It appeared to the evaluation committee that Rocks construction Ltd pricing was influenced by the estimated cost per kilometer in the region where it had constructed roads which is different from the estimated cost per kilometer in the region where Rivers road project is located.

Task:

You are the chairperson of the contracts approval committee. The evaluation team has again insisted in its evaluation report that Rocks construction Ltd bid is unrealistic and cannot execute the contract. The evaluation team recommended that you approve award of contract to Highways construction Ltd.

Would you approve the award to Highways construction Ltd or not? Explain your decision.

CHAPTER 4: WRITING TECHNICAL SPECIFICATIONS AND TERMS OF REFERENCE

4.1. DEFINITION

Technical specifications means the totality of the technical requirements contained in particular in the bidding documents, defining the characteristics required of a service to be provided, a material or product to be supplied or works to be constructed, and thus permitting these to be described such that it fulfills the use for which it is intended by the procuring entity. Here the procuring entity states the needs to be satisfied by the procurement. The technical specifications define what the procuring entity wishes to buy and in turn what the supplier is expected to supply or perform. Specifications must contain information that permits competition. Although specifications should be drafted in a manner that is not unreasonably restrictive, they must still describe clearly and accurately all technical and other minimum needs of the procuring entity.

4.2. TECHNICAL SPECIFICATIONS FOR GOODS

Specifications for goods may be generally divided into four categories: *design specifications*, *performance specifications*, *functional specifications* and *brand name or equal specifications*.

4.2.1. Design or technical specifications

The procuring entity will define in detail the materials to be used and the manner in which the work is to be performed. These specifications may provide drawings, measurements, tolerances, testing procedures and other specific details. Design specifications are used when the procuring entity wants to ensure the quality and performance of a required item or needs standardization of products. Using a design specification, the procuring entity will get the goods exactly as it requests, but also bears the risk of any problems or defects in the design.

4.2.2. Performance specifications

Are normally less defined than design specifications. They describe the performance desired from what the procuring entity is buying without specifically directing how the contractor should design or make the item. For instance, the performance specification might state that the procuring entity desires a device that can produce 60 copies per minute. The supplier is then asked to find the best solution to achieve this result.

4.2.3. Functional specifications

Are similar to performance specifications in that they place responsibility for the design on the supplier. But, rather than stating the needs in terms of performance standards,

functional specifications focus on the purpose or use of the object. For example, the supplier is asked to provide a car that can carry 20 people safely across dirt roads in both sunny and rainy conditions. Generally, performance and functional specifications are preferred because the risk of performance is shifted to the supplier. If the supplier chooses a method of performance that does not produce the desired results, it must then try another method until the supplier accomplishes the contract requirements. The cost of all these approaches is borne by the supplier.

4.2.4 Brand name or equal specifications

Specifications may also describe the item to be furnished by **a brand name**. This is sometimes called "**exclusive branding**." In such cases the specification should state that an "*equal*" is also acceptable. In addition, the specifications should set out the significant physical, functional and other characteristics of the product which are essential to the procuring entity.

In describing the technical specifications, the procuring entity should take care not to overstate its needs. Specifications that exceed needs usually add costs which are not necessary and thus waste public funds. In addition, overstating needs may limit competition unnecessarily. This can lead to higher costs and also unfair discrimination.

4.3. SPECIFYING GOODS

Goods and materials can literally be counted, touched, weighed and tested to see whether they fit, both before specification and after delivery. If 1,000 sheets of white A4 size, 80 gms photocopier paper are specified in two packs of 500 sheets, then it is possible to:

- See whether two packs have been delivered;
- Understand whether the paper has been delivered to the correct organization and place;
- Monitor the time of delivery;
- Look at the packaging to see if it is photocopier paper;
- Count all the 1,000 sheets;
- Weigh the paper to establish the weight in grams;
- Check that the colour is white.

The physical nature of goods means that specification and measurement can be visualized and described with less difficulty.

Schedule of Delivery

Here the procuring entity must describe the details for delivery of the goods

4.4. TECHNICAL SPECIFICATIONS FOR WORKS AND IMPLEMENTATION DESIGNS

Here again the procuring entity states the needs to be satisfied by the successful bidder. The same concepts discussed above for defining the technical specifications for goods apply also to the design and specifications for works.

In the case of a unit price contract, the procuring entity will provide a bill of quantities and the bidder will provide unit prices for the items listed based upon the estimated quantities. If the contract is a lump sum, the procuring entity will provide a list of activities involved in performance of the contract. Here the procuring entity should provide the key milestones and critical path for performing the works. This schedule is used to monitor performance and also may be used to determine the milestones for making progress payments.

4.4.1. Specifying works

Specifying works can be time-consuming and will require the expertise of architects, surveyors and other specialists who have specific experience of the construction being undertaken. Different works – for example bridges, buildings, airports, motorways and harbors – will all present different difficulties and require different sets of expertise. In addition to the design of the works, specifications will need to include aspects like:

- Gaining access to the site;
- Defining the site facilities available and what will be done by the bidder and procuring entity;
- Access to the facilities of the procuring entity during the construction of works;
- The offloading and storage facilities available;
- What is required in terms of installation and commissioning, when will the handover be considered complete;
- Where the risk and liability starts and stops for the bidder and procuring entity;
- Specifications for all the materials to be used in executing the works.

4.5 TERMS OF REFERENCE

Terms of Reference (ToR): Here the procuring entity states the needs to be satisfied by the procurement. The ToR define what the procuring entity wishes to buy and in turn what the consultant is expected to perform. The procuring entity should describe the services, set out the schedule for performance, and list the key personnel requirements.

4.5.1 Specifying consulting services

There is nothing inherent in a service – consultancy, for example – that prohibits it from being defined in functional or performance terms. Services, like goods, are required to satisfy specific needs, and specifications should be written so that the output provided by the service is measurable. However, a service has an intangible nature, which makes it more difficult to specify and even more difficult to measure.

The service of cleaning an office can provide an example here. The view of what is “clean” to one person may result in a complaint from another person that the office is not clean.

Services differ from goods in several ways – for example:

- Services are intangible;
- Services involve the performance of activities or tasks;
- Services cannot be owned like a product;
- Services cannot be stored;
- Samples of services cannot be seen prior to purchase;
- Some services cannot be performed remotely;
- Services are provided by people.

These differences have implications for specifications, and to overcome the difficulties that arise, service specifications must not only lay down parameters for Consultant’s performance, but also act as a quantifiable basis by which work can be measured. They should cover such aspects as:

- Details of services to be provided;
- Time and point of service provision;
- Required response times;
- Required documentation;
- Supervision and sign-off acceptance.

Frequently, the service requirement is expressed in the terms of reference incorporated within the contract, often as a schedule, relating to the specific nature of the service being provided. The following considerations must guide preparation of the terms of reference (TOR):

- TOR should contain sufficient background information on the project to enable consultants to present responsive proposals;

- The scope of work in particular should be consistent with the available budget;
- TOR should take into account the organization of the procuring entity and its level of technical expertise and institutional strength.

The TOR normally consists of:

- background of the project (summary of main features of the project and description of the assignment's objectives and general purpose);
- objectives of the assignment (description of the objectives and expected results of the assignment);
- scope of work (details of all main activities or tasks to be conducted by consultants and the expected results);
- transfer of knowledge (proposed training approaches and methods);
- list of reports, schedule of deliveries, and period of performance (estimated duration of the assignment, from the date of commencement to the date the procuring entity receives and accepts the consultant's final report or a specified completion date).
- data, local services, personnel, and facilities to be provided by the procuring entity; and
- institutional arrangement (definition of the institutional setup surrounding the assignment; indicating the role and responsibilities of everybody involved; and specifying the type, timing, and relevance of everyone's participation, including the Procuring entity's).

4.6. KEY PRINCIPLE IN WRITING TECHNICAL SPECIFICATIONS

Non-discrimination

It is bad practice for technical specifications to mention goods of a specific make or source, or of a particular process, and that have the effect of favoring or eliminating certain enterprises or products. For example, the indication of trademarks, patents, and types or a specific origin or production is prohibited. An exception to this prohibition is allowed where the subject matter of the contract cannot otherwise be described by specifications that are sufficiently precise and intelligible to all concerned. Reliance on this derogation should not, however, have discriminatory effects; to that end, it is

advised to require that such indications be accompanied by the words "or equivalent". Procuring entities relying on this or other derogations must always be able to provide evidence that they are necessary.

Good practice note – Specifications

The objective of a specification is to promote competition for a requirement. The specification must not therefore favour one bidder; it must allow as many bidders as possible to bid/tender.

Specifying is an upstream procurement process. Invest time in getting the specification right in relation to your requirement. The investment will pay dividends during the delivery of the requirement downstream. Contract management is less problematic if the specification meets the needs.

Comment: Potential for corruption

Even with the knowledge of the fundamentals of public procurement, some bidders will try to work with their procuring entities contacts to develop the specifications in a way that best allows their own equipment or service to be selected by the procuring entity, perhaps by stressing one unique feature of their product. This may be an overt or covert process. Some bidders even offer to help busy procurement officers write the specification; however, it is frequently the technical specialists or user unit heads who is easiest to influence, and procuring entities must warn procurement officers and user units against accepting such practice.

4.7. GUIDANCE ON WRITING SPECIFICATIONS

When writing specifications, the following should be taken into consideration:

- Use simple language;
- Avoid words or phrases that are not specific or that may lead to ambiguity, *e.g.:*
 - a. Should
 - b. High
 - c. Maybe
 - d. Normal
 - e. Reasonable
 - f. Approximately
 - g. Could

- h. Possible
- i. Not likely to

- Do not use jargon(slang);
- Define terms, symbols and acronyms;
- Write in simple terms. Do not expect the specification to be read only by experts;
- Use an attractive format. This will reflect your professionalism and encourage potential bidders to read the specification;
- Use a logical structure;
- Be as concise(brief) as possible without reducing understanding;
- Aim to define each aspect of the requirement in one or two paragraphs;
- Discuss drafts with colleagues and users.

4.8. TYPES OF CONSULTANT CONTRACTS

Clients spend substantial funds on consulting services and therefore need to consider how best to structure the contracts for those services. Three main considerations determine what type of contract to adopt in consultant assignments: (1) the nature of the assignment, (2) the distribution of risks and rewards between the PE and the consultants, and (3) the circumstances of the PE and of the consultants. The level of capacity in contract management and consulting services supervision that the PE will be able to provide may also be a factor in the choice.

The following types of contracts are normally used:

- Lump sum;
- Time-based;
- Retainer and/or contingency (success) fee;
- Percentage; and
- Indefinite delivery.

Each type of contract is described briefly in the following paragraphs, as well as the criteria that are suggested for their adoption and correct application.

Lump-Sum Contracts

Lump-sum contracts are used mainly for assignments in which the content and duration of the services and the expected output of the consultant are clearly defined. Under a lump-sum contract, the PE agrees to pay the consultant a fixed sum of money for services rendered with upfront specified technical characteristics, such as a study report, project design, and tender document, to be delivered within a specified deadline, the quality of which can usually be readily assessed. Lump-Sum contracts leave the risk of assignment cost overruns with the consultant.

Lump-sum contracts are often used in relatively simple and clearly defined assignments such as planning and feasibility studies, environmental studies, detailed design of

infrastructures, preparation of databases, and surveys. Lump-sum contracts are also adopted in cases of sophisticated and clear-cut assignments of short duration in which external factors generally are not expected to influence (delay or substantially change) the outcome of the advice or study being provided.

Remuneration is fixed for the duration of the contract, and no physical or price contingencies/emergencies are normally provided. Payments are made in accordance with a contractually agreed upon schedule at the delivery of an agreed upon product. If payments are made against a schedule of percentage of work completed, then, as a minimum, a progress report and supporting evidence that the planned work has been completed satisfactorily should be submitted.

The lump-sum contract is easy for the PEs to manage and requires little technical supervision, as no matching of inputs to payments is required. This type of contract is also indicated for PEs with relatively small or weak administrative and managerial structures but with capacity for appreciating the quality of the consultants' advice or services.

A lump-sum contract transfers cost risk to the consultants and gives PEs certainty about the costs involved in procuring consulting services. However, they can increase the risks for the PE with regard to the quality of the advice. Because fees are fixed, after the contract is awarded, consultants may internalize efficiency gains. Their incentives are to reduce inputs compared with those they had originally planned so as to increase profit margins.

Time-Based Contracts

Under this type of contract, the consultant provides its services on a timed basis according to quality specifications, and the consultant's remuneration is based on (1) agreed upon unit rates for consultant staff multiplied by the actual time spent by the staff in executing the assignment, and (2) reimbursable expenses using actual expenses and/or agreed upon unit prices. Time-based contracts transfer cost risk to the PE. They require a system to monitor and control assignment progress and costs because the incentives of consulting firms are to assign more resources on the job, including more senior resources.

Time-based contracts are recommended when:

- The nature and scope of the services are such that the TOR cannot be established with sufficient precision, as may be the case for complex or unusual assignments that are difficult to define (such as management of complex institutions or studies of new approaches);

The duration and quantity of services, i.e. the amount of staff months, depends on variables that are beyond the control of the consultants, or the services are related to

activities undertaken by third parties, for instance, supervision of implementation assignments;

- The output required of the consultants is difficult to assess in advance, for instance for technical assistance, institutional development, or emergency situations, in which the PE's requirements for assistance may evolve during the execution of the assignment; and
- A capacity building program (transfer of knowledge) forms part of the assignment.

Retainer and/or Contingency (Success) Fee Contracts

This type of contract is often adopted to remunerate financial advisers who assist PEs in privatization operations that require the sale of assets. In these cases the QCBS method, in which consultants are asked to quote a retainer fee and/or a success fee, is generally recommended for the selection of consultants.

The proportion of retainer and success fees is often fixed in advance and is not subject to negotiation. The retainer fee proportion tends to be set higher if the consultants' role contributes more to planning and design of privatization activities rather than to the effort of successfully selling assets. The retainer fee is paid as a lump sum if the scope of work of the assignment and its duration can be clearly defined; otherwise, a time-based remuneration should be adopted.

Success fees are appropriate when success is related to the efforts of the firms involved and is relatively easy to quantify.

Success fees should be retained for the transaction (sale) stage and should be reserved for those advisers whose efforts can have a significant impact on sale price.

Consultants can affect the asset sale price by attracting a large number of bidders, by providing transparent, appropriate, and timely information to bidders, as well as by structuring the sale to ensure strong interest.

Success fees are normally paid out of the revenues generated by the sale of the asset.

Percentage Contracts

In a percentage contract consultants receive an agreed upon percentage of the actual project cost or of the transaction sale price. This type of contract, which is still used by consultants and architects in some countries, is discouraged for consulting services because it offers no incentive to lower the cost of the services. On the contrary, it may induce consultants to adopt more expensive design solutions in order to increase the absolute value of their remuneration. The percentage contract is mainly used for procurement and/or inspection agents for services that are directly related to the quantity and cost of the goods or works procured or inspected.

Indefinite Delivery Contracts (Price Agreement or Standing Offers)

Indefinite delivery contracts refer to contracts in which an individual consulting firm or an association of firms is hired for a specified time period (usually three to five years) to undertake tasks as and when the need arises. The specific workload is unknown at the outset; all that is known is that advice is likely to be needed in a particular area.

Indefinite delivery contracts are usually agreed upon because it is anticipated that the services will have two particular characteristics:

- PEs will need access to immediately available or on-call services for urgent assignments, and a lengthy competitive bidding process is impossible because of external circumstances. These services could include experts for urgent remedial actions in emergency situations caused by natural calamities, wars, epidemic or outbreaks.
- Each individual consultancy will be quite small, making an expensive competitive selection process inefficient, although, when added together, the amount of advice is substantial.

These combined factors make it worthwhile to appoint suitable consultants who can be on standby and are called upon when needed. However, locking in one set of advisers over a considerable period of time raises a number of issues related to the selection of the consultants; therefore, the quality and price of the services proposed must be addressed. Since it is not known how often or for what specific tasks the consultants will be called upon, they may not be able to submit a plan of work or a fixed total price. At the same time the long contract period and the unknown activation dates mean that consultants may always credibly claim that the requested expert is not available.

Administering or managing an indefinite delivery contract requires considerable time and energy from PE's staff, who must negotiate and administer each delivery order.

4.9. EXERCISES-SPECIFICATIONS

Exercise 1-Specifications for University Staff Restaurant Services

"The university staff restaurant must provide appropriate hot meals from 12:00hrs to 19:30hrs each day and there must be three choices of main meal, including one healthy meal. Additionally, there must be a vegetarian option.

A range of hot and cold drinks, made freshly, must be available from 07:30 to 17:30 each day and fruit, snacks and confectionery must be available to employees for the same duration."

N.B:

This mini case study aims to prove how complex a simple specification can be. The specification above is an extract from a real specification used in a procurement operation.

Task:

If you were the potential bidder about to tender for the services specified above, what questions would you ask the procuring entity? Are there any areas of concern in the words used? Are any words less than precise?

Exercise 2-Procurement of Network Equipment

You are a procurement officer, and you have asked the head of ICT in your organization to provide specifications of his/her needs so that you prepare the bidding documents and call for bids. This requirement for procuring networking equipment is on the procurement plan. The head of ICT has specified the wires category as 6E (which is a generic specification of the latest generation of wires) but adds that the wires and related accessories must be Cisco certified.

Task:

Identify the fault with this specification.

- What do you think are the ICT head's concerns and how would you address them?*

CHAPTER 5: PROCUREMENT OF CONSULTANT SERVICES

INTRODUCTION

Consulting assignments, which are of an intellectual nature, are carried out over a wide spectrum of sectors, including infrastructure and the environment to public sector reform and financial sector modernization, privatization to change management and system integration, as well as regulation to capacity building. When engaging consultants, public sector clients (the Client) must follow appropriate procedures.

The procurement of consulting services is a special topic in the field of public procurement. Considerations of technical quality (as opposed to price) play a larger role in the procurement of consulting services than in the procurement of goods or civil works.

The subject of consulting services is treated in summary fashion in the law governing public procurement in chapter III, section 3 articles 60 to 67.

5.1. DEFINITION OF CONSULTING SERVICES

“Consulting services” refer to services of a professional nature provided by consultants using their skills to study, design, organize, and manage projects; advise clients; and, when required, build their capacity. Consultants offer clients the possibility of a more effective and efficient allocation of their resources by providing specialized services for limited amounts of time without any obligation of permanent employment.

Consulting services encompass multiple activities and disciplines, including the expertise of sector policies and institutional reforms, specialist advice and integrated solutions, change management and financial advisory services, planning and engineering studies, and architectural design services. Consultants also provide project supervision, social and environmental assessments, technical assistance, and program implementation. Consulting services may vary from simple routine tasks to highly specialized and complex assignments.

Consulting services should satisfy the following requirements:

- Meet high standards of quality;
- Be impartial (that is, delivered by a consultant acting independently from any affiliation, economic standing or otherwise, that may lead to conflicts of interest); and
- Be proposed, awarded, administered, and executed according to the highest ethical standards.

5.2. SELECTION OF CONSULTANTS

When hiring consultants through a competition, the PE should be aware of the distinction between organizations whose core business is exclusively the provision of professional consulting services, that is, consulting firms, and other organizations with a different mission or core business and cost structure that occasionally provide consulting services and may enjoy subsidies and other privileges from third parties, under varying degrees of independence. This distinction is important because it can affect fairness of competition, especially when price is a factor for selection. The degree of independence of the consultants is also to be considered, as it constitutes an important indicator of the impartiality required of the consultants in delivering their services. These “other organizations” may include state-owned organizations, universities, research institutes, and non-governmental organizations (NGOs). Consulting firms affiliated to these “other organizations,” private or public, that due to their affiliation cannot be considered fully independent, belong also to this group.

5.2.1. Main Considerations in the Selection of Consultants

In the Selection of Consultants, policies and procedures should be guided by the following principles as they are well stipulated in article 4 governing public procurement in Rwanda.

- TRANSPARENCY - Promotes transparency in the selection process;
- COMPETITION- Guarantees the widest possible competition, enabling bidder from all over the business community to communicate their prices to a given PE, thus ensuring the greatest possible choice of the best low evaluated bidder;
- ECONOMY - Achieve best value through open and fair competition;
- EFFICIENCY - through standardized procedures and consistent application of best selection practices minimize delays to the procurement process;
- FAIRNESS- through uniform policies and procedures for procurement create an equitable environment for competition; and
- ACCOUNTABILITY - Ensure the accountability of those involved with the selection process;

5.2.2. Conflict of Interest

A consultant conflict of interest is a situation in which consultants provide, or could provide, or be perceived as providing biased professional advice to a PE in order to obtain from that PE or from others an undue benefit for themselves or their affiliates. Although consultant conflict of interest is an easily understood concept, to identify and prevent it, or address its consequences, that is, the potential or actual prejudice to the PE's interests, requires in practice the exercise of common sense, sound judgment, and expertise. Conflicts of interest must be avoided because they affect the consultants' impartiality and spoil the quality of their advice.

5.2.3. Fraud and Corruption

Corruption is a barrier to development, and all projects should be free of fraud and corruption. All parties involved in procurement and selection activities maintain the highest standard of integrity throughout the process of hiring and employing consultants, and throughout the course of contract implementation.

5.3. ADVERTISING

The main objective of advertising is to inform as many eligible consultants as possible about a consulting opportunity. Advertising promotes transparency, fairness, and facilitates the participation of smaller firms that otherwise might not have easy access to information or to local contacts. The PE should advertise a request for expressions of interest (EOI) for consulting firms for each contract in the newspaper of wide circulation, or on freely accessible electronic portal. PEs may also advertise requests for EOIs in an international newspaper, or technical journal. For unusual or very large assignments, the request for EOI may also be sent to consulting and professional associations, embassies, or reputed consultants that are known to the PE. The request for EOI should solicit sufficient information so that the PE may evaluate the consultants' capabilities and eligibility to undertake the assignment.

Information should include:

- Core business and years in business;
- Qualifications in the field of the assignment;
- Technical and managerial organization of the firm; and
- General qualifications and number of key staff.

5.4. SHORT LISTING

Unlike in procurement of goods and works in which all interested bidders are publicly invited to present their bids when open bidding is utilized, the consultant selection process is based on obtaining a limited number of proposals from a shortlist prepared by the PE. Because it is too time consuming and expensive for PEs to invite and evaluate proposals from all consultants who want to compete, selection is based on limited competition among qualified firms that in the PE's view or experience are capable and can be trusted to deliver the services. Use of the shortlist method also promotes economy and efficiency by limiting the costs incurred by consultants in preparing unsuccessful proposals.

The PE prepares a shortlist comprising all possible firms specialized in the field. Shortlists may comprise a smaller number of firms in special circumstances, for example, when only a few qualified firms in the field exist or have expressed interest for the specific assignment, or when the contract amount does not justify the cost of wider competition.

5.5. REQUEST FOR PROPOSALS (RFPS)

The Request for Proposals (RFP) for a specific assignment provides all the information necessary for the short-listed consultants to prepare their proposals. It indicates the evaluation criteria, selection method, and procedures that will be used to evaluate the proposals. The RFP also contains the Terms of Reference (TOR) and the draft contract for the assignment.

Generally, the RFPs include the following sections:

Section 1: Letter of Invitation (LOI);

Section 2: Information to Consultants (ITC) (including the Data Sheet);

Section 3: Technical Proposal—Standard Forms;

Section 4: Financial Proposal—Standard Forms;

Section 5: Terms of Reference; and

Section 6: Standard Form of Contract (including General Conditions of Contract (GCC), Special Conditions of Contract (SCC), and appendices).

5.5.1 LETTER OF INVITATION (LOI)

The LOI states the intention of the procuring entity to enter into a contract for a given assignment and informs the shortlisted consultants that they are invited to submit a proposal for the assignment. It provides basic information regarding:

- the name of the procuring entity and the sources of funds to finance the consulting services;
- the names of the shortlisted consultants;
- a brief description of the objectives and scope of the assignment;
- the method of selection; and
- the date, time, and address for submission of proposals.

The LOI also instructs consultants to indicate whether they intend to submit their proposal alone or in association with other shortlisted consultants and whether this association is acceptable.

5.5.2 INFORMATION TO CONSULTANTS (ITC)

The ITC section contains all information consultants need to prepare responsive proposals. Among other things, it informs consultants about the evaluation process, including the evaluation criteria and sub-criteria, their respective weights, and the minimum qualifying mark, in order to provide for a fair and transparent selection process. The Data Sheet is the part of the ITC that contains specific information relating to the procuring entity and the assignment.

5.5.3 TECHNICAL AND FINANCIAL PROPOSAL FORMS

The objective of these forms is to allow the requested information to be presented in a clear and readily comparable manner and to allow procuring entities to easily understand and evaluate proposals in accordance with the established criteria. Important forms are:

- Forms on comments and suggestions of consultants on the terms of reference (ToR) and on data, services, and facilities to be provided by the client;
- Forms on description of the methodology and work plan for performing the assignment;
- Forms on financial information; and
- Contract forms.

5.6 SELECTION METHODS

There are seven methods for the selection of consultants. They include:

- **Quality and Cost Based Selection (QCBS):** This is the method by default;
- **Quality Based Selection (QBS):** This is applicable where quality is the paramount factor;
- **Selection under a Fixed Budget (FBS):** It may be applied when the assignment is simple and can be precisely defined and when the budget is fixed;
- **Least Cost Selection (LCS):** It may be applied when selecting consultants for assignments of a standard and routine nature, where well established practices and standards exist and in which the contract amount is small;
- **Selection based on consultant's specific qualifications (CQS):** This applies to very small assignments for which the cost of a full-fledged selection process would not be justified. Under this method, the procuring entity first prepares the TOR, and then requests expressions of interest and qualification information on the consultants' experience and competence relevant to the assignment. The procuring entity establishes a shortlist and selects the firm with the best qualifications and references. The selected firm is asked to submit a combined technical and financial proposal and is then invited to negotiate the contract if the technical proposal proves acceptable.
- **Single-Source Selection of consultants (SSS):** This method may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm, (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency, (c) for very small assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.
- **Individual consultants' selection (ICS):** This method is appropriate when: (a) teams of personnel are not required, (b) the experience and qualifications of the individual are the paramount requirement. The consultant is selected on the basis of qualifications for the assignment. Advertisement is not required; however, in some cases the Client may consider the advantage of advertising as an option. The procuring entity selects Consultants through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Clients.

The choice of the appropriate method will depend upon the nature, size, and complexity, likely downstream impact of the assignment, as well as technical and financial considerations. Quality and Cost Based Selection (QCBS) is a method based on the quality of the proposals and the cost of the services offered. It is the method most frequently used to select consultants. Since under QCBS the cost of the proposed services is a factor of selection, this method is appropriate when:

- The type of services required is common and not too complex;
- The scope of work of the assignment can be precisely defined, and the TOR are clear and well specified;
- The client and the consultants can estimate with reasonable precision the staff time, assignment duration as well as the other inputs and costs required of the consultants;
- The risk of undesired downstream impacts is quantifiable and manageable,
- The capacity building program is not too ambitious and easy to estimate in duration and staff time effort; and
- Feasibility studies and designs where the project is simple and well defined, known technical solutions are being considered, and the evaluation of the impacts from the services or from design mistakes are not substantial and not difficult to estimate.

To increase the likelihood of receiving responsive proposals, the RFP under QCBS shall indicate the level of key staff inputs (in staff-time) estimated by the PE to carry out the assignment, or the estimated cost of the services, but not both. However, consultants shall be free to determine their own estimates of staff time to carry out the assignment, and to offer the corresponding cost in their proposals.

Under QCBS, FBS, LCS, CQS, and SSS, both technical and financial proposals must be submitted at the same time. Under QBS, financial proposals may be submitted together with technical proposals (or solicited only from the consultant that submitted the highest ranked technical proposal).

5.7 PREPARATION, SUBMISSION AND EVALUATION OF PROPOSALS.

5.7.1 Preparation of Proposals

During the preparation period consultants may seek clarifications on the information contained in the RFP. Consultants must submit their requests for clarification in writing. Procuring entities must respond promptly, also in writing, and send a copy of the query and its response to all shortlisted consultants who have confirmed their intention to submit proposals. The procuring entity should not identify the source of the inquiry.

5.7.2 Receipt and Opening of Proposals

Proposals must be submitted at the designated place (exact address, office, and room number to avoid any ambiguity), no later than the date and time indicated in the RFP. When submission of both technical and financial proposals is required, only the technical proposals are opened. Minutes of the technical proposal opening event are kept, including lists of the firms that presented proposals and of the documents that were submitted.

5.7.3 Evaluation of Proposals

After the proposals have been received and opened, the evaluation process begins. The evaluation committee members first reviews each proposal to confirm that it is substantially responsive, that is, that there are no important omissions or deviations from the stated objectives, TOR, or other key requirements of the RFP. The evaluation also establishes whether a proposal passes the minimum qualifying mark provided in the RFP.

It is good practice for each evaluator to independently complete the evaluation, and thereafter the Evaluation Committee members meet to review, and if necessary discuss the merits of, individual evaluations and scores. For each proposal, the Evaluation Committee then calculates the average of the scores allocated by all members under each criterion, and identifies the best. It is also good practice to keep records of the evaluation including the joint as well as the individual evaluations.

5.7.4 Technical Evaluation Report and Notification of Consultants

The committee members prepare a Technical Evaluation Report. The report shows the strength of each consultant in accordance with the criteria of evaluation. Scores earned by each consultant are indicated. The report determines which consultants have passed the technical pass mark.

After that determination, the procuring entity notifies consultants whose proposals did not meet the minimum technical qualifying mark specified in the RFP, or were found to be nonresponsive, indicating that the consultant's financial proposals will be returned unopened. The procuring entity simultaneously notifies consultants whose technical proposals were above the minimum technical qualifying mark, and informs them of the date and time set for opening the financial envelopes.

5.7.5 Opening and Evaluation of Financial Proposals

Opening of financial proposals is also public. The Evaluation Committee verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, the quality scores, and the proposed prices are read aloud and recorded as each financial proposal is opened. A record of opening event is maintained.

The Evaluation Committee should first review the financial proposals for arithmetical errors and consistency between the financial and technical proposals (for example, omissions of items included in the technical proposals). Arithmetical errors should be corrected, omitted items evaluated, and the corresponding adjustments made to the offered prices to obtain the final evaluated prices.

For the purpose of comparing proposals, evaluated prices should be converted to a single currency using the exchange rate, date, and source indicated by the procuring entity in the RFP.

Note on technical and financial scores-Article 24 of procurement regulations: Evaluation of technical proposals for consultant services, the tender committee shall evaluate every technical proposal in accordance with the criteria specified in the request for proposals and in compliance with the following guide on scores:

- *General experience of the firm in the field: 5 to 15 points;*
- *Relevant experience in similar services: 10 to 20 points;*
- *Quality of the methodology proposed : 20 to 30 points;*
- *Qualifications and experience of the key personnel proposed for the mission: 40 to 60 points;*
- *Transfer of knowledge or technology: 0 to 10 points (where applicable);*
- *Participation of Nationals: 5 to 10 points (where required).*

5.7.6 Combined score and Award

If QCBS is the method of selection, the Evaluation Committee weighs and combines the scores of the technical and financial proposals to obtain a final ranking of the proposals and recommendation for award. The data are then recorded in a Final Evaluation Report.

The client then invites the consultant whose proposal has obtained the highest combined score to negotiate, and informs the other consultants that they were unsuccessful and furnishes the name of the selected firm.

The following formula is used to determine combined scores:

$S = (TS \times Tw\%) + (FS \times Fw\%)$ where:

S= Final score

TS =Technical score

FS = Financial score

Tw =Weight of technical score

Fw =Weight of financial score

$Tw + Fw = 1$

Financial score is determined as follows:

$FS = (LF \times 100) / Fi$

LF = The lowest proposal;

Fi = The proposal to be evaluated.

The consultant whose proposal attains the highest score, in accordance with the evaluation criteria in the request for proposals is selected for award, subject to satisfactory conclusion of negotiations. The procuring entity notifies the successful bidder of its selection and at the same time informs all the short listed consultants of the decision. In the absence of a challenge by any other bidder within seven (7) days of that notice, the contract is signed by both parties. A good contract should protect the interests of both parties in a balanced way. Standard Forms of Contract issued by RPPA are designed to ensure that this is indeed the case. When price is a factor in ranking consultants, financial terms of proposals that affected the ranking should not be negotiated.

5.8 PUBLICATION OF AWARD RESULTS

The procuring entity publishes the results of the tender as soon as the contract is signed. The results published include at least the following: winner of the tender, amount of the tender awarded and duration of the contract. The results should be posted on the internet of the procuring entity, posted on the Rwanda Public Procurement Authority (RPPA) internet, and displayed on the procuring entity's notice board.

5.9 CHALLENGES AND BEST PRACTICES IN PROCUREMENT OF CONSULTING SERVICES

The main challenge associated with the procurement of consulting services is to develop and the selection procedures in a careful manner to assure technical quality and impartiality. It is essential to structure the procedure so that conflict of interest, and the appearance of conflict of interest, is avoided. Impartiality, together with creativity, are the most important assets offered by consultants. It allows consultants to study alternatives and recommend solutions, technologies, and products from a range of possible suppliers and contractors in the best interest of the client. Consultant impartiality results from the consultants' independence and freedom from ties or affiliations that could lead them to compromise their judgment and advice.

5.10 EXERCISE- COMBINED SCORE OF TECHNICAL AND FINANCIAL PROPOSALS

Exercise:

Five shortlisted consultant firms were invited to submit proposals for the design of the ALPHA District master plan. The method of selection is QCBS. The technical proposal score weight is 0.8 and the weight of the financial proposal score is 0.2. Only three consultant firms attained the required technical score pass mark as follows:

Firm A: 82%

Firm B: 88%

Firm C: 94%

The financial proposals for each firm are the following:

Firm A: 95 million Rwfs

Firm B: 102 million Rwfs

Firm C: 98 million Rwfs

Tasks:

- *Calculate the final score for each firm.*
- *Which firm do you recommend award?*

CHAPTER 6: PROCUREMENT OF GOODS

INTRODUCTION TO INCOTERMS

Procurement of goods (equipment, supplies, and materials) is a fundamental activity of procuring entities.

There is a particular dimension to the procurement of goods when the suppliers firm is foreign or when goods will be imported from a foreign country by a national supplier and the goods will be transported through international trade.

In these international sales transactions it is common for the parties to agree to use the terminology INCOTERMS, explained below. It is important for employees involved in public procurement who are buying goods to become familiar with INCOTERMS so that in the drafting of contract terms, the negotiation of contracts for the sale of goods, and the implementation of those procurements, there is a full understanding of how those terms affect the contract price and the risk of loss.

INCOTERMS give the technical and commercial perspective to procurement of goods transactions. It does not give guidance on matters of contractor selection or contract administration. For this reason there is no discussion of INCOTERMS in the law on public procurement or in any other Regulations.

It is expected that the participants will learn international best practices with regard to the procurement of goods generally, and will become familiar with the use of INCOTERMS as a basic interpretative aid in the negotiation and execution of those contracts where the transaction involves international trade.

At the end of the session participants will be able to distinguish local sales contracts, where INCOTERMS are not normally used, from international commercial sales contracts, where the application of INCOTERMS will be critical to contract negotiation and performance. Participants will be expected to understand the basic concepts behind the division of INCOTERMS acronyms into Groups C, D, E, and F.

The Incoterms rules began development in 1921 with the forming of the idea by the International Chamber of Commerce. In 1936, the first set of the Incoterms rules was published. The first set remained in use for almost 20 years before the second publication in 1953. Additional amendments and expansions followed in 1967, 1976, 1980, 1990 and 2000. The eighth and current version of the Incoterms rules—*Incoterms 2010*—was published on January 1, 2011.

Incoterms 2010 defines 11 rules, reducing the 13 used in Incoterms 2000 by introducing two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) that replace four rules of the prior version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU).

In the prior version, the rules were divided into four categories, but the 11 pre-defined terms of *Incoterms 2010* are subdivided into two categories based only on method of delivery. The larger group of seven rules applies regardless of the method of transport, with the smaller group of four being applicable only to sales that solely involve transportation over water.

6.1. DEFINITION OF INCOTERMS WITH THE PROCUREMENT OF GOODS

The meaning of INCOTERMS is not always adequately understood, even though the terms are widely used. INCOTERMS stands for International Commercial Terms. The INCOTERMS, which are issued by the International Chamber of Commerce (ICC), a private non-governmental organization, provide uniform international definitions of certain key aspects of the obligations of the seller and buyer in a contract for the procurement of goods.

INCOTERMS provides definitions for key elements in the contract for the procurement of goods. These include the contract price, clearance of the goods in the exporter's and in the importer's countries, carriage of the goods, insurance for the goods during their movement from the seller to the buyer, allocation of risk as between the seller and the buyer for loss or damage to the goods during their journey, and point of passage of the risk of loss from the seller to the buyer. INCOTERMS are an intensely practical topic for practitioners of public procurement, on both the public and the private sector sides, in particular in the context of import procurement. INCOTERMS are a set of internationally agreed definition of certain key contract terms that are incorporated by the parties into their contract to signify their agreement to allocate a number of important responsibilities and define their obligations on a number of key points, including:

- (a) Geographical point where the seller is deemed to have fulfilled his delivery obligation to the buyer;
- (b) The extent to which the contract price includes any transport of the goods toward or to their final destination, and whether the seller or the buyer is responsible for arranging any such transportation;
- (c) Whether the contract price includes the cost of insurance of the goods during their journey;
- (d) Who is responsible for clearance of export formalities in the seller's country and who is responsible for clearance of import formalities in the country of destination; and
- (e) At what point in the journey of the goods does the risk of loss or damage to the goods pass from the seller to the buyer.

Those basically are the types of issues addressed by the INCOTERMS, each term providing somewhat a different answer to those issues, depending upon how the

parties decide they will allocate those responsibilities and tasks. It is important to understand that the INCOTERMS do not define all the contract terms in a sales contract, but only the limited number of issues of the type referred to above. INCOTERMS do not apply to a contract unless the parties expressly incorporate them into their contract. INCOTERMS are revised periodically, so it is important that the reference in a contract to the INCOTERMS refer to the current edition or whatever edition the parties wish to use (normally they will use the latest edition).

6.2. PRINCIPLES AND PROCEDURES OF INCOTERMS

6.2.1. Limited scope of INCOTERMS

A misconception sometimes encountered is that the INCOTERMS are the contract. That is not the case. Rather, the INCOTERMS only supply uniform definitions of options the seller and the buyer have as to the above contractual issues (i.e., the delivery terms of the contract) and what the sale price does and does not cover as to those delivery issues. In addition, the INCOTERMS affirm the basic obligation of the seller, as agreed by the parties, to make the goods available to the buyer or to deliver them to the carrier, and the basic obligation of the buyer to take delivery of the goods.

A good way to illustrate the limited scope of the issues covered by the INCOTERMS is that they do not define, for example, the transfer of title to the goods. In other words, the INCOTERMS cover only the issues that they cover, and other issues (such as the effects of *force majeure* events) are dealt with either elsewhere in the contract or by the applicable law. INCOTERMS does not deal with the principles and procedures of contractor selection or contract administration. Remember, Incoterms are not law and there is NO default Incoterm.

6.2.2. Incorporation of INCOTERMS by reference

The INCOTERMS are applicable by virtue of a contractual decision of the parties. They do not apply by way of legislation, as might the applicable contract law. Rather, INCOTERMS are applied by virtue of express reference in the sales contract.

Because the INCOTERMS have been revised periodically, approximately every ten years, it is a good idea for the sales contract to which the INCOTERMS are to be applied, to refer to the currently applicable version of the INCOTERMS.

At present, such a reference would refer to "INCOTERMS 2010", since it is the latest version of INCOTERMS issued by ICC.

6.3. MAIN CHALLENGES AND BEST PRACTICES IN PROCUREMENT OF GOODS WITH INCOTERMS

The main challenge for those involved in the procurement of goods is to understand and apply the INCOTERMS, as described in detail above, and to include those terms in the complete contract of sale in accordance with the law to the sales agreement. Note again that the proper use of INCOTERMS does not mean that all procurement issues have been involved in a contract for the sale of goods. There remain all the other issues of contractor selection, contract administration, resolution of disputes, etc., that we have discussed in connection with other chapters.

6.4. HIGHLIGHTS OF INCOTERMS

The 11 Incoterms of the 2010 version consist of two groups and are listed below in order of increasing risk/liability to the exporter. The revised rules, designated "INCOTERMS 2010", contain a series of changes, such as a reduction in the number of terms to 11 from 13. The DAF, DES, DEQ, and DDU designations have been eliminated, while two new terms, Delivered at Terminal (DAT) and Delivered at Place (DAP), have been added.

Under the revised terms, buyers and sellers are being urged to contract precisely where delivery is made and what charges are covered. This should avoid double-billing of terminal handling charges at the port of discharge. References to "ship's rail" were taken out to clarify that delivery means "on-board" the vessel. Insurance, electronic documentation, and supply chain security are addressed in more detail, and gender-neutral language is now used.

6.5. CLASSES OF INCOTERMS 2010

INCOTERMS 2010 are grouped into two classes:

6.5.1. Terms for any transport mode

6.5.2. Maritime only terms

- **EXW - EX WORKS (... named place of delivery)**

The Seller's only responsibility is to make the goods available at the Seller's premises. The Buyer bears full costs and risks of moving the goods from there to destination.

- **FCA - FREE CARRIER (... named place of delivery)**

The Seller delivers the goods, cleared for export, to the carrier selected by the Buyer. The Seller loads the goods if the carrier pickup is at the Seller's premises. From that point, the Buyer bears the costs and risks of moving the goods to destination.

- **CPT - CARRIAGE PAID TO (... name place of destination)**

The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage.

- **CIP - CARRIAGE AND INSURANCE PAID TO (... named place of destination)**

The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage. The Seller, however, purchases the cargo insurance.

- **DAT - DELIVERED AT TERMINAL (... named terminal at port or place of destination)**

The Seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the Buyer's disposal at a named terminal at the named port or place of destination. "Terminal" includes any place, whether covered or not, such as a port, warehouse, container yard or road, rail or air cargo terminal. The Seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

- **DAP - DELIVERED AT PLACE (... named place of destination)**

The Seller delivers when the goods are placed at the Buyer's disposal on the arriving means of transport ready for unloading at the named place of destination. The Seller bears all risks involved in bringing the goods to the named place.

- **DDP - DELIVERED DUTY PAID (... named place)**

The Seller delivers the goods -cleared for import - to the Buyer at destination. The Seller bears all costs and risks of moving the goods to destination, including the payment of Customs duties and taxes.

- **FAS - FREE ALONGSIDE SHIP (... named port of shipment)**

The Seller delivers the goods to the origin port. From that point, the Buyer bears all costs and risks of loss or damage.

- **FOB - FREE ON BOARD (... named port of shipment)**

The Seller delivers the goods on board the ship and clears the goods for export. From that point, the Buyer bears all costs and risks of loss or damage.

- **CFR - COST AND FREIGHT (... named port of destination)**

The Seller clears the goods for export and pays the costs of moving the goods to destination. The Buyer bears all risks of loss or damage.

- **CIF - COST INSURANCE AND FREIGHT (... named port of destination)**

The Seller clears the goods for export and pays the costs of moving the goods to the port of destination. The Buyer bears all risks of loss or damage. The Seller, however, purchases the cargo insurance.

BE SPECIFIC:

If you use INCOTERMS in the Sales Contract or Purchase Order, you should identify the appropriate INCOTERM Rule [e.g. FCA, CPT, etc.], state "INCOTERMS 2010 and specify the place or port as precisely as possible.

6.6. RECOGNITION OF WHERE THE RISK OF LOSS TRANSFERS

A common misconception when the Seller pays the freight is that the Seller has the risk of loss until the goods are delivered to the place or port specified on the bill of lading or airway bill. Actually, when using INCOTERMS CPT, CIP, CFR or CIF, risk transfers to the Buyer when the Seller hands the goods over to the carrier at origin, not when the goods reach the place or port of destination.

6.7. RESPONSIBILITY FOR LOADING AND UNLOADING CHARGES

EXAMPLE:

DAT obliges the Seller to place the goods at the Buyer's disposal after unloading at the named terminal at port or place of destination.

DAP obliges the Seller to place the goods at the Buyer's disposal on the delivering carrier ready for unloading at the named place of destination. CPT, CIP, CFR or CIF on the other hand, require the parties to identify as precisely as possible the point at the agreed port of destination because the costs up to that point are for the account of the Seller.

In summary, **some key principles of INCOTERMS**, according to which they are differentiated, include:

Specificity to mode of transport

Some INCOTERMS are intended to be utilized for maritime transport and inland waterway transport; other INCOTERMS are useable for a variety of different means of transport. It is important not to mix those up.

Transfer of risk from buyer to seller

Generally, the point of division of costs is also where the risk of loss or damage to the goods is transferred from the seller to the buyer. That is also normally the delivery point, i.e., the point where the seller is deemed to have fulfilled his delivery obligation under the sales contract.

Division of costs

Generally, as noted above, the point of division of costs coincides with the point of completion of the seller's delivery obligation.

Buyer's obligation to pay the price

That is the basic contractual obligation of the buyer, which is affirmed in the INCOTERMS. The corresponding obligation of the buyer is to take delivery of the goods when they are placed at his disposal.

Seller's delivery obligation

The fundamental obligation of the seller is to deliver the goods in conformity with the contract terms (including proper packaging), but the actual point at which they are deemed delivered varies from one INCOTERM to another.

Seller's duty to give assistance

In particular, the seller should, at the buyer's request, risk and expense, provide documentation the buyer may need for arranging transit passage as well as clearing the goods.

Documentation requirements

INCOTERMS affirm seller's obligation to provide commercial invoice, documentation of delivery to carrier (transport document).

Seller's duty adequately to pack the goods

That is a basic duty of the seller, but any special requirements must be notified to the seller.

Use of additional wording

Use of any suffix wording after the INCOTERM must be done with caution so as not to confuse the meaning of the term.

To help you understand freight process this Incoterms Table below reflects buyer & seller responsibility for each type of shipment under the revised 11 different Incoterms governing shipment.

- Green indicates the **seller** has the responsibility to provide the service
- Blue indicates it is the **buyer's** responsibility

Fig.2: INCOTERMS EXPLANATION TABLE

Duties of buyer/seller according to Incoterms 2010

Incoterm	Loading on truck (carrier)	Export-Customs declaration	Carriage to port of export	Unloading of truck in port of export	Loading charges in port of export	Carriage to port of import	Unloading charges in port of import	Loading on truck in port of import	Carriage to place of destination	Insurance 1	Import customs clearance	Import taxes
EXW	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	N/A	Buyer	Buyer
FCA	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	N/A	Buyer	Buyer
FAS	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	N/A	Buyer	Buyer
FOB	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	N/A	Buyer	Buyer
CFR	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	N/A	Buyer	Buyer
CIF	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Seller	Buyer	Buyer
DAT	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	N/A	Buyer	Buyer
DAP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	N/A	Buyer	Buyer
CPT	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	N/A	Buyer	Buyer
CIP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DDP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	N/A		

CHAPTER 7: CONTRACT MANAGEMENT

INTRODUCTION

Contract administration (sometimes called contract implementation or contract performance) begins when the contractor has been selected and the procurement contract signed. The topic includes the organizational dimension to contract administration; contract terms, payment and monitoring; the resolution of disputes; contract modification, termination, breaching and record keeping.

The important practices of effective contract administration are nonetheless critical to the successful completion of the procurement objective. When a procuring entity awards a contract to a bidder, the arrangement cannot just be left to run itself – it must be managed.

Contracts are frequently complex and they may involve many people, may take or last for a long time, and may consume many resources. It is therefore vital that they are properly managed. Key to the process of successful contract management is the recognition that procurement officers must follow this stages that are: **plan, do, check** and **act** (PDCA).

In terms of the procurement process, the 'plan' stage refers to the phases prior to the award of the contract and the 'do' stage refers to the activity of the successful bidder throughout the life of the contract. Many procurement officers are very careful during 'plan' but they then let the successful bidder 'do' and they forget to 'check' and 'act'.

In the procurement context, 'check' refers to the checks and controls that are introduced to monitor performance, and 'act' refers to the activities necessary to ensure that any performance that has moved out of line is brought back within the required parameters.

Where successful bidders recognize that people from the procuring entity are not monitoring their progress, they may get careless and delivery will be less than acceptable, or they may create and demand variations for items that are already within the contract, thus incurring or requiring additional costs for the procuring entity.

Chapter V of the **LAW N° 12/2007 OF 27/03/2007 on public procurement** articles from **article 73** to **175** detail a directive to establish adequate staffing and procedures for the management of contract performance.

Purpose of the chapter

The purpose of this chapter will be to lead participants to a heightened awareness and a thorough understanding of contract administration. The case studies have been developed from experience of procuring entities to help participants deepen their knowledge on Contract management.

Objectives of the chapter

It is expected that the participants will learn Rwandan and international best practices with regard to contract management. They will be expected to identify various phases of contract management, including contract terms, payment and monitoring; the resolution of disputes; contract modification, termination, and breach; and record-keeping. By the end of the session, following the small group discussion of case studies, participants will have gained practical experience in how to organize the contract management function and how to address specific questions of monitoring contract performance and implementing the public sector side of the responsibilities of the contract performance process.

7.1. DEFINITION OF CONTRACT MANAGEMENT

Contract management can be defined as:

The steps that enable both the contracting authority and the contractor/ successful bidder to meet their obligations within the contract in order to deliver the objectives set by the contract or contract management refers to the performance of the contract by the contractor and the procuring entity, during which the contractor performs the agreed upon scope of work.

Selection of the contractor properly through an approved method of procurement is only the first phase of a particular public procurement action for which the procuring entity is responsible. Once the procurement contract has been awarded, contract administration begins. Contract administration is of critical importance to the proper functioning of the procurement system and is essential to the achievement of the purposes of the particular procurement action.

7.2. MAIN CHALLENGES IN CONTRACT MANAGEMENT

The main challenge within PEs in contract administration is to properly appreciate the importance of it. Often procuring entities give full attention to the contract selection process, but then walk away from the procurement once the contractor is in place. It is imperative that the PE devote adequate staff and resources to the phase of contract administration. Unless this happens the PE risks a failed procurement and the additional time and money to go through the process again.

For the contractor/ successful bidder the challenge is to perform the work in a satisfactory manner and to obtain timely payment for the effort. In this regard, the contractor takes the risk that the PE will delay necessary approvals or fail to pay on time. An experienced contractor will add some measure of protection for this risk in her/his contract price, even if it becomes to some extent less competitive as a result. The proper management of the risks identified above is a major interest of both the PE and the contractor. Each party can benefit from a commitment to the discipline of risk management and an investment in the necessary resources to meet these concerns.

7.3. BEST PRACTICES OF CONTRACT MANAGEMENT

7.3.1. Contract management organization

For the PE it is often important to establish a contract administration team to organize the effort. Depending on the nature and scope of the contract it will be important for the PE to bring together, on the contract management team, expertise from the disciplines of contract management, finance, audit and law, as well as technical experts such as engineers and others in the subject matter of the contract.

There are a number of essential steps to be taken in a successful contract management.

For example, in case of a contract for works, the initial steps in contract management will include the following:

1. Holding post-award conferences with the successful bidder, where necessary, and devising a specific contract administration plan;
2. Establishing a letter of credit within the time and conditions specified in the contract, if that is the agreed method of payment;
3. Development of a contract implementation work plan and schedule;
4. Monitoring progress, including determination of extent of performance accomplished periodically according to the work plan, and inspection and testing of quality aspects;
5. Arranging possession and access to site;
6. Management of the financial aspects of contract implementation, including payments to suppliers, budgetary and cost accounting aspects;
7. Organization of files related to contract implementation, preparing periodic reports for the senior management of the PE on the implementation of contracts; and

8. Acceptance of performance.

With regard to goods contracts it may be important to arrange for pre-shipment (in relation with transportation) inspection, perhaps engaging an external agent, and for receiving and acceptance of the goods.

Whereas with service contracts, especially consulting services, it will be important to assure that communications between the PE and the consultant are open, frequent and focused on the terms of reference.

7.3.2. The Inaugural or Initial Meetings

For any major contract such as a big construction it is good practice to hold a formal inaugural or initial meeting soon after the contract has officially been awarded and signed. At this meeting people from sides, the bidder and the procuring entity will come together for the first time in the context of the agreed contract.

They may have met before, but this will have been while the parties were going through the procurement process. At this meeting it is vital that both sides move from a competitive to a co-operative approach – they will be working together for the life of the contract and both will want a successful outcome.

Everyone who is to be closely involved in the execution of the contract should be present at the meeting and ideally sitting around the same table. The objectives of the meeting include:

- Understanding the roles and responsibilities of everyone present
- Discussing the implementation and/or project plan
- Discussing issues that impact on the execution of the contract
- Discussing control mechanisms

Other matters can become apparent at an inaugural meeting. These include:

- ✚ Perception by people from the PE of the truth and credibility of certain statements and promises made by the successful bidder prior to the award of the contract,
- ✚ An understanding of the keenness (a very great interest) of the successful bidder for the contract,
- ✚ Whether the successful bidder has fully understood the requirement,
- ✚ Specific capabilities of the people working for the successful bidder,
- ✚ The extent of flexibility that both sides are prepared to demonstrate within permitted parameters,
- ✚ The extent to which the successful bidder may seek extras or variations,
- ✚ The extent to which people can work together,

While accommodating minor suggestions from both sides, care must be taken to avoid corrupt practices, such as changing the scope of work or becoming too familiar with each other.

Finally, this initial meeting is an important opportunity for the supervising official and other managing this contract to establish personal credibility in the eyes of the people from the successful bidder.

His/her approach should be neither too soft nor too severe:

An approach that is too soft may be interpreted as weakness, signaling to the successful bidder that the procurement officer, the supervising official or any other staff involved in a tender may be easily exploited. Giving this impression could lead to many contractual claims and requests for variations throughout the life of the contract.

An approach that is too severe could alienate the people from the successful bidder and hinder the development of a constructive working relationship. Giving this impression could lead to people from the successful bidder not being prepared to give and take in the spirit of the contract. The meeting should be conducted in a serious, firm and polite manner. Remember that no second chance to make a first impression.

7.3.3. Contract terms

From the standpoint of defining the content of the contract administration phase, the procurement contract is the key document, the roadmap to contract performance, and therefore should be well drafted and well understood by the parties.

The procurement contract must include all the terms and conditions set out in the bidding documents. From the perspective of the procuring entity, the heart of the contract is the commitment of the supplier or contractor to provide the goods or services or works required by the procuring entity. From the perspective of the contractor, the heart of the contract is payment for work performed. The contract will contain the General Conditions of Contract set forth in the bidding documents. These will include the standard, uniform terms and conditions that define the procurement contract.

The general conditions differ substantially depending upon the category of procurement: goods, works or services. These conditions are not negotiable after bids are submitted or awards made. The contract will also contain the Special Conditions of Contract set forth in the bidding documents, in which the procuring entity identifies the

purchaser and the supplier, the terms for performance security, the date for beginning performance, and the conditions for delivery, acceptance, payment and warranty. Note that any Special Conditions will modify the terms and conditions in the General Conditions.

The form for Special Conditions of Contract for Works requires the procuring entity to identify the parties to the contract and the site or sites where the work is to be performed, including the date the contractor is given access to the site. The form also addresses insurance, inspection, type of contract, payment terms, and provision for price adjustment.

The form for Special Conditions of Contract for Services is similar to that for goods, except that it must describe where the services will be performed and any pre-conditions for the benefit of the contractor. Reporting requirements are often essential tasks in service contracts. Note that any Special Condition supersedes the General Conditions.

Whether or not included in General or Special Conditions of Contract, the key provisions in the contract will address scope of work, payment, performance security, contract monitoring, performance delay, contract modification, termination and breach, and resolution of disputes. The content of these provisions is discussed in the following paragraphs. For further information regarding content of procurement contract that have to be appended to the bidding document and which alleviates fears and risks for both parties to the contract are well detailed in the **article 73** of the law on public procurement.

7.3.4. Scope of Work

The scope of work or the terms of reference are normally carried over from the bidding documents into the contract. It is critical that the parties review and focus on the details of the scope and the TOR before beginning contract execution. Any precisions or clarifications in the scope that are necessary should be agreed upon and set down clearly in the contract document.

7.3.5. Payment

Payment to contractors on a timely basis in accordance with contract terms is essential to the integrity of the procurement system. Most procurement laws emphasize the importance of timely payment. Unpaid contractors lose their incentive to do good work and inevitably raise their prices in future procurements.

Subject to the terms of the procurement contract, payment is made on the basis of the submission and acceptance of a proper invoice which must be approved and signed by the supervising official. The procurement contract defines the manner and timing of

payment. In the case of procurement of goods, the invoice is accompanied by any shipping/delivery or other required documents, in the prescribed form which may be obtained from the procuring entity.

Prior to effecting/completing payment, the officer responsible for payment establishes the availability of the appropriate supporting documents, including payment vouchers attached to relevant invoices, purchase orders, and cross-references to a purchase order or procurement proceeding numbers.

Payments that become due to the supplier are made in accordance with the deadlines set forth in the procurement contract, failing which the supplier is compensated by payment of interest in accordance with the provisions of the procurement contract. If the procurement contract provides for a prompt payment discount, such a discount shall be applied if the procuring entity makes payment in accordance with the terms of the prompt payment discount provision.

An advance payment may be made in an amount in accordance with the procurement contract, but normally shall not exceed twenty percent (20%) of the initial contract price or other level set in the standard bidding documents, and as indicated in the procurement contract. Advance payments are normally made against the posting of an advance payment security. The advance payment should be used only in activities related to the tender. If the contractor uses the entire advance or part of it in other activities that are unrelated to the tender, the advance shall immediately be considered as a debt which shall be paid by seizing the entire security or part of it. An advance payment may actually not be considered a payment because it is typically subject to repayment, by deductions from progress payments that become due.

The procurement contract may provide for the making of progress payments, for example on a monthly basis, based on the actual work performed as measured by the supervising official and recorded in the daily site log book or in accordance with performance milestones identified in the contract and having been achieved, or based on actual quantities delivered or completed.

Progress payments are issued in accordance with the contract, upon presentation and acceptance of such documentation as required by the procurement contract to evidence the progress in performance. Notwithstanding the above, where progress payments are made, the procurement contract may provide that a percentage of amounts due may be withheld until performance of the procurement contract is completed (sometimes referred to as "retention money").

Final payment shall be made once performance of the procurement contract has been completed and accepted by the procuring entity. The procurement contract may mandate that the contractor provide to the procuring entity a release from claims related to the contract as a condition for final payment, subject to exceptions including:

1. Specified claims;
2. Contractor's liability to third parties stemming from performance of the procurement; and
3. Claims for reimbursement of costs based on liability incurred to third parties in performance of the procurement contract, provided the claims are not known to the contractor as at the date of signature of the release.

For further readings on the payment, advance payment, daily site log book you can refer to articles n° 89, 90,101,119,121 and 122 the **LAW N° 12/2007 OF 27/03/2007 ON PUBLIC PROCUREMENT.**

7.3.6. Performance Security

A performance security, as a certain amount of money, is issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor. For works contracts, the bidding documents may normally provide that at the time of contract execution the bid security of the successful bidder will be converted into a performance security. In case stated like that the bid security must have an amount of money as the performance security or adjusted to it. As a best practice this may take the form of cash, a letter of credit, a bank guarantee, surety bond or other instrument. The performance security will provide assurance to the procuring entity that in the event of default by the contractor the procuring entity will be compensated for the losses it has sustained. Under the terms of a surety bond, the insurer is normally obliged in the alternative to provide a cash payment to the procuring entity or to complete the contract using other resources.

The law on public procurement in its articles from **75** to **80** clarifies all general provisions related to the performance security.

7.3.7. Monitoring the Contract

During the course of contract execution, particularly for civil works contracts, it is important that the PE establish good communications and monitoring procedures to oversee and measure contract performance. Often defects in contract execution are discovered during such monitoring and often they are quickly corrected or cured by the contractor.

7.3.8. Performance Delays

Delays in performance frequently undermine satisfactory contract execution. Contractors may experience delays in beginning or completing the work, or in meeting mid-point performance targets; this may happen because the contractor's planning or scheduling is deficient or the contractor has not committed sufficient resources to the job.

Many contracts will provide liquidated damages to compensate the procuring entity for such delay. Liquidated damages are designed to avoid litigation over damages for delay by fixing in advance an agreed-upon formula (a daily rate, with a ceiling) for calculating the penalty to be paid by the contractor for delayed performance.

The Bank or authorized financial institution shall be obliged to give to the procuring entity all the amount of the performance security upon claim by the latter within ten (10) working days from the receipt of such a claim.

The Bank or authorized financial institution shall also be obliged to pay an additional interest of one percent (1%) for every day of payment delay. If it is necessary to take the matter to courts, and that the court rules in favour of the procuring entity, this interest shall continue to accrue up to the time the courts' decision is executed.

It is also necessary to be mindful of potential delays attributable to the procuring entity or other parts of the public sector side, and to mitigate such risks. Delays within the responsibility of the PE may include failures to give the contractor access to the job site; failure to provide design documents, if required; and failure to accept works, or delivery of goods, in a timely manner. The principal failure of the procuring entity, however, is likely to be the failure to make timely payment for work performed. Contracts will often apply an interest penalty to the procuring entity for such delayed payment. For example the performance security shall be returned to the successful bidder in two phases: the first half shall be returned within thirty (30) days following the provisional acceptance of works and the second half shall be returned within thirty (30) days following the final acceptance. If such duration is not respected, the performance security shall bear interest equivalent to one over one thousandth (1/000) for every day of delayed payment.

Delays caused by "force majeure", (encompassing causes of delay beyond the control of the parties), result in an excuse for contractor performance during the period of force majeure. Floods, fire, earthquake, and strikes are examples of force majeure conditions.

7.3.9. Contract Modification

The procuring entity and the contractor must agree in writing to any contract amendment or modification that alters the basic nature or scope of the contract. Often it is also stipulated in the procurement law or regulations that, except in certain cases, an amendment that increases the contract value by more than 25 percent requires fresh procurement proceedings, or justification for use of one of the grounds for single-source procurement.

For the purpose of dealing with unforeseen circumstances that may arise, the contract may permit the procuring entity to issue a variation order requiring the supplier to implement technical changes in the quantity or delivery time of the goods, construction works or services to be supplied. Issuance of variation orders shall be subject to budgetary provisions, and only issued when the use of such orders is more likely to achieve value for money than engaging in bidding proceedings in accordance with the restrictions on use of direct procurement without competition.

Contractual provisions may be included for valuation of the performance resulting variation orders.

7.3.10. Contract Termination and Breach

In the event of breach of contract by the supplier/contractor, the procurement contract specifies the remedies available to the procuring entity. Those remedies include, but are not limited to: (1) rejection of defective performance; (2) prompt removal and replacement of defective goods; (3) liquidated damages for delay, in accordance with a rate set for each week or other unit of time, or part thereof, of delay; (4) termination of the contract and purchase of replacement performance, at the expense of the defaulting party, should any losses or additional costs be incurred by the procuring entity; and (5) such other remedies as may be available pursuant to the contract or to applicable law.

Article 166 of the law on public procurement specifies Sanction for breaching rules of conduct by the successful bidder by stating that a breach of any of the provisions related to the rules of conduct shall entail the automatic termination of the contract.

Article 174 of the law on public procurement shows all reasons for contract termination by stipulating that a tender contract may be terminated due to the death of the successful bidder, the cancellation of the tender or to successful completion of the contract execution.

Suspension and debarment action may be an appropriate administrative action to consider as well if the contractor's actions of default meet the regulatory standards

applicable to suspension and debarment. There is normally a particular authority for the procuring entity to terminate a procurement contract for the convenience of the institution, upon a determination that because of changed circumstances the continuation of the contract is not in the public interest. This remedy is specifically intended for special and unforeseen cases, and should be sparingly utilized.

In the event of a termination for convenience, or other forms of termination of the procurement contract, the contractor is entitled to reimbursement of expenses incurred in contract performance, but not the recovery of profits anticipated on the completion of the contract. The procurement regulations normally spell out in detail the particular formulae for reimbursement, as applicable.

7.3.11. Resolution of Disputes

Resolution of disputes is introduced here because of its fundamental importance in contract management. The subject is treated in more detail in chapter eight of this module.

It is important to avoid serious contract disputes and the procuring entity and the contractor should plan to do so from the beginning of the procurement process. This concern should underlie the parties' allocation of contractual risks in a reasonable fashion. Professional contract management aims to avoid time-consuming, costly claims through the early identification of problems.

Many disputes between the successful bidder and the procuring entity can be resolved through informal means of discussion and negotiation. These may or may not require the parties to amend or extend the terms of the contract. The parties may always renegotiate the contract through mutual agreement even when there is no contract clause saying so, provided the amendment does not adversely affect the lawful interests of third parties.

When disputes arise they may be resolved through informal discussion and negotiation in many cases. This is a business-oriented approach that can minimize cost and delay for the parties. In fact, contracts often contain clauses calling for parties to resolve their disputes amicably (i.e., via negotiation).

7.3.12. Record Keeping

Modern procurement law makes clear the responsibilities of every procuring entity to record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed in article 8 of law on public procurement.

CHAPTER 8: APPEAL MECHANISM

Objectives

Objectives of this chapter are:

- To make participants aware of the rights of aggrieved bidders to appeal procurement decision;
- To make participants aware of the actions to be taken when an aggrieved bidder appeals.

Legal provisions for appeal are laid down in chapter IV articles 68-72 of the procurement law.

Any prospective or actual bidder may lodge in a protest or challenge (application for administrative review) against a particular conduct during the procurement proceeding. An application for administrative review must identify a specific act of omission or commission contravening the Law or any other procurement regulations. The challenge procedure takes the following steps:

- **Review by the procuring entity:** a bidder submits a request for review to the procuring entity within seven (7) days after the bidder became aware of the circumstances giving rise to the request. The procuring entity provides a response within 7 days.
- **Review by Independent Review Panels:** if a bidder is not satisfied with the decision of the procuring entity or the procuring entity fails to provide a response within 7 days, he/she forwards the application for review to an independent review panel. There are Independent Review Panels in all Districts except Kigali Districts and an independent review panel at the national level where Kigali Districts as well as bidders from other Procuring Entities forwards their claims. Decisions of the District independent review panels are examined by the National Review Panel.
- **Effects of appeal:** Once the complaint is lodged, the procurement proceedings are suspended until a decision on the complaint is issued by the Panel.
- **Remedies:** The Independent Review Panel may recommend one or more of the following remedies, unless it dismisses the complaint:

- denouncing actions or decisions of the procuring entity which are contrary to the provisions of the Law or other applicable rules ;
- requiring the procuring entity that has acted or proceeded in a manner that is contrary to the provisions of the procedures to decide consistently with them;
- annulling in whole or in part an act or decision of the procuring entity contrary to the Law or procedures;
- if a decision of the procuring entity, other than any decision bringing the procurement contract into force, is found to be contrary to these procedures, revising the decision or substituting its own recommendation for such a decision;
- ordering re-evaluation of the bids citing the grounds for such an order;
- recommending the payment of reasonable costs incurred in participating in the bidding process when a legally binding contract has been awarded which in the opinion of the panel should have been awarded to the complainant;
- ordering that the procurement proceedings be terminated.

CHAPTER 9: PROMOTING INTEGRITY OF THE PROCUREMENT SYSTEM

9.1. THE CODE OF ETHICS

A Ministerial Instruction No 001/11/10/TC of 24/01/2011 establishing the professional Code of ethics governing public agents involved in public procurement was issued for the guidance of all participants i.e. individual persons, public officials, procurement entities, bidders, legal entities etc. in public procurement to conduct themselves in a manner that is considered appropriate to the procurement profession. It aims to promote ethical behavior that ensures impartiality, accountability and transparency. Transparency and accountability in public procurement gives bidders the confidence to participate in bidding for contracts, thereby increasing genuine competition which enables procuring entities to get best value for money. The Code also describes what constitutes misconduct and the sanctions applicable for any such misconduct. Whilst the code highlights some instances of misconduct, it cannot define misconduct for all instances and therefore it follows that other instances of misconduct will be determined in the light of the circumstances of each individual case and as such the Code also provides the mechanism for determination of the sanctions applicable.

The code lays down obligations of bidders and public servants dealing with public procurement. It also deals with issues of conflict of interest, violations, and sanctions.

CHAPTER 10: USING E-PROCUREMENT

Objectives:

Objectives of this chapter are to:

- Make participants aware of E-procurement;
- Make participants aware with aspects of procurement where E-procurement may be applied.

Legal provisions of E-Procurement: Article 13 of procurement law states that "E-public procurement whenever available, Information Communication Technology (ICT) shall be used in Public Procurement in matters related to:

- Publication of the General Procurement Notices
- Advertisement of the procurement opportunities
- Publication of a summary of the evaluation results
- Requesting for information on the tender process
- Dissemination of Laws and regulations related to public procurement

10.1. E-PROCUREMENT DEFINED

E-Procurement is the use of **Information & Communications Technology** (especially the Internet) by **governments** in conducting their **procurement** relationships with suppliers for the acquisition of goods, works, and consultancy services.

10.2. RATIONALE OF E-PROCUREMENT

E-Procurement enhances key principles of procurement namely; transparency, value for money (efficiency), and timeliness. E-procurement enhances transparency and fairness by bringing together procuring entities and bidders in a virtual environment. Enhanced transparency and fairness brings increased private practitioners' confidence in the procurement system. This confidence increases participation and competition.

Table 5: Key Benefits of E-procurement

	Government	Bidder	Public
Transparency	<ul style="list-style-type: none"> • Anti-corruption • Increased number of suppliers • Professional procurement monitoring • Higher quality of procurement decisions and statistics • Political return from the public whereby transparency increases government image 	<ul style="list-style-type: none"> • Increased fairness and competition • Improved access to the government market • Open the government market to new suppliers • Stimulation of SME participation • Improved access to public procurement information • Government accountability 	<ul style="list-style-type: none"> • Access to public procurement information made easy • Public expenditure information is monitored easily • Members of the public "Have a say" • Government accountability is enhanced

Efficiency (Costs)	<ul style="list-style-type: none"> • Lower prices • Lower transaction costs • Staff reduction • Reduction in fiscal expenditure 	<ul style="list-style-type: none"> • Lower transaction costs • Staff reduction • Improved cash flow 	<ul style="list-style-type: none"> • Redistribution of fiscal expenditure
Time	<ul style="list-style-type: none"> • Simplification/elimination of repetitive tasks • Communication anywhere/anytime • Shorter procurement cycle 	<ul style="list-style-type: none"> • Simplification/elimination of repetitive tasks • Communication anywhere/anytime • Shorter procurement cycle 	<ul style="list-style-type: none"> • Communication anywhere/anytime

10.3. MAKING E-PROCUREMENT WORK

Although web-based technology is the core of an E-Procurement system, its successful use depends on more than technology: it is about the appropriate leadership, policy and legal framework, institutional change, and human resources. The balanced interaction of all these factors provides the basis for an efficient E-procurement system with the expected benefits.

To make E-Procurement work, some major areas need to be streamlined:

- Put in place appropriate policy guidelines for the use of E-Procurement;
- Support procuring entities in using E-procurement;
- Develop and use online systems for improved procurement operations and monitoring;
- Implement awareness raising, capacity building, and harmonization.

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