

REPUBLIC OF RWANDA



RWANDA PUBLIC PROCUREMENT AUTHORITY (RPPA)

INTRODUCTORY TRAINING MODULE IN PUBLIC PROCUREMENT

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LIST OF ACRONYMS

BDS	: Bid data sheet
CV	: Curriculum Vitae
EOI	: Expression of interest
GCC	: General conditions of contract
INCOTERMS	: International commercial terms
IRPs	: Independent review panels
IT	: Invitation to tender
ITB	: Instructions to bidders
LOI	: Letter of invitation
LS	: Lump sum
OCB	: Open competitive bidding
PEs	: Procuring entities
QBS	: Quality based selection
QCBS	: Quality and cost based selection
RFP	: Request for proposal
RPPA	: Rwanda public procurement authority
RRA	: Rwanda Revenue authority
RSSB	: Rwanda social security board
Rwf	: Rwandan francs
SB	: Successful bidder
SCC	: Special conditions of contract
Sf	: Financial score
St	: Technical score
TC	: Tender committee
TOR	: Terms of reference

Objective of this module

After covering this module, participants will be able to:

- Understand the importance of public procurement,
- Describe the principles of effective public procurement, Rwanda's public procurement process, and the role of procuring entities in awarding tenders,
- Understand the activities associated with effective public procurement,
- Formulate procurement plans,
- Prepare bidding documents and Request for proposals,
- Choosing appropriate procurement method,
- Develop appropriate evaluation criteria,
- Invite and evaluate bids and proposals,
- Acquire prerequisite for contract management.

INTRODUCTION

For achieving their daily responsibilities, public procuring entities have to purchase goods, services and works from potential bidders through competition ways. In this regard, the public procurement law, regulations and different rules constitute the toolbox that makes the whole public procurement process perform well.

Many public procurement reform and anti-corruption practices are effective in the Rwandan procurement system, but skills gap remain one of the main challenges that can hinder public procurement operations. To tackle this problem, this module was designed to help people with no experience in public procurement so they can perform their duties without difficulties.

Training people involved in public procurement operations is one of measures and is a continuous process basing on the following serious factors:

- There is a high staff turnover within procuring entities and this has a negative impact that exposes these PEs to recruit new employees who can replace those who leave. These new recruited staff cannot perform their duties related to public procurement as they all have academic backgrounds different to procurement,
- Every two years, some of the members of tender committees and those of independent review panels are replaced by others as their term is over. Therefore those who are called to perform these new duties in TCs or in IRPs are in need of being trained so as to help them work better.

This module is intended to be a guide for trainers of procurement officers, members of tender committees, members of independent review panels and other public officials who are new to this field so as to meet the goals and objectives of their procuring entities through better performance in procurement of Works, Goods and services. This will be achieved through the choice of better procurement methods in transparent and fair public procurement activities.

If the content of this module is well put into action, the main function of Rwanda Public Procurement Authority which is to regulate, monitor and build capacities in public procurement will be well achieved.

CHAPTER ONE: IMPORTANCE OF PUBLIC PROCUREMENT AND KEY TERMS USED IN PUBLIC PROCUREMENT

1.1 Importance of public procurement

"Governance", which can be defined as "the traditions and institutions that determine how authority is exercised in a particular country", is considered as one of the key factors in the development and reform process in developing countries, and particularly in Rwanda. Good governance covers several aspects in the exercise of that authority and includes "the capacity of governments to manage resources efficiently and formulate, implement and enforce sound policies and regulations". This includes, first of all, an efficient management of Public Expenditure, therefore the importance of Public Procurement. Procuring entities today purchase all kinds of goods, e.g. standard materials, transport equipment, pharmaceuticals, education materials, etc.; award works contracts of different sizes and complexity, from community development works to large infrastructures; and procure services from typical consultancy activities to concessions. These developments have been accompanied by closer cooperation between the public and private sectors. For this, Public officials need to be equipped with instruments, as well as a range of procurement, project and risk management skills to properly plan and manage procurement processes, in accordance with the laws and regulation governing public procurement and the budget.

1. 2 Definitions of key terms used in public procurement

Among the key definitions for procurement purposes, these are some the most relevant to this particular training (Art.1, procurement law). These definitions are further elaborated in the proceeding chapter based on their relevance.

Accounting officer: also known as the chief budget manager, he is an officer empowered to approve TC reports and to sign contracts on behalf of the PE.

Bid or tender: refers to an offer from a bidder.

Bidder: means any potential participant engaged in public procurement proceedings.

Bidding document: means the document containing information required for preparation of bids, the award process and the tender execution.

Bid Security: guarantee from bank or any other financial institution allowed for bidding process.

Contract: means the agreement between the PE and the SB.

Consultant Services: refers to activities of an intellectual or of immaterial nature.

Constructor, consultant or supplier: means any physical or legal person under procurement contract with the PE.

Corrupt practice: an act to offer, give or receive money or valuables to member of a PE for purposes of impartiality in the tendering process.

Day: refers to every day including holidays unless stated otherwise.

Fraudulent practices: refer to any act of lying, providing misinformation, including collusive practices among bidders aiming at influencing the procuring entity to making wrong decisions or to giving room for poor execution of the contract.

Fraud: misinformation or lying to influence award of tender.

Goods or supplies: means objects of every kind and description including raw materials, products, equipment be it in solid, liquid or gaseous form, electricity, as well as services that are linked to the supply of the goods if the value of those services does not exceed that of the goods themselves.

Performance security: means any guarantee by a bank or any other relevant institution established to guarantee the PE that in case the contract is not performed, be it technically or at the level of deadlines, the procuring entity would receive the amount provided for such a guarantee.

Procuring entity (PE): 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 the SB.

Public procurement: refers to the supplies or goods, works, consultant services and other services as they may be needed by a PE.

Successful bidder (SB): 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 PE without having been subject to tendering proceedings.

Terms of reference (TOR): 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.

Services: refer to any services other than consultant services.

Tender committee: means a committee established by the PE to assist the Procurement unit/Procurement officer in the bid opening, bid evaluation and recommend for award of procurement contract.

Technical specifications: guidance in goods and works to the bidder for the kind items required.

Works: mean all activities related to the realization of building or engineering works upon the request by the client.

1.3 Scope of applications and exclusions

The Law on public procurement applies to all public procurement of goods, works, consulting services and other services. Exclusions are made for procurement of items meant for national defense and security.

1.4 Fundamental principles of public procurement

The Public Procurement Law of Rwanda, No 12/207 of 27.03.2007, Article 4, refers to the following "Fundamental Principles in Public Procurement":

Transparency

A transparent system has clear rules and mechanisms to ensure compliance with those rules. The rules of the competition are predictable and clearly laid out and records are open to inspection by public auditors and by others, such as unsuccessful bidders. Transparency fosters the confidence of taxpayers and all stakeholders in the public procurement system.

Competition

An open system provides an opportunity for all eligible bidders to compete in providing goods, works and services, and ensures that no undue restrictions are placed on competing for a particular contract.

Economy

Economic criteria focus mainly on **price** but also include other criteria which provide economic benefits to the contracting authority, such as:

- Fitness for purpose (i.e. **quality**);
- Delivery and availability;
- Life – cycle costs (e.g. maintenance and operating costs);
- On-costs (e.g. transport and storage); and
- The administrative cost of the procurement activity.

The most economic contract does not therefore always mean the cheapest price. Best "value for money" (VFM) should be the economic objective and can be summarized in the following "Five Rights":

To buy

- The **RIGHT** quantity
- Of the **RIGHT** quality
- At the **RIGHT** price
- For the **RIGHT** place
- At the **RIGHT** time

Efficiency

Efficient public procurement implies a system which operates in a timely manner, with a minimum of bureaucracy, while being responsive to the needs of the end-user of the goods or facilities procured. The principle of efficiency is measured by the best proportion between used procurement budget and effects achieved.

Economy protects the interests of the budget owner, while efficiency ensures the interests of the end-user are met. Efficient public procurement is simple and swift, producing positive results without delays.

Fairness

The conduction of public sector procurement without favour or discrimination - all potential bidders should be provided with the same treatment. Information and procedures should be put in place to ensure that each bid is given fair and equal consideration.

Accountability

Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an image of transparency and trustworthiness. It constitutes a central pillar of any public procurement system. Without transparent and accountable systems enabling governments and citizens to engage in a mutually responsive way, the vast resources channeled through public procurement systems run the risk of increased corruption and misuse of funds.

“Accountability is about granting a sense of responsibility to its users, making them accountable for their actions and/or inactions by enforcing established rules and procedures. Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. It is a process that supports the credibility of the procuring entity by serving as a deterrent to collusion and corrupt practices while serving as an inducement for individual and institutional probity.

Note: There is **no hierarchy within the Mandatory Principles** of public procurement and a rational application of all of the principles is necessary to overcome the potential conflicts among them. While together the principles provide a common framework underlying Rwanda procurement, individual principles may conflict in some situations, requiring professional and management experience and judgment to achieve the correct balance. Some examples are provided below:

- Transparency and openness in public procurement may conflict with long-term savings and value-for-money considerations. If transparency and the resulting price competition are based on a win-win process, the potential benefits for the procuring entity could easily be counterbalanced by the administrative costs of tender evaluation and responses to unsuccessful bidders.
- Open competitive tendering may conflict with the economical use of administrative resources and effectiveness in awarding contracts during a reasonable period of bid validity.

– Open tendering secures maximum competition. However, the risk management factor is much higher; the worst scenario is that the contractor may become bankrupt due to incompetence or low bid pricing. This will involve the procuring entity in cost overruns and delay in contract implementation.

– In public procurement open tendering may conflict with the recommended practice of establishing strategic long term partnerships such as entering into long term framework agreements based on a competitive selection of suppliers. This permits an assurance of uninterrupted supply at competitive market prices and at optimum quality standards and good working relationship with suppliers.

– Transparency and competition principles in public procurement may require broad advertisement which increases costs and may result in transparency and fairness that may reduce effectiveness.

1.5 Types of tenders

There are three kind of tenders, which comprise of:

- Goods and other services (non-consulting services or physical services) tenders
- Works tenders
- Consultancy services

1.6 Accessibility of procurement legislation

The Law, orders, standard bidding documents and contract shall be public. Procurement regulations and standard bidding documents are established by **Ministerial Orders** issued by the Ministry in charge of the procurement and they are accessed publically.

1.7 Procurement planning

Every Procuring Entity shall produce an **Annual Procurement Plan** indicating the objectives to be achieved in accordance with procurement regulations. It ensures budget allocation. Respecting regulations governing budget execution also is a must.

1.8 Communication in public procurement

Any communication between Procuring Entity and Bidder shall be made in writing

1.9 Record of procurement proceedings

The Procuring Entity is responsible for keeping records of procuring proceedings for at least 5 years with the following information:

- Bidding documents
- Bids
- Bid opening and evaluation reports
- Tender award notification
- Copy of contract
- Certificate of completion
- Correspondence

1.10 Auditing the conduct of procurement proceedings and contract execution

RPPA regularly monitors public procurement proceedings to ensure compliance with the legal framework for procurement.

1.11 Currency used in bidding

Bidding documents specify the currency to be used:

- Rwandan currency
- Any foreign currency

Central Bank exchange rates will be the source of conversion for offers in foreign currency. The date for the foreign exchange is established in the bidding documents.

1.12 Joint ventures

Companies may form joint ventures for tendering purposes. One of these companies is considered as "lead company" and represents the joint venture in all activities during tender process. One joint venture – One bid. In the same tender, companies forming a joint venture are not allowed to:

- Participate in two different joint ventures
- Participate under their own name

1.13 Packaging tenders

Procuring entities may group tenders into different lots for:

- Promotion of small sized companies
- Attraction of a large number of bidders

Bidding documents will clearly specify the nature of each lot and the award criteria

Tenders are not to be divided with the intention of avoiding public procurement procedures

1.14 E-Public procurement

If available Information Communication Technology should be used in Public Procurement for:

- General procurement plan publication
- Advertisement of procurement opportunities
- Publication of a summary of evaluation results
- Requesting information during tender process
- Dissemination of Laws and related documents

1.15 Language to be used in public procurement

National tenders are in Kinyarwanda or in both English and French. For International tenders, tender documents have to be in both English and French. Bidders may submit their bids in one of the above three official languages. Contract will be prepared in the same language used by the SB in bid preparation.

CHAPTER 2: CODE OF CONDUCT FOR PROCUREMENT OFFICIALS

2.1. Anti-corruption measures

An official or former employee of the procuring entity or any other procurement authority cannot:

- Solicit directly or indirectly or be offered a bribe in any form
- An offer of employment
- Other services or any valuable

Any bidder's offer will be rejected by the tender committee where it is proved that a corruptor fraudulent practice took place during the procurement process. (*Art.1, bullet 9^o of law N° 12/2007 of 29/03/2007 Law on Public Procurement*).

2.2. Conflict of interests

Members of Cabinet, Heads of procuring entities and Civil Servants shall not participate in public tenders. It is prohibited for any member of tender committee to participate in tender award process if the following persons are involved:

- A relative up to the second degree
- A former employer
- A person committed in the same financial interest

- A bidder can become potential employer

Consultants involved in tender preparation shall not be involved in provision of goods, works or consultancy services. Any employee of the procuring entity or member of Board of Directors of the Tender Committee who has interest with respect to procurement shall:

- Not take part in the process
- Disclose his/her interest
- Not take part in any action during contract execution

For breaches of the above provisions, sanctions may be imposed by the PE in addition to contract cancellation. (*Art.16 of law N° 12/2007 of 27/03/2007 Law on Public Procurement*).

2.3. Confidentiality

During and after procurement proceedings information shall be kept confidential.

Allowed disclosures:

- to the Accounting Officer
- in respect of the Law
- in case of review or procurement audit
- pursuant to Court decision. (*Art.17 of law N° 12/2007 of 27/03/2007 Law on Public Procurement*).

2.4. Debarment of bidders

RPPA has the power to debar a bidder from participation in public procurement

Decision to debar can be taken on the following grounds:

- False information during tender submission or prequalification (2 years)
- Collusion between bidder and a public official (3 years)
- Fraudulent pricing (3 years)
- Breach of Laws (3 years)
- Poor or non-performance (1 year)

Repeat occurrence leads to indefinite debarment. Procurement officers are requested to visit RPPA website in order to avoid awarding a tender to a debarred bidder/company. (*Art.18 of law N° 12/2007 of 27/03/2007 Law on Public Procurement*).

2.5. Procedures for debarment

Bidder notified in writing prior to RPPA decision to debar. Notification to include these:

- Under which ground the intention to debar is based
- Bidder's right to a hearing

- Time and place for hearing
- Period of suspension for investigation (max. 6 months)

Procedures to apply:

- Bidder has the right to a hearing and to defense and may be represented by a Lawyer
- Hearing to be recorded and records retained
- Witnesses to take oath
- Suspension takes effect upon written decision to debar and within 30 days of bidder hearing/defense. Suspended bidders are ineligible to participate in public tenders. A list of debarred bidders and their debarment period to be kept updated by RPPA and published in newspapers. (*Art.19 of law N° 12/2007 of 27/03/2007 Law on Public Procurement*).

CHAPTER 3: LEGAL AND INSTITUTIONAL FRAMEWORK

3.1. Legal framework of public procurement in Rwanda

- Law No. 12/2007 of 27/3/2007 on Public Procurement,
- Ministerial order n°001/08/10/min of 16/01/2008 establishing regulations on public procurement and standard bidding documents,
- Standard bidding documents,
- Circulars.

3.2. Organization of Public Procurement organs

3.2.1 Rwanda Public Procurement Authority (RPPA)

Powers and responsibilities for RPPA are governed by a specific Law - 25/2011 of 30 June 2011.

3.2.2 Independent Review Panels (IRP)

There is an Independent Review Panel at the National level and Independent Review Panels at all district levels for the purpose of conducting independent administrative reviews of complaints and challenges of the procurement process. Appeals against the decisions taken by the City of Kigali and the districts thereof shall be referred to the Independent Review Panel at the National Level.

IRP composed of 5 members from:

- Public institutions (max 2 members)
- Private sector
- Civil society

Term of office for IRP members is 4 years, but two of the five members be replaced every 2 years. Adequate budget to be provided to each IRP. Minister in charge of Public Procurement or District Councils can dismiss any member of the panel for proven incompetence, misconduct or failure to perform.

3.3 Establishment of a procurement unit (PU) / Procurement officer within the procuring entity (PE)

Functions of a Procurement Unit:

- Procurement planning
- Preparation of bidding documents

- Publication and distribution of invitations to bid
- Receipt and safe keeping of bids
- Obtaining necessary award approvals
- Notification of tender award
- Efficient contract execution
- Providing information to RPPA
- Other functions specified in the regulations

Procurement entities are responsible for the whole procurement process from planning to completion of contract execution. Procurement entity to establish a tender committee responsible for bid opening, tender evaluation and recommendation for award. Recruitment of external consultants is allowed to help them when deemed necessary.

Table 1: Key roles of institutions involved in public procurement

No.	Institution/entity	Key roles and responsibilities
1.	RPPA-established by law no. 63/2007 of 30/12/2007(Having reviewed to Law n°25/2011 of 30/06/2011 establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning	<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; -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.

2.	Procurement units/procurement officers in procuring entities	<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.
3.	Internal tender committees	<ul style="list-style-type: none"> -Opening and evaluation of bids; -Recommendation of award of contract.
4.	Accounting Officer/Chief budget manager (Art.4, ministerial order No 001/08/10/Min.	<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 4: PROCUREMENT METHODS

The choice of procurement method is a critical issue to the success of procurement action and it is influenced by a number of factors, such as market conditions, complexity of the requirement, monetary value of the procurement and whether goods, works, or services are procured. The choice should be made with these factors in mind, with a view to maximize competition to the greatest extent possible.

4. 1 Open competitive bidding (OCB)

The **OCB** is the preferred method for procuring supplies, works, goods and other services. Other methods can apply based on rules established in this Law and are described after full explanation of OCB.

4.1.1 General Principles

4.1.1.1 Invitation to tender

PE prepares invitations to tender with the following information:

- PE name and address
- Tender number
- Brief description of goods, works or services to be procured
- Expected delivery or completion time
- Availability of tender document and fee – if any
- Date and place for tender submission
- Date and place of bid opening
- Invitation to bidders or their representatives to attend bid Opening.

4.1.1.2 Rules concerning description of Goods, Works and Consultant services

Objective technical and quality characteristics shall be the base when drafting:

- Technical specifications
- Plans
- Drawings

- Designs
- Requirement or description of goods, works or consultancy services
- No reference to brand, trademark, patent, design type shall be permitted.

4.1.1.3 Bidding/tender documents

Tender document is a book from which bidders' base to submit their offers, along which the procuring entity evaluates the bids and awards a tender and along which a contract to execute the job is based. Its objectives are:

- To give the bidders the required instructions to comply with the invitation to bid procedures
- To inform the bidders of the evaluation criteria
- To define contract negotiations
- To guarantee that the retained bidder will have the required experience and capacity
- To specify quality and quantity the works to be executed or the goods to supply

PU is responsible for preparing bidding documents in compliance with the Law and its regulations. To foster fair and wide competition, bidding documents must contain the following sections:

- *Tender notice/ invitation for bidders* (TN or IFB)
- *Instructions to bidders* (ITB)
- *Bid data sheet* (BDS)
 - *Evaluation and qualification criteria*- this section specifies the criteria to be used to determine the lowest evaluated bid, and bidder's qualification requirements to perform the contract
 - *Bidding forms*-this section includes the forms to be submitted with the bid namely: the bid form, price schedule, bid security, the manufacture's authorization (if required for supplies),etc
 - *Supply requirements*- this section includes the list of works, goods and related services, the delivery and completion schedules, the technical specification and the drawings that describe the works, goods and other related services to be procured
- *General conditions of contract* (GCC) - This section includes the general clauses to be applied in contracts. The text of the clauses in this section shall not be modified.
- *Special conditions of contract* (SCC) – This section includes specific clauses to each contract that modify or supplement *general condition of contract*.
- *Contract forms*- this section includes the form for the agreement, which, once completed, incorporates the instructions to bidders, the general conditions of contract and the special conditions of contract.

- The *forms* for *performance security* and *Advance payment security*, when required, shall only be completed by the successful bidder after contract award.

More explanations of each part composing a tender document is provided here below:

4.1.1.4 Contents of the tender document

1. Tender notice/ invitation for bidders (TN or IFB)

A tender notice is considered to be the advertisement of the tender. It is basically an invitation for bidders, informing them the tender opportunity, the kind of works or goods required, where to get more information on the tender, how much the tender may cost, where and when to submit bids and bids opening, among others. This invitation for bidders must have a minimum of the following:

- The title of the tender
- The source of funding
- Name of the PE
- A short description of goods to supply or works to execute, indicating the scope of work to be done
- Indicate where the tender document may be obtained, how much it will cost, name of the bank and account to pay
- Whether a site visit is obligatory, necessary or not. The date of site visit, time and place of taking off
- Indicate if bid security is needed, if so how much it will be
- Address of where inquiries or clarifications on the tender document may be made.
- Address of place where bids will be submitted and the deadline of bids submission
- Address of the place and time of bids opening

Note: Information in the invitation for bidders must be consistent with that in bid data sheet.

2. Instruction to bidders (ITB)

This section provides information to help bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of contracts. This section contains provisions that are generic for all tenders and shall be used without modification.

ITB shall be elaborated on the following items:

- Definitions of words used in the tender document
- The purpose of the tender
- Composition of the tender document
- Place of execution
- Deadline for execution

- Source of finance
- Eligibility of the participants
- Documents constituting the bid submission
- Conditions for obtaining the tender document
- Deadline of the bids validity
- Site visit
- Expenses incurred because of the invitation of bids
- Clarifications regarding the tender document
- Language of the bids
- Currency of bid, whether taxes are inclusive or not
- Presentation of bids
- Bids submission deadline, rejection of late bids
- Modification and withdraw of bids
- Opening of bids envelopes
- Determining the administrative and technical conformity of the bids to the tender document
- Evaluation of financial bids and correction of errors during arithmetic verification
- Evaluation criteria
- Notification of tender award
- Signature of the tender
- Guarantee of good completion
- Cancellation of the tender

3. Bid data sheet

This section includes provisions that are specific to each tender and supplement instructions to bidders. This is the section the bidder shall need to carefully read as it gives more detailed information for bid preparation.

It should at least comprise the following, with specific identification:

- The name of the PE, the title of the tender and the source of funds
- List of debarred with reference to RPPA website
- Address to which clarifications on the tender may be made and minimum time acceptable for clarifications. Common practice allows preferably 15 days before the bids submission date
- Delivery period/ contract period
- Place of delivery, destination or site for construction
- Language of bid- Kinyarwanda, French or English
- Price adjustable or not, currency of price, pronounced authority for foreign currency exchange
- Domestic preference or not
- Bid validity period- preferably 90 days but should not exceed 120 days

- Bid security- whether it is required or not. If required- its amount. It can only be from a bank, financial institution (insurance company) or be an irrevocable letter of credit. It should have a validity of 30 days after expiration of the bid validity.
- How the bid should be prepared, how many copies of the bid require, how many envelopes should be labeled.
- Where (address of place) and when (date and time) the bids must be submitted, it should be noted that bids submitted after this time shall be rejected
- Where (address of place) and when (date and time) the bids shall be opened
- Evaluation criteria with minimum requirements for the administrative, technical and financial evaluation
- Administrative document required- bid form stamped and signed by authorized person, a valid bid security required, a valid tax clearance certificate and valid social security certificate, payment slip for the tender document, site visit certificate (if required) price schedule/ bills of quantities
- Technical evaluation criteria- minimum number of similar references done, number of key staff, minimum qualification and experience required for each, methodology and work schedule, financial capacity (might be required).

4. Bidding forms

The forms one should be cautious about are: bid submission form, bid security form, price schedule (in case of goods tender), manufacturer authorization (if required), format or presenting key staff, equipment, CVs format, financial statement format, annual construction turnover formats, among others. Of these forms the most critical forms an evaluator needs to know are: bid submission form and bid security.

- *Bid submission form*- it should indicate at least, the title of the tender, procuring entity the bid is addressed to, bidders name, bid validity, signed and stamped by the authorized person. This format shall not be altered
- *Bid security*- it should contain, the name of the beneficiary (PE), date, name of the bidder, title and number of the tender, name of the bank endorsing it, amount of the bid security equivalent to the one mentioned in the tender document, mention conditions under which the security can be seized:
 - When the bidder withdraws their bid before bid validity expires
 - Bidder fails to submit a performance security or refuses to sign the contract
 - Bidder refuses to accept the arithmetic verification of their bid price

Note: for a bid security to expire, one of the following conditions should have occurred:

- Bidder was successful
- Bidder was not successful
- Its 30 days after bid validity
-

5. Works/ supply requirements

This section contains the technical specification, the drawings and supplementary information that describe the works/ goods to be procured. The technical specification shall describe the goods and the works that are tendered for. They must be clear and coherent. They shall prescribe the quality of material required, standard expected and in the case of works, the techniques of execution, control, monitoring and evaluation of works.

6. Bills of quantities/ Price schedule

The bills of quantities include the description of works to be executed for each stage, described in the form of items, their units of measurement and quantities. It gives the bidder the information that allows them to prepare with efficiency and precision bids that are realistic to the expected works. In regard the price schedule, the date of delivery, delivery schedule, the transportation according to INCOTERMS shall be included.

Table.2 price schedule sample

Item No.	Description of activity	Unit measurement	Quantity	Unit price	Total price
	Mobilization	LS	1	100,000	100,000
	Site installation	LS	1	500,000	500,000

7. Drawings/ plans

The detailed plans on normalized scales must be inserted in the tender document for bidders to conceptualize the works and estimate the unit prices more precisely.

8. General conditions of contract (GCC)

This article in the GCC is generic for all tender and meant to express the rights and obligation of the parties. These articles shall not undergo any modification as all the adjustments specific to a tender may be done in the Special Conditions of Contract. It should be noted that GCC is a contractual document and part of the tender document.

It shall include articles such as:

- Definitions/ terminology used in the contract
- Applicable laws and language
- Documents available to the successful bidder
- Right of access to the site
- Permits, licenses or approvals from the PE
- Engineer's duties, authority and instructions

- Contractor's obligations
- Performance security
- Sub- contractors
- Setting out
- Safety procedures
- Quality assurance
- Site data, security of the site, access routes, protection of the environment
- Electricity, water and sanitation
- Staff and labour- working hours, health and safety
- Plants, material and workmanship- inspection, standard tests
- Commencement, delays and suspension
- Test of completion
- Defects liability
- Variations and adjustments
- Contract price and payment
- Insurance
- Force majeure
- Claims, disputes and arbitration

9. Special Conditions of Contract (SCC)

The articles in this section specify the contractual clarifications reflecting the conditions the buyer shall be subjected to meet so to win the tender, the country of the buyer, the sector and goods purchased. It gives information that completes the clauses of GCC and any modifications/ additions to the GCC specific to the tender.

10. Contract forms

This is an agreement between two parties, "the procurement entity and the successful bidder". The agreement describes the works to be done or goods to be supplied. This agreement shows how the successful bidder will supply goods or execute works and the payment modalities that shall be done by the PE.

This section includes the form for the agreement, which once completed, incorporates corrections or modifications to the accepted bid that are permitted under the instructions to bidders, the GCC and the SCC.

Documents integral to the contract are:

- The agreement
- Special Conditions of Contract
- General Conditions of Contract
- Technical requirements/ technical specifications
- Schedule
- Notification of award

- Bidder's original price schedule
- Any other document deemed necessary

These documents prevail in importance in the order above. The contract must have signatures and stamps of both parties for it to be valid.

Note: Administrative documents submitted by foreign bidders shall refer to the laws in force in their home countries.

4.2 Modifications to bidding documents

Amendments to bidding documents are allowed at any time before submission deadline. Amendments can be issued at PE's own initiative or further to potential bidders' concerns. Amendments must be copied to all those who purchased (or were given by PE) the tender documents. Any amendment will constitute an Addendum to the tender documents.

4.3 Advertisement

When estimated value of goods, works or services is above the threshold established in the regulations, PE must advertise the invitation to tender in:

- at least one newspaper with wide circulation.
- PE website
- PE notice board.

4.4 Time for preparing tenders

Time allowed for tender submission for OCB is at least 30 calendar days from date of advertisement. If the time remaining after last amendment is less than one third of the time allotted for tender submission, PE shall extend tender submission deadline.

4.5 Provision of bidding documents

PE will provide copies of tender documents as indicated in Invitation to Tender. PE may charge a fee (amount established in the Regulations) for purchasing tender document. Such fee can only cover costs of preparation, printing and dispatch of tender documents.

4.6 Bid security

Procurement under OCB will require a tender security. Form and amount of bid security to be established by PE. Generally no more than 2% of tender price or a fixed amount. This bid security will be seized if the bidder:

- Withdraws its proposal after tender submission deadline, but before validity period deadline
- Rejects a correction of arithmetical error
- Refuses to sign a contract as required or fails to submit the required performance security

4.7 Bid security shall be released if:

- The procurement proceedings were cancelled
- No responsive tenders were submitted
- After contract award/signature

4.8 Submission and Receipt of bids

Tender proposals must be signed and sealed in an envelope. The assigned tender number must be recorded on the envelope. Respect of tender submission deadline is mandatory: late tenders are returned unopened. PEs must ensure that the place where tenders are submitted is accessible and guarantees safe keeping of received bids.

4.9 Changes to bid

Tender proposal may be changed or withdrawn before bid submission deadline, upon written request. Changes are not allowed after bid submission deadline.

4.10 Bid opening

Bids will be opened in public by the tender committee **not later than one hour** after bid submission deadline. Bidders or their representatives may attend the bid opening. At bid opening the following information to be read and recorded:

- Name of person / firm submitting the tender
- Tender price including modifications or discounts received before submission deadline
- Presence / absence of bid security (if applicable)

A copy of bid opening report can be made available upon request. Tender committee members who shall be at least three members will: Initial each original bid and they have to sign the bid opening report. (*Art. 32, procurement law*).

4. 11 Bid validity period

Established in the bidding documents. Its extension may be required by PE before end of bid validity period. That extension must be notified to all bidders submitting a bid/proposal. Bid validity period must not exceed (120 days) 4 months without bidders' acceptance.

4. 12 Responsiveness of Bids

Responsiveness of a bid means the Conformity to requirements specified in the bidding documents.

4.13 Bidder's qualification

SB must meet **all** following qualification criteria **prior** to contract award as specified in bidding documents (or request for proposals):

- Personnel
- Equipment (for works contract)
- Financial capacity
- Legal capacity
- Cash flow requirements
- Litigation
- Debarment (if any)
- Any other criteria if established in bidding documents.

4. 14 Evaluation of bids

This is a responsibility of the Tender Committee. It is only based on procedures and criteria set in the bidding documents. Nothing can be added or removed from the criteria stipulated in bidding document. The objective of evaluation is to obtain the most economically works, goods and services. The SB will be the one submitting the lowest responsive bid. The tender committee prepares an evaluation report with all requirements provided in the regulations.

Criteria of bid evaluation

- **Administrative document required:**
 - Bid form stamped and signed by the authorized person
 - A valid bid security if required
 - A valid tax clearance certificate
 - Payment slip for tender document
 - Site visit certificate, if required
 - Price schedule/ bill of quantities

- **Technical evaluation criteria:**
 - Minimum required number of similar technical references done and asked
 - Number of key personnel, minimum qualification and experience required for each
 - Minimum required equipment
 - Methodology and work schedule

- **Financial capacity is always a must.**

4.15 Evaluation process

The evaluation process for goods and works shall involve three stages,

- the preliminary stage (Administrative evaluation), technical evaluation and financial evaluation. It should be noted that for goods and works and other services scores are not used. The evaluation analyses:
 - Whether required documents were submitted along with the bid and whether these documents are valid as per the tender document requirement.
 - Whether the bidder is technically responsive to perform the works or supply the goods. In other words, sufficient technical references, qualified and experienced personnel, adequate equipment to perform the job
 - And whether they are financially stable to handle the assignment.

4.15.1 Preliminary evaluation of bids (Administrative evaluation)

This shall involve analysis of the validity and conformity of the following documents to what the tender document requires:

Bid form- signed and stamped by the authorized person representing the bidder. It must indicate the bid validity period.

Price schedule/bills of quantities-completely filled in, in the format given in the tender document and in some instances may require initialing or a stamp.

Bid security from an accepted bank or financial institution, containing the amount stated in the tender document, indicating its validity and must have all conditions upon which the bid security may be seized by the PE.

Tax clearance certificate from Rwanda Revenue Authority (RRA), with dates of validity by the time of submission deadline.

Social security certificate from Rwanda Social Security Board (RSSB) with dates of validity by the time of submission deadline.

Trading license: a copy of the company trading license for proper identification

Site visit certificate: in case the site visit was asked, the bidder should submit a copy of a site visit certificate given to him/her by the PE.

Copy of the pay slip a copy of the pay slip indicating that bidder paid the money to get a copy of the tender document.

Bids that do not conform to these required documents shall not proceed to the next step of evaluation which is the technical evaluation. Only those found responsive at this point, may have their bids proceed to the technical evaluation.

However distinction between minor and major deviations must be made.

Examples of major deviations that shall be leaf to disqualification:

- Late bids
- Unsigned bid
- Bid security that is not accepted
- Non-conformity with the planning

Minor deviations are those that do not substantially affect the field, the quality or the performances, the rights of client or obligations of the bidder or rectified the competitive position of bidders.

Example of minor deviation is: Payment methods

4.15.2 Technical evaluation

This stage analyses the technical competence of the bidder relative to the kind of work proposed. The technical evaluation is done based on the following criteria:

Similar technical references- a list of completed technical references done by the bidder or those over 70% of the contract completion is required, which conforms to the minimum complexity of the tender. This should be accompanied by, as proof of these references, good performance recommendations from respective clients of these references mentioned.

Qualified and experienced key personnel- signed curriculum vitae of the key personnel required in the tender document, demonstrating the qualification and experience. This should be accompanied by notified academic certificates for proof of qualification.

Equipment- a list of equipment required indicating the year of make, the state in which it is, and number of equipment as required by the tender document. In case of vehicles, trucks, the bidder could support this list with copies of vehicle log books or vehicle identification. The bidder may hire out some of the equipment, in which instance, needs a contract with the owner.

Bids found technically responsive shall proceed to the financial evaluation.

4.15.3 Financial evaluation

This stage involves **Correction of arithmetical errors** of the bid. Arithmetic Verification will be done in the following manner;

- Ensure all items and corresponding quantities in the bills of quantities/ price schedule in the bid are to those in the tender document.
- Ensure the unit price in words and figures are similar. Total and unit price must be written both in figures and in words. Price in words **prevails** when figures and words differ.
- Ensure the unit price multiplied with quantities equal to the total bid price. PE is responsible for correction of arithmetical errors and for communication to respective bidder. After this verification both the bid price and the arithmetic verified bid price are indicated. If bidder rejects corrections, PE will reject the bid and seize the Bid Security.

The tender committee will recommend the tender to be awarded to the bidder technically responsive and the lowest bid price.

4.16 Request for clarifications

PE may ask **in writing** for any clarification useful to tender evaluation and comparison. Such clarifications shall not change bids' substance.

4.17 Rejection of All bids

Tender Committee may reject all bids on the following grounds:

- When procurement process is overtaken by events or no longer required
- When prices are above the forecasted budget
- When fraud and lack of fairness occurred during procurement process
- When all bids are considered as “non responsive”

When a tender was cancelled, all bidders shall be informed in writing.

4.18 Local preference

It is granted to:

- Companies registered in Rwanda
- Rwandan nationals
- Bidders in member states of regional economic integration bodies
- Local Preference shall not exceed 10%

It is included in bidding documents as defined in the regulations.

4.19 Notification of contract award

PE must notify the results of the evaluation to successful and unsuccessful bidders simultaneously and within tender validity period and inform the unsuccessful bidders why they disqualified. The PE can specify major elements of evaluation process that is available on request. Notification is done in two stages; at the provision and the final stage. (*Art. 43, procurement law*).

Provisional notification- which informs bidders on the evaluation results, who was temporarily successful and who were unsuccessful. Before final notification, the unsuccessful bidder(s) have 7 days to lodge a protest – if any – and then contract can be signed with the SB. Before contract signature a performance security not exceeding 10%, and not below 5% of contract price is required from the SB. This performance security is submitted in 15 days from receipt of the letter of acceptance and also appears on contract negotiations. Upon contract signature, unsuccessful bidders must be informed.

4.20 Two-stage tendering

First stage

- Initial bids containing a proposal **without** bid price
- Generally relating to:
Technical – quality characteristics of goods

- ❖ Construction
- ❖ Contractual terms and conditions of supply
- ❖ Professional and technical competence
- ❖ PE will retain substantial responsive bids and make adjustments to the bidding document

Second stage

PE invites substantially responsive bidders to submit final bids **with** bid price based on adjusted bidding documents. From here a bidder not wishing to participate in the second stage may withdraw from tendering. Then final bids are evaluated and compared.

4.21 Conditions for the use of two-stage tendering

- When it is not feasible for PE to draft detailed specifications for goods, works or services to be procured
- When as a result of a previous tender process no bids were submitted or all bids were rejected
- When as a consequence of the above PE believes that re-launching another similar tender process could not result in a successful outcome.

4.22 Other Procurement Methods

- Restricted tendering

A method that is open only to bidders included in the invitation.

Conditions:

- Nature of goods, works or services to be procured are so highly complex or specialized that only a few known bidders can meet the requirement
- Time and costs for an OCB will be too high compared to the value of goods or works to be procured
- In case of international tender, it is not allowed to invite more than two bidders from the same country.

Procedure:

- Bidders' invitation replacing advertisement
- Invitation to include at least 3 potential bidders selected from a list of prequalified bidders
- Other procedures as per OCB

The time for bids submission is- minimum 14 days for local tenders and 21 days for international tenders. The threshold for restricted tendering is: tenders < **5 million Rwf.**

- **Request for quotations**

PE requests quotations from at least 3 bidders; no limit to maximum number of bidders. The request for quotations must include all necessary information to be included in the price such as:

- Goods, works or services to be procured
- Transportation
- Insurances
- Custom duties
- Other relevant information

Contract awarded to lowest priced quotation meeting the above requirements.

Conditions for using request for quotation

- For readily available goods or services
- For works with standard specifications and with a low cost
- Tenders below the thresholds specified in the regulations which are: tenders < **1 million Rwf.** (Art. 16-21, Ministerial order no. 001/08/10)

Note: Tenders shall not be split in order to meet the above conditions

- **Single source/Direct contracting**

- Bid price can be solicited from a single qualified bidder and awarding a tender to him/her.

Conditions:

- The total cost is not above the amount determined by the Minister in charge of public procurement. The thresholds are: tenders < **100,000 Rwf.**
- Extension of existing contract (value not exceeding 20% of initial tender price) for additional works, subject to additional contract
- Force majeure circumstances
- Bidder is a Monopolist of the items or a particular domain

- **Force account**

Construction with recourse to civil servants and the use of public equipment.

Conditions:

- Quantities of works not definable in advance
- Works small and scattered around the country
- Works to be undertaken without interrupting on-going activities
- Emergencies
- Works to be completed in any case following contractor's non-performance

- **Community Participation**

This is used:

- When the beneficiary community may participate in delivery of services
- To enhance economy, create employment and involvement of the beneficiary community
- Context to be defined by procurement Regulations in the ministerial order no. 001/08/10 that is planting trees, building terraces and anti-erosive terraces.

The thresholds for community participation are: not > **20 million Rwf**, with exception tender of tree planting and anti-erosive terraces (Art. 16-21, Ministerial order no. 001/08/10)

4.23 Time limits for bid submission under public procurement methods

- **Open competitive bidding**

- ❖ National Open Competitive bidding: 30 days
- ❖ International Open Competitive bidding: Usually 45 to 90 days

- **Restricted tendering:**

- ❖ National restricted tendering: 14 days
- ❖ International restricted tendering: 21 days

- **Request for quotations:**

- ❖ working days

The time is measured from the date of receipt of invitation/request of quotations

4.24 International tender

To be carried out on the following basis:

- Bid size
- Technical skills and know how not available in Rwanda

Invitation and Advertisement

- Invitation to tender and bidding documents drafted in English and French
- Advertisement in at least one international newspaper with widespread circulation
- Other means of communication

Publication period

- Between 45 and 90 days from the day of newspaper publication

Standards

- International standards to be observed

- If local standards are equivalent to or better than international ones, the former apply

General and Specific Conditions

- Those generally used in international trade

4.25 Thresholds for International tenders

For works tenders, tenders estimated to cost over **1.2 billion Rwf** may be advertised as international tenders, while those less are national tenders. As for goods and other services, tenders likely to cost over **600 million Rwf** may be advertised as international tenders. Consultancy services with **100 million Rwf** may be advertised as international tenders.

Notwithstanding these thresholds, a tender may be advertised as international depending on the nature and complexity regardless of the size. (*Art.13, Ministerial order no. 001/08/10*).

4.26 Prequalification proceedings

For procurement of large works and complex or high value goods. To identify the potential market of qualified bidders. The PE issues a pre-qualification document with information for application and criteria based on:

- Qualification of bidder's staff
- Qualification of bidder's equipment
- Qualification of bidder's financial capacity
- Similar previous experience

CHAPTER 5: PROCUREMENT OF CONSULTANCY SERVICES

Procurement of consultancy services is significantly different from goods and works tenders. It involves submission of two proposals in two separate envelopes, the technical and financial proposal, as opposed to the other that submit both technical and financial offers in one bid. As we proceed we shall identify the differences.

Table 3 *Difference between Procurement of goods, works and other services with Consultancy services.*

Goods, Works and other Services	Consultancy services
Product based	Knowledge based
Bidding documents	Request for proposals
Opening of bids done once	Opening is done in two stages, technical proposal opening and financial proposals
Technical specifications	Terms of references
Evaluation focuses on conformity to requirements	Evaluation involves award of scores
Price is a major factor	Price is one of the major factors
Bid and performance securities	No securities recommended
Negotiations are rare	Negotiations are mandatory

5.1 Expressions of interest and short listing

Expressions of interest (EOI) to establish a short list to be advertised by PE in/on:

- ❖ National & international newspapers with wide circulation or
- ❖ Use of electronic advertisement (e.g.: dg market, RPPA website(PPS) and the PE website)
- ❖ Notice board of the PE.

The regulations establish the threshold for tenders not awarded through expressions of interest.

Expression of interest notice to contain the following information:

- ❖ PE name and address
- ❖ The kind of consultancy required
- ❖ Source of finance
- ❖ Description of services to be provided
- ❖ The minimum technical requirements of the firm (e.g. similar references, C.Vs of key personnel)
- ❖ Qualifications needed to submit a proposal
- ❖ Indication about where and when to submit the proposal

Expression of interest are then evaluated based on the minimum technical requirements of such that particular consultancy a shortlist is made. A shortlist may have as many as possible but should not have less than 3 firms but no maximum number.

A request for proposal (RFP) is then issued to only those shortlisted. Consultants can be individuals or firms, but not both under the same tender.

5.2. Request for proposals (RFP)

Here the PE issues and circulates RFPs to shortlisted consultants (either individuals or firms) and the short listed consultants confirm their intention to participate. The RFP shall include at least the following information:

- PE name and address
- Nature, time frame and location for delivery of the required services
- Terms of reference, required tasks and outputs of the services
- General and specific conditions of contract
- Instructions for proposal's preparation - to include a separate technical and financial proposal
- Instructions on where and when proposals are to be submitted
- Evaluation and comparison criteria,
 - ❖ for technical proposals as the basis to establish responsiveness
 - ❖ for financial proposals
 - ❖ any other additional evaluation method (as specified in RFP)
- Fraud and corruption rules as well as conflict of interest restrictions.

Generally the RFP comprise the following parts:

- **Letter of invitation (LOI):** invitation to shortlisted firms.
- **Instructions to consultants (ITC):** This section provides information to help the consultants prepare their proposals. Information is also provided to on the submission, opening, evaluation of bids/proposals and on the award of contracts.

This section contains provisions that are to be used without modification

Bid data sheet (BDS): This section includes provisions that are specific to each tender and that supplement instructions to consultants. It shall contain similar information as indicated for the bid data sheet with a few differences. The evaluation criteria shall include award of scores. In regard to the QCBS selection method, this is how evaluation criteria shall follow:

Technical evaluation- Setting of criteria, sub-criteria and point system for the evaluation of full technical proposals are:

- ❖ 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 10points (where required)
- Total points for the criteria: **100**

The minimum technical score **St** required to pass is: **(70-90%)**

Financial evaluation:

The formula for determining the financial scores is the following:

Sf: $100 * \frac{Fm}{F}$, in which **Sf** is the financial score, **Fm** is the lowest price and **F** the price of the proposal under consideration.

The **weights** given to the technical and the Financial Proposals are:

T= ----- {Normally between **0.7** and **0.9**} and **F**= ----- {Normally between **0.1** and **0.3**}. Where **T** and **F** stand as the weight of technical and financial proposals.

- **Technical proposal standard forms:**

This section includes forms to guide the consultants on how to prepare the technical proposal. (Formats of the technical proposal submission form, consultant's organization and experience, comments on TORs, Approach of methodology and work plan, CVs, staff schedule and activity schedule.

- **Financial proposal standard forms:**

This section includes forms to guide the consultant on how to prepare the financial proposal. (Formats of the financial proposal submission form, summary of cost, breakdown of cost under remuneration fees, reimbursables and miscellaneous.)

- **Terms of reference (TOR):**

TOR is an integral part of RFP and explains in detail what the assignment shall involve, expected resultants, and indicates the following:

- Background of the assignment
- Objectives/ goals
- Scope of the assignment
- Outline of any transfer of knowledge or training(when appropriate)
- The expected outputs and services and surveys necessary to carry out the assignment
- Where and when the services are to be provided
- Full details of data, services, equipment, staff, facilities, etc. to be provided by the PE
- Estimate of the capacity of key staff inputs
- The selection method applied

5.3 Selection methods and criteria

Evaluation and selection of successful proposal is based on one of the following selection methods:

- **Quality & Cost-Based Selection (QCBS)** (the default method).
It considers both technical and financial competence of the consultant. It comprises:
 - ✓ Allows for competition evaluated on a specific technical proposal opening
 - ✓ Minimum technical score shall determine who proceeds to the financial proposal opening
 - ✓ Total score- shall involve the combination of technical scores with weighted coefficient and the financial scores with coefficient.

- **Quality-Based Selection (QBS)**
Used when quality is the paramount factor. This emphasizes quality/ technical competence, where the bidder with the highest technical score is the only one whose financial proposal is opened and considered successful bidder. It is used for very complex assignments, with limited expertise.

- **Selection under fixed budget (FBS)**
Used for simple assignments. Known budget exposed to the bidders at the time of launching the tender. The most technically qualified within the budget is awarded the tender.

- **Least cost selection** (used for standard & routine assignments of small amounts, with existing practices and standards). It is used for assignment that are commonly done and that shall not require a lot of intellect later to have an adverse effect if done poorly. Here, all of those found responsive, the bidder with the lowest price at the financial opening is considered the winner.

- **Selection based on consultant's specific qualifications (CQS):**

Only consultants from a specific domain of qualification are required. CVs are requested for and evaluated. The most technically qualified shall have their financial proposal requested for and contract negotiations initiated.

5.4 Technical proposal opening

During the opening of proposals for consultancy, only the envelope with technical proposals is opened and the financial proposal kept sealed for another opening, the financial opening. At this opening, the tender committee shall read in brief documents found in each firm's proposal. i.e similar references, key personnel, methodology and work. A technical proposal opening report shall be prepared and signed.

5.5 Evaluation of technical proposals

Tender Committee evaluates the technical proposals based on the following criteria:

- ❖ General experience of the firm for the assignment:5 to 15 points
- ❖ Relevant experience for the assignment (with sub-criteria):10 to 20 points
- ❖ Quality of presented methodology (with sub-criteria):20 to 30 points
- ❖ Qualifications and experience of proposed key staff for the assignment (with sub-criteria):40 to 60 points
- ❖ Transfer of knowledge or technology:0 to 10 points (where applicable)
- ❖ The participation of national key staff in case of international tenders:5 to 10 points (where required)

The total points for the criteria: 100 points

The minimum technical score St required to pass is: (70-90%)

5.6 Opening of financial proposal

Only those who technical proposal scored above the minimum technical score required shall have their financial proposals opened. The rest are not opened.

5.7 Evaluation of financial proposals

To be opened **after** completion of technical evaluation. In QCBS only the financial proposals of bidders scoring the minimum acceptable in technical evaluation are to be opened. The total score is obtained by adding the importance technical and financial evaluations results. On the basis of the complexity and the nature of the assignment, quality and cost may have different weighting. Weighting specified in the regulations.

The same procedure is also to be applied in fixed budget and least cost selection. Under fixed budget, proposals above the prescribed budget are rejected and the bidder with the highest technical score whose price is within the budget is selected. Under least cost method, the bidder whose proposal attained the minimum technical score **and** the lowest price is selected. Under QBS, **only** the financial proposal of the bidder whose technical proposal has the highest technical score will be opened.

5.8 Notifications of tender award

Following a satisfactory conclusion of evaluation, the bidder whose proposal best met the selection method and the evaluation criteria will be selected for award temporarily. The PE informs other unsuccessful bidders included in the short list about that decision. If no challenge by other bidders within 7 days from provisional notification, the successful bidder is given a final notification, and the contract can be signed by the parties.

5.9 Negotiations with selected consultant

Negotiations with the selected consultant cover:

- ❖ TOR
- ❖ Deliverables and progress reports
- ❖ Facilities provided by PE
- ❖ Payment schedule
- ❖ Clarification of the tax obligation of the consultant in the country
- ❖ Refundable fees-reimbursables, based on receipts

Negotiations on the financial proposal are subject to the following: In QCBS, fixed budget and least cost selection, consultant's fees (Personnel wage) **are not negotiable** (only reimbursables can be discussed). If negotiation with the first ranked consultant fails, negotiations can take place with the second ranked consultant.

CHAPTER 6: WAYS AND ORGANS FOR REVIEW/APPLEALS

6.1 Right to review

A prospective bidder or an actual bidder, at any stage of the procurement proceedings, may apply for a review when he/she is not satisfied of any conduct in procurement proceedings. However in order for the request to be accepted, the minimum requirements are to be shown in the application- what was omitted or added to the procurement law, in the procurement process contested.(*Art. 68,procurement law*).

6.2 Procedure of appealing

Request for review must:

- Be submitted before submission and opening of bids,
- Be in writing and addressed to the Head of the PE **before** contract signature,
- Be submitted within 7 days from the provisional notification of award.

If the matter with the bidder submitting the request for review is not solved Head of PE must suspend the procurement process. Suspension with explanatory reasons must be notified in writing within 7 days from receipt of request of review. In case of unsatisfactory results after this process, the complaining bidder may appeal to the Independent Review Panel. He/ she can lodge that complaint 7 days from knowing the decision of the PE.

6.3 Independent Review Panel (IRP)

For complaints about procurement decisions taken at District Level or if contract had been signed without fulfilling debriefing requirements, review requests are to be addressed to District IRP. Complaint request must be made within 7 days from receipt of unsatisfactory explanatory note on previous request for review addressed to PE. Decisions of District IRP will be examined by IRP at National Level (included those at the level of the City of Kigali and its Districts).Once the complaint reaches the District IRP the procurement, process is suspended until IRP decision is taken. Decision to be taken within 30 days from receipt. If extra time is needed (no more than another 30 days), IRP informs the PE and the claimant. Failure to make a decision within the prescribed time and requiring additional time means that the claim is sound and trustworthy.IRP decision are addressed to the PE and the claimant. IRP working procedures are set out in procurement Regulations.

6.4 Appeal fees

Appeal fees shall be non-refundable and are relative to the size of the tender (Art.34, Ministerial order No 001/08/10):

- ❖ For tenders < **20M Rwf**- appeal fee is 50,000Rwf
- ❖ Tenders >**20M Rwf**- appeal fee is 100,000Rwf
- ❖ All appeals addressed to the National IRP- shall have the fees paid to government treasury
- ❖ Appeals addressed to District IRP- pay to respective districts

6.5 Contents of the request for review

For an appeal to be reviewed by the IRP, it must have the following: Art.37, Ministerial order No 001/08/10.

- Identification of complaint-name, address, tel., Po Box
- Identification of the PE
- Decision against which the review is requested
- Date and which decision was taken& when complainant became aware of it
- Organs to which the review is addressed
- Signature or thumb print of applicant
- Payment slip for appear fee attached
- Copy of trading license

6.6. Independent Review panels

The purpose of an independent Review Panel is to independently review complaints from bidders against procurement procedure (Art.21, procurement law). Twenty seven (27) districts have IRPs, while Kigali city, its three (3) districts and the rest of PEs uncontended bidders appeals to the National Independent Review Panel.

6.7 Composition of Independent Review Panels (IRPs)

- Independent review panels are composed of five (5) members selected from the public institutions, private sector and civil society. Public institutions shall not have more than two (2) members
- Appointments of members of the National IRP is done by the Minister in charge of public procurement while members of the district IRPs are appointed by the District council
- The term of office for IRPs members is 4 years, with at least 2 members replaced every 2 years

- The budget and offices for the district IRPs comes from the District, while that for the National IRP is RPPA
- Dismissal of IRP members can be done by- Minister in charge of public procurement for National IRP and the District council for district IRPs

Those not allowed in IRPs are:

- Members of the tender committees
- Staff and members of "RPPA" Board of Directors (*Art.35, ministerial order 001/08/10*)

The duties for permanent officer of IRP at National level are to:

- Receive and register requests for review, giving them numbers
- Prepare all documents necessary for the IRP activities
- Prepare summons/ invitations for those to be invited by the panel
- Acts as the secretary of the IRP

Fixing the date of review shall be the duty of the chairperson of the panel, who shall inform the Permanent officer of the date for him/ her to invite others. (*Art. 39, ministerial order No 001/08/10*)

The procuring entity that has taken the decision relating to the request for review shall provide the Independent Review Panel at the national level with all the required documents on the tender contract within five (5) complete days from the date on which the entity concerned received the letter of the Independent Review requesting for it to that of deposit of the required documents. (*Art. 40, ministerial order 001/08/10*)

The number of days mentioned above shall be three (3) complete days if the entities concerned by the review are those within Kigali City or requested by a District Independent Review to a district.

On request by the NIRP, the responsible PE shall submit all related documents of the tender within 5 days of receipt of the letter. In the instance that it is in Kigali or it's from district IRP to the district only a maximum of 3 days is acceptable. (*Art. 40, ministerial order 001/08/10*)

Decision taken by IRP shall only require 2/3 of the five members. All decisions shall be taken based on the procurement law and regulations of procurement procedure and the tender document of that particular tender. (*Art. 41, ministerial order 001/08/10*)

Conflict of interest- An IRP member may be considered to be in a conflict under the following circumstances. (*Art. 42, ministerial order 001/08/10*):

- If one of the IRP members has applied for review
- If one has relationship/ misunderstanding with complaint

In one of the above circumstances, a member of the panel shall inform, in writing, the panel of the issue and request for not taking part in the review proceedings.

Publication of IRP decisions shall be done on- notice boards of the PEs, websites of respective PEs and RPPA. (*Art. 43, ministerial order 001/08/10*). IRP shall issues quarterly reports to the minister in case of the National IRP and the District council in case of the District IRP. (*Art. 44, ministerial order 001/08/10*).

The Independent Review Panels shall be audited by RPPA. (*Art. 45, ministerial order 001/08/10*)

6.8 Powers of the IRPs

If the complaint is not dismissed, IRP may recommend one or more of the following remedies:

- Denouncing non-compliant PE actions or decisions contrary to the law
- Requiring the PE to comply consistently with the above actions/decisions
- Annulling in whole or in part the portion of procurement under review
- Revising / replacing its own recommendation, if a PE decision – other than contract award – results in non-compliance with the Law and regulations
- Ordering re-evaluation of bids
- Recommending payment of costs incurred for bidding participation, if the signed contract is legally binding but IRP considers that tender should have been awarded to the claimant
- Ordering termination of procurement process
- Decisions made by IRP at National Level are final unless judicial proceeding on set. (*Art.71, procurement law*).

6.9 Likely areas of appeal

Areas for discussion by the trainees on likely areas of appeal due mistakes done by PEs and these may be avoided or what IRPs need to look out for:

- Bid submission form
- Bid security
- Administrative documents, such as; tax clearance, social security certificate, trading license
- Forged documents; CVs, references, equipments or vehicle log books
- Tender document preparation for the PE
- Criteria of evaluation
- Method of procurement used
- Bids submission
- Bids opening
- Evaluation results
- Notification period, etc.

6.10 Certain rules applicable to review proceedings

A copy of IRP is to be made available for inspection by the general public unless disclosure would:

- be contrary to Law
- impede Law enforcement
- not be in public interest
- jeopardize commercial interests
- inhibit fair competition

If PE considers that a suspension of the procurement process would not be in the public interest, IRP will be required to waive the suspension.

CHAPTER 7: PUBLIC PROCUREMENT CONTRACT MANAGEMENT

7.1 General overview in tender execution

7.1.1 Contents of procurement contract

The contract shall include the following details (annexed to the bidding documents)

- Identification of contract parties
- The subject matter
- Under which Law provision award took place
- Priority of contract documents
- Price and adopted pricing method
- Delivery / Completion period and penalties for delays
- Contract progress monitoring system
- Acceptance of goods / works / services conditions
- Payment terms
- Insurance, securities, compensation matters
- Contract amendment / termination conditions
- The name of the Chief budget manager and the budget source
- Force majeure
- Bank details for payments
- Dispute settlement mechanism

7.1.2 Contract amendment

Amendment must be made in writing and signed by all parties involved. Such amendment must not in any case modify the general nature of the tender. Amendment may increase or decrease the contract value by **less** than 20%. **Above** 20% a new tender is required.

7.1.3 General provisions related to performance Security

The Performance security

- To be submitted by SB **before** contract signature
- Value between 5% - 10% of contract value
- Seized by PE in event of partial or total non-performance
- Not required for contracts whose value is below the threshold established in the regulations
- Shall not generate interest
- Form to be determined in bidding documents (bank security or guarantee of a recognized financial institution or irrevocable letter of credit)

- Bidding documents must describe the need for and the form of other forms of performance security.

7.1.4 Seizure of performance security

Within 10 days following a written request done by the PE, the bank or authorized financial institution will pay the full amount of the security to PE. Interest of 1% of interest will be accrued for every day of delay. Such interest will continue to be applied if the case is taken to court and court's decision is in PE's favour.

7.1.5 Right to deduct and obligation to reconstitute the performance security

The PE has the right to deduct from the performance security any amount owed a failure to perform the contract. The Contractor shall reconstitute the total performance security amount within 20 days from the notification of the deducted amount. If the guarantee is not fully reconstituted, PE has the right to deduct the amount from the invoice payment.

7.1.6 Recovery of performance security

Performance Security to be returned in two steps:

- First 50%, within 30 days following provisional acceptance of works
- Second 50%, within 30 days following final acceptance.

7.1.7 Contract Price

Pricing – Contract Price

Contract price covers all expenses for goods / works / services to be provided

Contract price/types may be:

- Lump-sum price: This is used for tenders whose duration and provision are easy to define. Payments are based on the submission of reports and easy to administer.
- Time based price: Used for tenders whose duration and provisions are difficult to define. Payments are based on unit prices and refund of charges.
- A combination of all.

Tenders whose execution does not exceed 9 months' duration are to be awarded on a **fixed price** basis.

Revisable price

For contracts of over 9 months' duration, a provision for a price review is included in the bidding documents. Price review mechanism is defined in the regulations. Price reviews do not apply if a delay in completion is caused by the SB.

7.1.8 Advance payment*General principles*

No payment shall be made before works; goods or services are executed / delivered / and accepted by PE. However, advance payments are allowed if so defined in the bidding documents.

Advance payment

Not exceeding 20% of contract value. If given to SB an advance payment security for the same amount generally is requested. This advance payment is used specifically for tender related activities and it is retained in percentage from each approved invoice. The amount to be retained is a percentage defined in bidding documents. The Advance payment security is returned within 30 days following full reimbursement of advance.

7.1.9 Payment in installments

For over 3 months payment may be made on completion of defined activities. The bidding document and the contract define which activities have to be completed before each installment is payable. Advance retention applies and an installment invoice shall be paid within 45 days.

7.1.10 Obligations and rights of the procuring Entity*Invalidity of the contract due to falsified or fraudulent documents.*

A contract shall be null and void any time during contract execution if it is proven that the tender process was compromised by the SB with false or fraudulent documents. Once the contract is cancelled and not retendered, it may be awarded to the 2nd ranked bidder.

7.1.11 Representation of the PE in contract execution

The PE represented by supervising official, with right to:

- Free access to the site
- Product inspections

Bidders are solely responsible for contract execution and PE supervision do not exempt them from their responsibilities.

7.1.12 Right to determine additional works to be performed

During contract execution PE may prescribe additional works under the same contract conditions provided that: Value of extra works does not exceed 20% of initial contract price. Execution period is extended, if necessary.

7.1.13 Right to increase or change activities to be performed

During contract execution, the PE may modify the contract by reducing / increasing /changing the quantity or some of the requirements of the contract. Such modification is subject to an additional contract to be executed under the same financial conditions of the initial contract. Bidder shall accept such modification provided its total amount is within 20% more or less than initial contract amount. If the effect of the modification is more than 20%, PE and SB shall negotiate on compensation to be given to the successful bidder depending on the total expense incurred in the execution of the tender. This compensation shall not exceed twenty per cent (20%) of the activities that have been reduced.

7.1.14 Rights and obligations of the SB

The SB has obligations to respect provisions of the bidding documents or other requirements in public tenders.

SB is required to execute the contract in full compliance with:

- The bidding documents
- The procurement regulations
- Instructions given by PE management based on the bidding document

If the bidder considers that instructions are not in line with tender documents and regulations, it should make a formal written complaint to PE within 30 days of receiving the instruction.

7.1.15 Respect of laws and regulations in force

SBs are responsible for compliance with all Laws and regulations by themselves and their staff. The PE cannot be held responsible for any breach of Laws and regulations by SB.

7.1.16 Execution of multiple contracts

If a SB is awarded different contracts, each with its contract conditions shall be considered to be independent. All Problems in contract execution of one specific tender shall not be taken into consideration in contract execution of another tender.

7.1.17 Sub-contracting

This shall be defined in bidding documents. If provided, no sub-contract shall be awarded to a debarred firm. The SB is responsible to PE for subcontractor performance.

7.1.18 Use of public procurement contract as a guarantee

The SB may provide a signed contract as a guarantee. In event of contract cancellation, no claim may be made against PE. In case of sub-contracting, the amount of this contract shall be deducted from the total contract amount.

7.1.19 Claim for compensation

The SB has the right to address claims to PE. In case of disagreement, the SB shall be required to provide written evidence to PE, demonstrating the impact on contract activities and price within 5 days. Only claims based on actions from PE and its representatives may be considered.

7.1.20 Payment

Payments will only be made on presentation of regular invoice. The PE supervisor shall approve the invoice. The contract defines payment conditions, methods of payment and penalties for delayed payments. Companies registered in Rwanda or owned by a Rwanda national will be paid in local currency.

7.1.21 Force Majeure

Exemption from liability: Parties will not be held responsible for delays in contract execution due to "force majeure":

- Demonstrations
- Lock-out
- Wars / Embargo / Riots
- Population uprising / epidemics
- Landslides / earthquakes / hurricanes / thunderstorms/floods

- Civil war
- Explosions
- Any other phenomenon beyond parties' control

7.1.22 Loss, damage or destruction due to force majeure

PE will pay invoices for items *if and only if* lost, damaged or destroyed following force majeure during contract execution.

7.1.23 Communication of force majeure

If one of the parties considers that a force majeure will prevent compliance with contract conditions, it shall inform the other party within 5 days of the force majeure event.

7.1.24 Continuing the activities in case of force majeure

Unless otherwise instructed and the situation permitting, the contractor shall continue to respect contract obligations. If this implies extra funds, the parties have to agree these in advance.

7.1.25 Extension of the execution period or cancellation of the contract

Contract execution period may be extended by prior agreement between PE and SB. After 6 months of persisting force majeure, the contract is cancelled.

7.1.26 Government decision

If changes in contract provisions are decided by competent authorities, PE and SB will comply with that decision and will:

- Modify contract provision to allow continuation of contract execution
- Determine eventual compensation, or
- Cancel the contract

7.1.27 Penalty relating to delays in execution

- *The report*

In the event of non-execution of contract PE supervisor must immediately submit a report to the SB. The SB must acknowledge receipt of the report.

- *Penalty relating to delays in execution*

Delays should be charged to the SB at a rate of 1⁰/00 of the value of uncompleted activities per day. Penalty not to exceed 10% value, otherwise the contract will be automatically cancelled

- *Penalties for delaying to correct mistakes*

In event of poor performance SB will be required to rectify the mistakes or replace items not conforming to requirements. Mistakes must be corrected within 10 days, otherwise penalties will be charged as follows:

- 1⁰/00 of the initial value of the item / requirement to be replaced/ rectified for each of the first 7days of delay
- 1⁰/00 of the actual value of the item / requirement for each day thereafter

- *Deducting money for penalties*

The amount related to penalties is to be deducted from payment of approved invoices or from performance security. If total amount of penalties exceeds the amount of performance security:

- the contract shall be automatically cancelled
- the SB shall be considered responsible for such cancellation

- *Costs for preparing and executing new contract after cancellation of initial contract*

If contract is cancelled further to a breach by the SB, SB will bear costs for re-tendering. The established cost is 1% of the new contract price. Deduction to be made from approved invoices for which payment is pending.

7.2 Contract management of tenders for works

7.2.1 Commencement of works

The PE issues written instructions for the date of commencement of works. If instructions are not issued within 60 days from contract signature, the SB may refuse to execute the contract and claim compensation.

7.2.2 Insurance for works

Based on bidding documents requirements, SB must submit evidence of insurance covering injuries to persons or property during contract execution. If requested, proof of payment of insurance premium(s) shall be made available.

7.2.3 Planning for the execution of works

Before the commencement of works, the SB shall submit a work-plan for the activities to be undertaken during contract execution. The Contents of the work-plan include the following:

- List of planned activities
- Deadlines for submission for approval of layouts /drawings
- A 3 months cash-flow forecast

7.2.4 Procuring entity's additional instructions

If required, tender documents shall determine the time limit for additional instructions. If tender documents are silent, additional instructions may be given within 30 days from their request.

7.2.5 Demarcating the site for works

The works site must be clearly demarcated. For this the SB is responsible for demarcation which must be completed before the commencement of works. The PE is informed in writing and has 15 days to inspect the site demarcation. If PE does not inspect site, demarcation will be deemed to be approved.

7.2.6 Supervision

SB must provide an office available to the supervising official named by PE. The supervising official will monitor the works on a daily basis. Works shall not be executed / completed without supervising official approval. Supervising official may be member of PE or a consultant hired by the PE.

7.2.7 Security at Site

The SB will take the following security measures during contract execution:

- Security of bidders' staff, PE representatives and any visitors authorized by the PE
- Compliance with existing Law in force in respect of where works shall be executed
- No access to unauthorized persons
- River water flows, drainage of waters, etc. to prevent any accident
- Protection of landmarks
- Safeguard of neighboring persons and properties

7.2.8 Daily site log book and statement

The supervising official will maintain a log book regarding works completed according to the contract and inspections performed, with the following records:

- Quantities of works actually completed
- Number of worked hours
- Equipment rented
- Materials / supplies received
- Days of bad weather

Records are produced and signed by the SB within 5 days. The SB shall submit a daily statement to the supervising official detailing the work executed, materials delivered and the number of workers involved.

7.2.9 Materials from demolition

All materials and objects resulting from demolition become property of the SB. If the bidding documents define that such materials become property of the PE, the SB will ensure no damage to them. The SB will be responsible for any damage during demolition of such materials. The supervising official will instruct the SB on where to transport and store such materials (not more than 100 meters from the site).

7.2.10 Discoveries during the execution of works

Discovery of any object of value during execution of works must be notified to the PE. Such objects will be considered as property of the PE and handed to supervising official.

7.2.11 Approval of materials to be used

Any material to be used by the SB must be approved in advance by the supervising official. The PE may use any means to determine quality and quantity of materials. In event of disagreement an independent assessment will be performed.

7.2.12 Fraud and defect

In event of suspicion of fraud or defect, the SB may be asked to demolish the work executed and reconstruct it. Here costs will be borne by SB or by PE on whether suspicion is found to be true or not.

7.2.13 Temporary suspension of works

Suspension decision may be taken by PE for public interest. It can also be taken by SB in accordance with provisions of law. Temporary suspension no longer than 30 calendar days. Contract duration shall be extended accordingly.

A temporary suspension longer than 30 calendar days leads to contract cancellation.

If PE suspends for more than 30 days, SB has right to claim compensation.

7.2.14 Measures to be taken in case of temporary suspension

When a temporary suspension occurs, the SB shall make sure that works already completed are well protected.

7.2.15 Unexpected circumstances

It is assumed that SB knows soil conditions at the site and that tender proposal was prepared accordingly. Therefore all costs incurred due to ground conditions will be borne by SB. If unforeseeable technical or geological obstacles are encountered during contract execution, potential additional costs or extension of execution period shall be taken into consideration.

7.2.16 Failure of the successful bidder

Contractual obligations are not met by SB if:

- Works are not fully completed within prescribed period
- Works are suspended and will not be executed within prescribed period
- Contraventions to written instructions take place

Failure must be communicated in writing by the supervising official. The SB has 15 days to reply justifying the failure in writing. If SB does not reply, acceptance of report content is assumed and SB has to rectify the failure.

7.2.17 Replacement of the successful bidder

In event provisions of previous article are not fulfilled within 15 days, the PE may complete the works by **force account**, using SB materials and staff. Alternatively PE may decide to sign a contract with another firm and the cost will be charged to the SB. Before implementing any of the above actions, PE shall discuss with SB and prepare a report showing works' progress and materials at the site.

7.2.18 Types of official acceptance of works

This has to be defined in tender documents

- Partial provisional acceptance
- Provisional acceptance
- Final acceptance

Partial acceptance relates to part of works to enable PE to take possession and utilize part of the works accepted. From the moment of acceptance, SB shall only be responsible for repairs resulting from construction defects or poor workmanship (as covered by durability guarantee)

Provisional acceptance shall concern the entire works. Same provisions as for partial provisional acceptance

7.2.19 Duration of the guarantee for works

One year from the provisional acceptance date, unless otherwise defined in bidding documents.

7.2.20 Date of provisional or partial provisional acceptance of works

Takes place within 20 days of the date foreseen for works completion, upon written request by SB. In event of earlier or delayed work completion, SB must inform the supervising official in writing. Within 20 days from acceptance request, PE must accept or refuse to accept the works. After this period, PE shall pay SB 0.5% of the amount due for payment after acceptance for every week of delay, not exceeding a total of 5%.

7.2.21 Works which may not be accepted

Refusal to accept the works shall occur if:

- Requirements are not met
- Works were not executed professionally
- Works were executed using materials not approved by PE

Provisional or partial provisional acceptance of works can only take place after the above failures have been rectified.

7.2.22 Final acceptance of works

Relates to the entire works and must take place:

- Within 20 days before expiry of:
 - Guarantee period for provisional acceptance
 - The last period of guarantee if several partial provisional acceptances were established
- Within 20 days following rectification of mistakes reported in the minute of acceptance
- If mistakes are not fully rectified, PE refuses the final acceptance in writing

- SB then informs PE about rectification of all mistakes and requests final acceptance
- A final acceptance certificate is released to SB stating that contractual obligations have been met
- Works are deemed finally accepted if PE does not respond to SB's request for final acceptance

7.2.23 Cleaning the site

After provisional or partial provisional works acceptance SB is required to remove items or equipment no longer required. Upon final acceptance, SB is responsible for clearing the site.

7.2.24 Final statement

Within 90 days from final acceptance, SB must provide PE with a draft statement of each party's obligations in view of contract termination. The statement is to be signed by the supervising official.

7.2.25 ten-year accountability

The SB is accountable to PE for the durability of all executed works. He is also accountable for any failure arising from design and construction for a period of 10 years from final acceptance date.

7.3 Contract management of tender *for supplies*

7.3.1 Delivery period and multiple procurement contracts

Delivery period is determined by the contract. If SB has previously been awarded a similar tender (with expired delivery terms), but supplies had not been yet delivered, first assignment shall be given preference provided delivery terms for second assignment remain unchanged.

7.3.2 Planning for the execution of the contract

In tenders for large supplies, bidding document will define if SB is required to present a plan for contract execution, before starting. The bidding documents will also define deadlines for presentation of plans and PE comments.

7.3.3 Suspension of the contract, its duration and security of supplies during suspension period

The PE may – at any time – give written instructions to SB to suspend:

- Further manufacturing of supplies
- Delivery of supplies at the place of reception

All these reasons for above suspension must be explained to SB and the suspension must not exceed 60 days. If suspension exceeds 60 days and is not responsibility of SB, SB has the right to request contract cancellation, indicating all negative factors resulting from such suspension. If suspension was accepted, the SB is responsible for security of supplies during suspension period.

7.3.4 Additional costs caused by the suspension of the contract

To be added to contract amount following written request by SB.

Exceptions:

- Different provisions established in the contract
- Weather conditions caused the change in place of destination
- SB failures
- Security of supplies

7.3.5 Preliminary technical acceptance

Tender documents define whether technical acceptance is needed and specify the methodology to be used. The PE has right to require the replacement of supplies (or their materials), if inspection reveals mistakes or defects.

7.3.6 Responsibility of the successful bidder

The tender documents define where and when inspection should take place. The SB is responsible for the supplies until acceptance report is signed by the PE.

7.3.7 Place of delivery

The tender documents define delivery location and requirements. If it is not feasible to fit the supplies in the indicated place of delivery, PE will notify the SB of another delivery location. When the place of delivery was changed, transport and handling costs to be at PE's expense.

7.3.8 Delivery note

To be prepared by SB on the day of delivery. The note indicates the following:

- Supplies

- Quantities
- Type
- Number
- Weight
- Mode of transport

Responsibility for loading, unloading and final placement of supplies must be defined in tender documents

7.3.9 Acceptance of supplies

It is defined in tender documents.

- Partial acceptance:
 - May be final or provisional
 - Where final acceptance is not provided, supplies can be used by PE after partial acceptance, which is deemed as final acceptance and requires a final acceptance report
 - Where final acceptance is provided, SB will be required to repair or replace damaged items for the duration of the guarantee period
- Provisional acceptance
 - Whenever tender documents require a final acceptance
 - Guarantee period starts from the day of provisional acceptance
- Final acceptance
 - After provisional or partial acceptance
 - After delivery and verification of goods compliant to requirements
 - To take place 20 days prior to provisional acceptance guarantee period deadline
 - Report required showing how tender requirements were executed.

7.3.10 Rejection of delivered supplies

If inspection reveals that supplies do not conform to requirements, the PE:

- Rejects supplies
- Informs SB within 20 days
- Sets a deadline for SB to collect faulty supplies

If SB fails to fulfill the requirements before above deadline, PE is allowed to take all necessary measures including selling the supplies by public auction. Proceeds of the sale will be used to cover the costs related to the public auction and any debt incurred by SB during tender execution after the PE will deposit positive balances in SB's account. The SB will bear the difference in event of a negative balance.

7.3.11 Slight reduction of price due to change of quantity or quality

The PE may accept supplies differing slightly from requirements in return for a price reduction. If delivered supplies are only partially in good condition, PE will either:

- Reject all supplies
- Sort and accept the supplies in good condition and reject the rest (sort costs will be at SB expense)

If quantity of supplies is less than required, PE may:

- Reject all supplies
- Accept only the delivered quantity

7.3.12 After sale service and final statement

This has to be defined in tender documents. Repair, maintenance or spare parts have to be provided in due time. Within 30 days from final acceptance report signature, the SB shall submit to PE a proposal of final statement of supply delivery approved by the supervising official.

7.4 Management of tenders for consultancy services

7.4.1 General regulations for the successful bidder

The SB for services shall at all times be accountable for its advice to the PE. In particular, the SB shall refrain from:

- Revealing information on services provided without prior the PE approval
- Engaging in any act in contradiction of the contractual obligations

The SB is not allowed to take any decision on PE's behalf without prior written consent. The SB shall not compromise his/her independence at work.

7.4.2 Restrictions on remunerations and professional secrecy

The SB and his/her staff shall not receive any remuneration related to tender execution other than from the PE. The SB and his/her staff shall:

- Maintain professional confidentiality until contract completion
- Not disclose any confidential information without prior written consent of PE
- Not use received information to detriment of PE.

7.4.3 Tenders for project design

The SB shall:

- Prepare project document & drawings with the latest techniques
- Prepare non-discriminatory technical specifications and/or drawings in order to enhance competition.

7.4.4 Right on ownership of reports and documents

All documents and drawings produced by the SB are confidential and property of the PE. All documents are to be submitted to PE after contract completion. No documents related to the contract can be published by the SB; no information can be disclosed without PE's written consent.

7.4.5 Sanction for breaching rules of conduct by the successful bidder

Breach of rules of conduct will lead to automatic contract termination.

7.4.6 Principle of non-modification of contract execution methodologies

The SB is required to perform the required services with staff and methods prescribed in the contract

7.4.7 Liability of the procuring entity and its representatives

The SB is accountable for mistakes made during contract execution. On the PE demand, the SB will be required to correct the above mistakes. The SB is not liable for claims / losses due to:

- The PE ignoring advice
- The PE instruction leading to a mistake
- The PE inaccurately implementing SB recommendation

7.4.8 Staffing

In case of a technical assistance contract, the SB is responsible for staff put at disposal and their competence. The PE may request replacement of SB staff following incompetence or misconduct.

7.4.9 Working hours and days off

The SB staff put at the PE disposal shall observe the PE working hours and calendar. Leave is allowed unless differently provided in tender documents.

7.4.10 Suspension of service contract execution

The PE has the right to suspend the contract execution whenever deemed necessary. Suspension reasons shall be explained to the SB. That Suspension period shall not exceed 60 days. If suspension period exceeds 60 days and suspension reasons are not due to the SB negligence, the SB may request contract cancellation. The PE shall make a decision about cancellation within 15 days from the request. Consequences from contract cancellation shall be at PE expense.

7.4.11 Reports or documents to be produced and final statement

Type and number of reports determined by RFP. The PE comments on report within 60 days from submission. If PE is silent after 60 days, the report is considered as approved. In case of non acceptance, the PE shall give the SB a period to modify the report for approval. Within 30 days from the final approval of services, the SB shall submit a proposal of final statement of the execution of the contract, approved by the supervising official.

7.4.12 Successful bidder's death

In such an event, if the SB is an individual contract shall be terminated. Heirs of individual SB may continue the execution of the contract. If tender had been awarded to several persons, the PE shall consider whether to terminate the contract or continue with it based on agreement among the remaining consultants to complete the assignment.

References

1. Law No. 12/2007 of 27/03/2007 on Public procurement.
2. Ministerial order No. 001/12/2007 of 16/01/2008 establishing regulations on public procurement and standard bidding documents.
3. Law No. 25/2011 of 30 June 2011 establishing and determining the organization, functioning and responsibilities of Rwanda Public Procurement Authority.
4. Public Procurement User guide, November, 2010.
5. Ministerial instruction No 001/11/10/TC of 24/01/2011 establishing the professional code of ethics governing public agents involved in public procurement.
6. RPPA Website: www.rppa.gov.rw.