
COOK ISLANDS GOVERNMENT

Purchase and Sale of Goods and Services Policy (Procurement Policy)



This policy is approved to be effective 2nd July 2024

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ABBREVIATIONS

BTIB	Business Trade Investment Board
CIG	Cook Islands Government
EOI	Expressions of Interest
HOA	Head of Agency
MFEM	Ministry of Finance and Economic Management
NTT	Notice to Tenderers
PSGS	Purchase and Sale of Goods and Services
PPP	Public Private Partnership
RFT	Request for Tender
SOE	State Owned Enterprises
TC	Tender Committee
TVP	Tarai Vaka Process

DEFINITIONS

TERM	EXPLANATION
Agency	means all Ministries, Island Administrations, Crown Funded Agencies and State Owned Enterprises and “Agencies” has a corresponding meaning.
Board	means the Board of Directors established by enactment.
Cabinet	means the Cabinet of Ministers as established by Article 13 of the Constitution.
Central Procurement	means one agency having responsibility for completing procurement activities for another agency or agencies.
Coercive Practice	means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
Collusive Practice	means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
Conflict of Interest	means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
Corrupt Practice	means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
Emergency Situations	means (a) natural or manmade disasters – e.g cyclones, tsunamis, flooding, fires or contamination; (b) critical health or environmental emergencies – e.g pandemic or food security; and (c) failures of critical infrastructure or events involving supply of utilities – e.g power, water, communication or road and hospital infrastructure failures.
Format	means the actual text/content within a tender document but does not include letter heads, style or font.
Fraudulent Practice	means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

TERM	EXPLANATION
Head of Agency	means the person holding delegated responsibility of a Minister and includes a Chief Executive Officer or a Managing Director of a State Owned Enterprise. Where the purchase and/or sale is for a State Owned Enterprise the Minister may be referred to as the Board of Directors.
Island Government	has the meaning given to it in section 4 of the Island Government Act 2012-2013.
Non-Price	means those benefits, qualities, procedures or systems which are not evaluated using cost alone.
Obstructive Practice	includes (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an investigation; (b) making false statements in order to materially impede an investigation; (c) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (d) materially impeding contractual rights of audit or access to information.
Price	means the cost of goods or services evaluated based on budget availability or cost.
Tender Committee	means the committee established as per section 6 of this policy, with the exemption of State Owned Enterprise where SOEs may use their Board of Directors as their Tender Committee (TC) unless CIG Capital Funded, in which case the TC will comprise the Financial Secretary (or nominee), the Solicitor-General (or nominee) and the relevant SOE's Board Chairman.
Tarai Vaka Process	Cook Islands Government Activity Management Cycle
Tender Report	means the report to be submitted to the Tender Committee by the tendering agency, including an assessment summary on the procurement process conducted with recommendation for Tender Committee approval.
Tender Secretariat	means the secretariat to the Tender Committee
Tender Team	means the group of people who are responsible for the management of the tender process and includes those people who are specifically responsible to evaluate Tenders.
Quote report	means a report prepared for the purposes of a quote process for purchases estimated to be above \$50,000.

TERM	EXPLANATION
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Waiver	means a waiver under section 1.11 of this procurement policy
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INTRODUCTION

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I OVERVIEW

I.1 Authority

- I.1.1 The policy is made pursuant to section 63 of the Ministry of Finance and Economic Management Act 1995-96 (MFEM Act), and any subsequent legislation that empowers MFEM to issue instructions to ministries and line agencies to ensure compliance with financial disciplines.

I.2 Application

- I.2.1 This policy applies to all CIG agencies.
- I.2.2 It is recognised that State Owned Enterprises (SOE) may require some adaptation of this policy due to the structure and the commercial nature of their businesses. SOEs are expected to comply with this policy unless otherwise authorised by the Financial Secretary or Gazetted under the MFEM Act.
- I.2.3 Where the purchase and/or sale is for a State Owned Enterprise, matters requiring the approval of the Tender Committee under this policy may instead be referred to the Board of Directors of that State Owned Enterprise. In this context, all relevant references in this policy to the Tender Committee will be deemed to be references to that Board of Directors. This section 1.2.3 does not apply to purchases for State Owned Enterprises which are funded, in part or in full, by the Cook Islands Government.
- I.2.4 Although this policy allows for traditional procurement that includes agreements and contracts with the private sector, there is currently no PPP Policy.
- I.2.5 This policy must be read together with the PSGS Templates Booklet which may be amended from time to time. Templates and sample documentation referred to in this policy are published separately by MFEM and available from time to time on the MFEM website.
- I.2.6 Where purchases pertain to activities that fall under Tarai Vaka Process (TVP), all required TVP approvals have to be obtained prior to the commencement of the purchasing of goods and/or services process. The only exception to this stipulation is the Expression of Interest process, which can be run prior to obtaining TVP approvals as long as no financial commitment is made as part of this process.

I.3 Purpose

- I.3.1 This policy is designed to ensure that the Crown conducts all sales and purchases in a uniform manner which is open, transparent and provides value for money for the Crown.

I.4 Mandatory Limits for All Sales and Purchases

- I.4.1 The following sets out the monetary (VAT Exclusive) limits with regards to all sales and purchases.

Transaction Type	Estimate Cost / Sale Price	Specific Process
Purchases (Within Agency Budget)	\$200,000 and above	Tender with Head of Agency (HOA) and TC approval
	\$100,000 – \$199,999	Quotations with HOA and TC approval
	\$5,000 - \$99,999	Quotations with HOA approval

Purchases (Outside of Agency Budget)	All	Cabinet
Asset Sales	All Vehicles Other Assets where original cost is \$5,000 or above	Tender or Auction
	Original Cost is under \$5,000	Advertise within entity on a first-come first-served basis.

1.5 Authority Levels

1.5.1 This table sets out who may authorise spending for a particular purpose.

Transaction Type	Estimate Cost / Sale Price	Specific Process
Purchases	Up to \$99,999	HOA
	\$100,000 and above	HOA and TC
Sale of Assets	All sales	HOA except where this is for vehicles it will also include the Financial Secretary

1.6 Delegation of Authority

1.6.1 Heads of Agencies who wish to delegate authority for procurement are to clearly document such delegation in writing in accordance with the law that establishes their Agency and the CIG Public Service Manual.

1.6.2 Documentation for delegated authority should include the following information:

- a) The type of transaction authorised, e.g. operating expenditure or capital expenditure;
- b) The level of expenditure authorised; and
- c) The area of the organisation, or the appropriation, to which the authority extends e.g. Management Accounting Division of MFEM only.

1.6.3 The Heads of Agencies must delegate the appropriate authority in writing to Heads of Divisions (or equivalent), Finance & Purchasing personnel or any other relevant personnel. The law does not authorise the delegation of authority to anyone who is not employed by the Agency.

1.6.4 Members of Parliament or Island Government must not be delegated authority to purchase goods or services. This does not mean that they cannot be consulted or offer advice.

1.6.5 Any payments to the Head of Agency must be countersigned by the Senior Finance Officer and where possible another manager. A copy of this approved invoice must be kept on a separate file and be made available to Audit.

1.7 Funding

- 1.7.1 All purchasing must be made from the net total in the relevant Appropriation Act. It is not permissible to top up a capital purchase with operating funds.
- 1.7.2 Before any procurement takes place, the Head of Agency must ensure funding is available to carry out the completion of the contract or explicitly state that a contract will only be let once funding is available.
- 1.7.3 Procurement contracts can be multi-year only if full funding is available for the duration of the contract works.

1.8 Conflicts of Interest

- 1.8.1 All public servants must declare interests in writing in any business entity that is seeking public funds by way of tender bid or otherwise to the Head of Agency. See templates available.
- 1.8.2 All tender bids should be accompanied by a conflict of interest declaration by those representing the bid including how they will manage these if any.
- 1.8.3 Tendering agencies should ensure that all personnel directly involved in the tendering process must declare any conflicts of interest before the tender is evaluated. In the case of the Head of Agency, declaration should be made to the Public Service Commissioner or, if for an SOE, these should be made to the governing board of the SOE and the MFEM Procurement Tender Secretariat.
- 1.8.4 When the Head of Agency believes a conflict of interest arises, or could be seen to arise, the individual affected must remove themselves from the tender situation. Details of all conflicts must also be reported to the tender committee.
- 1.8.5 When a tender is issued by MFEM, the Solicitor-General (or a nominee of the Tender Committee) will chair the Tender Committee whereby the Solicitor-General will provide his/her final recommendation to the tender secretariat. At no time during the analysis process by the tender committee will the Financial Secretary make any recommendations on MFEM tenders.

1.9 Fraud and Corruption

- 1.9.1 All agency staff, tenderers, suppliers, contractors, sub-contractors, service providers or suppliers, and any personnel thereof (procurement parties), must observe the highest standard of ethics during the procurement and execution of CIG contracts including ensuring good governance, accountability and transparency in accordance with standards of fiscal responsibility as required by the MFEM Act.
- 1.9.2 Government has the right to immediately terminate the procurement process because there has been a breach of ethics by a procurement party who:
 - a) Has made, caused to be made, received any offer, gift, payment, consideration, inducement, reward or benefit of any kind, which would, or could be construed as an illegal, unethical, or corrupt practice.
 - b) Is being investigated for a fraudulent practice or is subject of a finding of fraud, or is convicted of a serious criminal offence;
 - c) Influences the actions of another party by a coercive practice or collusive practice; or
 - d) Does anything which amounts to an obstructive practice.

1.10 Variations to Existing Contracts

- 1.10.1 When a contract which was entered into as a result of a tender process requires a variation which would have the effect of increasing the agency spend by more than 15% of the total spend under the contract, the proposed variation must be approved by the tender committee.

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- I.10.2 When a contract entered into as a result of a quotation process (with HOA approval) requires variation and the effect of that variation would be to exceed \$99,999 in total payments made under the contract, the proposed variation must be approved by the tender committee.
- I.10.3 When a contract entered into as a result of a quotation process (with HOA and TC approval) requires variation and the effect of that variation would have the effect of increasing the agency spend by more than 15% of the total spend under the contract, the proposed variation must be approved by the tender committee.
- I.10.4 Agencies must provide the following information when requesting an approval:
- a) Tender title and Reference number, if applicable;
 - b) Background information in regards to existing contract;
 - c) Reasons for variation;
 - d) Total cost of variation;
- I.10.5 A request for variation will only be considered in the following circumstances:
- a) where there is an urgent need to proceed with a variation in order to protect life or property;
or
 - b) where there is an urgent need for the variation to be carried out due to an Emergency Situation or unforeseen events; or
 - c) Market or funding restrictions specifically required by the project and the tender committee is satisfied of the case; or
 - d) the tender committee is satisfied that there are exceptional circumstances specifically required by the project; or
 - e) when Intellectual Property (IP) owned by one or more supplier is necessary to the success of the procurement process, for example a renewal of a service contract to support existing enterprise software. The Tender Committee may require a review of alternative options or an explanation of the necessity of expenditure prior to approval.
- I.10.6 Where the variation pertains to an activity that falls under TVP, TVP approval for the variation has to be obtained prior to tender committee approval.
- I.10.7 A lack of forward planning by agencies is not an acceptable reason for urgency nor will it be considered an 'exceptional circumstance' for a particular tender project.
- I.10.8 If no written approval is provided by the Tender Committee, funding will not be authorised for release.

I.11 Waiver

- I.11.1 If an agency wishes to deviate from the procurement process the agency must write to the tender committee to obtain approval for a waiver. A waiver will only be considered in the following circumstances:
- a) when there is an urgent need to proceed with a project in order to protect life or property;
or
 - b) when there is an urgent need for the project to be carried out due to an Emergency Situation or unforeseen events; or
 - c) when no tenders have been received for a particular project or where there is likely to be only one supplier that is reasonably capable of supplying the relevant goods or services; or

- d) the tender committee is satisfied that there are exceptional circumstances specifically required by the project; or
 - e) when Intellectual Property (IP) owned by one or more supplier is necessary to the success of the procurement process, for example a renewal of a service contract to support existing enterprise software. The Tender Committee may require a review of alternative options or an explanation of the necessity of expenditure prior to approval.
- I.11.2 A lack of forward planning by agencies is not an acceptable reason for urgency nor will it be considered an 'exceptional circumstance' for a particular tender project.
- I.11.3 The agency must be clear on which process or sections of the procurement policy they are requesting to deviate.
- I.11.4 If no written approval is provided by the Tender Committee, funding will not be authorised for release.

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PURCHASES OF GOODS AND SERVICES

2 EXPRESSIONS OF INTEREST

2.1 Expression of Interest Process Requirements

- 2.1.1 The purpose of an Expression of Interest (EOI) is to explore market availability. EOI may be sought prior to completing a full tender process. The tender specifications documents may have to be revised to include any changes resulting from the receipt of EOI. Any proposed tenderers who submit an EOI must be provided the opportunity to tender.
- 2.1.2 EOI may be used as a process for creating a list of reputable suppliers. Any method for evaluating and selecting these suppliers must be approved by the Tender Secretariat.

3 PROCUREMENT METHODS

3.1 Overview

3.1.1 For the purpose of this policy potential procurement methods include:

- a) Quotation
- b) Open Tender
- c) Closed Tender
- d) Request for Proposals
- e) Direct Contracting
- f) Emergency Procurement

3.1.2 Although methods are determined based on the estimated cost thresholds, should a purchase fall within the quotation threshold, the procuring entity can choose to use a tender process. This section 3 is intended to summarise how such procurement methods (particularly direct contracting) can be accommodated under this procurement policy. This section does not establish procurement methods which are in addition to, or separate from, the procurement methods set out in more detail in other sections of this policy.

3.2 Quotation

- 3.2.1 Subject to section 3.3.2, the quotation process is the primary method for purchases that are estimated to be between \$5,000 and \$199,999.
- 3.2.2 Refer to section 5 - Quotations for full policy requirements.

3.3 Open Tender

- 3.3.1 The open tender process is the primary method for any purchases that are estimated to be \$200,000 and above.
- 3.3.2 This method can also be used for purchases estimated to be below \$200,000, if appropriate.
- 3.3.3 Refer to section 6 - Tenders and section 7 – Open Tender for full policy requirements.

3.4 Closed Tender

- 3.4.1 The closed tender process is a restricted tender process for any purchases that are \$200,000 and above.
- 3.4.2 Tender Committee approval must be sought prior to proceeding with a closed tender process.
- 3.4.3 Refer to section 8 – Closed Tender for full policy requirements.

3.5 Request for Proposals

- 3.5.1 Request for Proposals can be used via either a tender process or the quotation process, depending on the estimated cost of the procurement.
- 3.5.2 Request for Proposals \$200,000 and above must follow the open tender process and those that are below \$200,000 must follow either, at the Agency's discretion, the quotation process or the tender process.
- 3.5.3 Refer to section 7 – Open Tender or section 5 - Quotations for full policy requirements.

3.6 Direct Contracting

- 3.6.1 Direct contracting is where an Agency is permitted to engage and contract with a single supplier (or a syndicate of suppliers supplying goods and/or services under a single contract) for the procurement of goods and/or services pursuant to a HOA/CEO approval and, where applicable, a Waiver, as otherwise provided for in this procurement policy.
- 3.6.2 Direct contracting with a supplier for quote purchases below \$100,000 (Quotation with HOA approval process) must be approved by the HOA/CEO. Full justification for selection must be kept on record for audit purposes.
- 3.6.3 Direct contracting with a supplier/s for quote purchases between \$100,000 and \$199,999 (Quotation with HOA and TC approval process) must be approved by the HOA/CEO and the Tender Committee. Where purchases are not advertised a Waiver must be sought and approved by the TC for direct contracting. Full justification for selection must be kept on record for audit purposes.
- 3.6.4 Direct contracting for purchases \$200,000 and above (Tender with HOA and TC approval process) must be approved by the HOA/CEO and the Tender Committee. Where purchases are not advertised a Waiver must be sought and approved by the TC for direct contracting. Full justification for selection must be kept on record for audit purposes. Refer to section 5 – Quotations, section 6 – Tenders, or section 1.11 – Waiver for full policy requirements.

3.7 Emergency Procurement

- 3.7.1 Emergency procurement options available in Emergency Situations include direct contracting or quote with HOA approval process methods.
- 3.7.2 Tender Committee approval must be sought by requesting a Waiver to proceed with direct contracting or proceeding with a Quote with HOA approval process for an emergency procurement should the purchase be \$100,000 or above.
- 3.7.3 Emergency requests will only be considered in the following circumstances:
- a) natural or manmade disasters – e.g cyclones, tsunamis, flooding, fires or contamination;
 - b) critical health or environmental emergencies – e.g pandemic or food security; and
 - c) failures of critical infrastructure or events involving supply of utilities – e.g power, water, communication or road and hospital infrastructure failures.
- 3.7.4 A lack of forward planning is not an acceptable reason for emergency procurement methods to be considered.
- 3.7.5 Refer to section 1.11 – Waiver for policy requirements relating to waivers.

4 ALTERNATIVE PROCUREMENT

4.1 Central Procurement

- 4.1.1 A tender or quote process is not required for agencies procuring from the central procurement provided that the agency responsible for the central procurement has complied with this policy.
- 4.1.2 If goods are to be procured as a replacement for good(s) which are to be disposed of, those replaced good(s) must be returned to the procurement agency at Book Value.

4.2 Public Works Model Procurement

- 4.2.1 A public works model is where an Agency takes primary responsibility for the management, delivery and, where applicable, completion of a works project or public services, rather than contracting with a prime contractor (or similar) to undertake such responsibility. A public works model may include the Agency procuring products, services and facilities from external suppliers in addition to, or in place of, the Agency's own personnel, resources, facilities and equipment.
- 4.2.2 A public works model may be used where it is a more efficient and more cost-effective method of completing public works or providing public services instead of procuring it from the Private Sector. For example, in providing essential infrastructure or services in the Pa Enea (outer islands) where there are significant extenuating circumstances, such as long distances from the capital, Rarotonga, and heavy lift capacity that is only available by sea with limited domestic shipping services. Typically, infrastructure projects are totally reliant upon imported materials, equipment and skilled labour. Public administration and construction capacity in the Pa Enea is generally low level and with limited capacity. Projects tend to be smaller to reflect small communities and present high risks with low profit margins for the private sector. The outcome of a competitive bidding process for a prime contractor tends to make the projects unaffordable, unless grant funded by a development partner.
- 4.2.3 Where an agency chooses to use the public works model, they are reminded that, where external contracting (for goods or services) is required, they must still comply with this policy.

5 QUOTATIONS

5.1 Quotation Process Requirements

- 5.1.1 Purchases between \$5,000 and \$199,999 must follow either the quotation process or the tender process.
- 5.1.2 At least 3 quotes should be obtained from suppliers of goods and services in the Cook Islands, unless circumstances dictate that fewer quotes are obtainable. Quotations should only be obtained from those genuinely interested in supplying the goods or service.
- 5.1.3 When it is not possible to obtain 3 quotes, an indication of the appropriate price for the product or service should be obtained in order to ensure that the quotation provided represents a fair price for the good or service.
- 5.1.4 A Head of Agency must authorise any purchase of \$5,000 and above where less than 3 quotations are obtained and justification should be kept on record for audit purposes.
- 5.1.5 Ensure the same instructions/specifications are supplied to all parties furnishing quotations including the VAT component. Ensure that the detail of the quotes is sufficient to be able to make valid comparisons e.g. if freight is included
- 5.1.6 The following is a list of issues to consider when obtaining a quote. This list is indicative only as each situation is different.
 - d) Full description of the purchase/sale item including, where relevant, size, weight.
 - e) Gross Amount.

- f) Tax Amount.
 - g) Delivery date and availability.
 - h) Condition, if second hand.
 - i) Warranty conditions.
 - j) Maintenance.
 - k) Levies.
 - l) Freight.
 - m) Payment requirements – discounts, payment terms and dates.
- 5.1.7 All quotes between \$5,000 and \$99,999 must be compared with each other, assessed and approved by the Head of Agency.
- 5.1.8 All quotes \$100,000 and above must be approved by the Head of Agency and the Tender Committee and the following requirements apply to all purchases estimated to be between \$100,000 and \$199,999 procured via the quotation process:
- a) Requests for quotes must be advertised for a minimum of 10 working days to provide a reasonable period of time for potential tenderers both here, outer islands and overseas to submit proposals. Advertisement must be advertised by way of at least 3 different sources of public media services
 - b) Signed declarations of conflict of interest must be provided by all agency staff members responsible for the quote process and the suppliers providing the quotes.
 - c) The agency must complete and submit a Quote Report signed by the Head of Agency to the tender committee to obtain approval for their recommended purchase.
 - d) The Quote Report must provide supporting documentation including:
 - i. proof of advertising;
 - ii. signed declarations of conflict of interests,
 - iii. original copy of quotes; and
 - iv. the quote document check list.
 - v. when only one or two quote(s) are obtainable the information about the reasonableness of those quote(s) must be provided with the quote(s) for approval of the Tender Committee.

6 TENDERS

6.1 Tender Committee

- 6.1.1 The Tender Committee is responsible for ensuring that a contestable, transparent, accountable, arms length and without favouritism (probity) process has been followed, not to duplicate the work of the evaluation team. This ensures that the Crown and the taxpayer receive the best possible value for money.
- 6.1.2 The Tender Committee consists of the Financial Secretary (or nominee), Solicitor-General (or nominee) and other technical advisors as required, provided that these advisors are not members of the tender committee but act in an advisory capacity only.

6.1.3 Tender Committee members who wish to delegate authority for procurement activities are to clearly document such delegation in writing and which must be kept for record keeping and audit purposes.

6.1.4 MFEM is responsible for providing secretariat support to the tender committee.

6.2 Recording

6.2.1 Details and all related documentation for the process of the tender must be labelled and filed clearly, and made available for inspection, review and audit. All tender outcomes will be published.

6.2.2 All related documentation for the process of the tender will be made available to the Office of the Ombudsman or any other properly authorised investigative office for investigation purposes if requested. All tender processes are subject to review by the Audit Office under the provisions of the Public Expenditure Review Committee Act.

6.3 Confidentiality

6.3.1 Employees of agencies should not, except so far as may be necessary for the proper performance of the employee's duties, as authorised by the Head of Agency or as may be required by law:

- a) Disclose to any person any official information that has come to the knowledge of the employee in the course of the tender process;
- b) Use or attempt to use any such official information for personal benefit, or the benefit of any other person or organisation, or in any manner whatsoever other than in accordance with the duties, and consistent with the obligation, of honesty expected of a person holding a position with the Crown.

6.3.2 Any member of the tender team that is not a public servant must agree to the above conditions by signing an agreement with the agency before being approved as a member of the team.

6.3.3 The evaluation process and relative documents are confidential. It is at the discretion of the Head of Agency whether to disclose the evaluation process to the tenderers. If it appears to the Head of Agency that he/she may be asked to exercise that discretion the tender documentation should clearly state the evaluation process may be disclosed to tenderers.

6.4 Documentation

6.4.1 Template documentation is available for the preparation of tenders and must be used. If there is a compelling reason why this documentation is not appropriate for the tender you are preparing you should seek Crown Law Office legal advice before obtaining approval from the Tender Secretariat to use other tender documentation.

6.4.2 These documents are:

- a) Template Request for Tenders;
- b) Contract for the Supply of Products;
- c) Contract for Supply of Products and Services;
- d) Contract for the Engagement of a Consultant;
- e) Contract for Construction
- f) Template Tender Report;
- g) Declaration of Confidentiality and Conflict of Interest;
- h) Document Checklist

- i) Self Evaluation Checklist
- j) Tender Log

6.5 Electronic Tender Submissions

- 6.5.1 Agencies may use the electronic tender account to submit their tenders (e-tenders) but must obtain the tender secretariat's approval to use the electronic tender account before advertising the tender.
- 6.5.2 The agency may allow tenderers to submit their tenders in hard copy.
- 6.5.3 E-tenders must only be opened on the day of the opening of the tender box. Access to the electronic tender account is limited to ensure integrity, confidentiality and that the tenders are kept secure.
- 6.5.4 To ensure that e-tenders have been successfully received by the electronic tender account, bidders should ensure that they receive an automatic receipt from the electronic tender account notifying a successful receipt. If a receipt is not received tenderers should contact the contact officer responsible for that tender.
- 6.5.5 Tender documents must include an approved statement explicitly stating that e-tenders are acceptable to the agency and describing how e-tenders will be submitted.

7 OPEN TENDER

7.1 General

- 7.1.1 A tender is an invitation to the market to provide offers for the provision of goods and or services. These offers will be evaluated and where appropriate, the Crown will enter into a contract with the successful tenderer.

7.2 Open Tender Steps

- 7.2.1 The following are the steps which must be undertaken when conducting a tender. Each of these steps is discussed in detail below.

Step 1: Appropriation details

Step 2: Delegated Authority

Step 3: Tender Team

Step 4: Specifications

Step 5: Tender documentation and contract

Step 6: Tender Committee Secretariat Sign Off Prior to Advertising

Step 7: Advertising Tenders

Step 8: Opening of Tender Proposals (Manual and Electronic Tenders)

Step 9: Evaluation of Tenders

Step 10: Tender Committee Approval Prior to Awarding Contract

Step 11: Awarding of the Contract

7.3 Step One - Appropriation details

- 7.3.1 Prior to any tendering process taking place, the Head of Agency must ensure funding is available to carry out the completion of the contract or explicitly state that a contract will only be let once funding is available.

7.4 Step Two - Delegated Authority

- 7.4.1 Prior to issuing any tender process all staff should ensure that they have the appropriate delegated authority in order to do so and also that they act within the limits of that authority. Refer to section [1.6](#) of this policy for further details.

7.5 Step Three - Tender Team

- 7.5.1 A tender team must be established to issue, document, manage the tender process, and evaluate tenders. The tender team shall consist of 3-5 members with appropriate expertise, from within or outside the agency, e.g. engineer, technical assistants, financial advisers and/or any other relevant personnel.
- 7.5.2 The tender team members may change at times during the process but it is recommended that a core membership be maintained throughout the whole process for continuity and consistency. For any project of complexity or length it is important that a person with experience in project management be included to advise on project logistics.
- 7.5.3 Each tender team member must sign a conflict of interest and confidentiality form declaring any conflict of interests which may, or may be seen as affecting his or her involvement with the tender. If a conflict of interest exists, but the team member is to remain a member, the tender team must record how they will manage conflict of interest. Copies of all declarations and descriptions of how conflicts of interest are to be managed must be kept on the tender file. Any declarations containing possible conflicts should be acknowledged as seen and signed by the Head of Agency.
- 7.5.4 One tender team member will be appointed as Chair and delegated the responsibility for ensuring procedural integrity and compliance throughout the process. One tender team member will be delegated the responsibility of recording all information and activity relating to the process.
- 7.5.5 If any Member of Parliament, including Ministers, are involved in the tender or quote, this must be noted by the evaluation team and brought to the attention of the tender committee in their report. Extra care should be taken to ensure the process is transparent, without bias and will withstand public scrutiny.

7.6 Step Four - Specifications

- 7.6.1 The specifications are a clear statement identifying what the agency wishes to purchase and outlining what is required from the supplier. For instance:
- a) Freight, duty, wharfage and handling and transport. To avoid confusion appropriate Incoterms should be used. Refer <https://www.searates.com/reference/incoterms/> for further details and useful terms.
 - b) Installation or construction requirements.
 - c) Time frame for expected completion.
 - d) Detailed design/plan (for civil works construction projects), drawings or photographs (for motor vehicles, machinery and equipment).
 - e) Quantity listing materials, e.g. cubic metres of cement, number of nails or timber.
 - f) Quality standards e.g. grade or mix of cement required, hurricane or standard nails, type of timber etc.

7.6.2 The specifications should be prepared by an appropriately qualified person and should be peer reviewed by another suitably qualified person. In addition the grammar, formatting and punctuation should be reviewed by a suitably qualified person.

7.6.3 Check to make sure the specifications in the tender are matched word for word in the contract section.

7.7 Step 5 – Tender Documentation and Contract

7.7.1 The tender documentation must clearly set out the process which will be followed in conducting the tender. It is essential that this is clear and complies with the requirements of this policy in order to avoid litigation risk for the Crown. The tender must contain the mandatory terms discussed below, the proposed form of contract, the specifications of the goods or services which the tenderer is to provide, pricing details and any further information that may be relevant to the assessment, i.e. previous experience as well as how tenders will be evaluated. See Step 9 for tender evaluation procedures.

7.7.2 There are **mandatory terms** for tenders. **Schedule One** contains mandatory tender terms which must be contained in any tender documentation. These mandatory terms are contained in the template documentation which you should use to prepare a tender.

7.7.3 **Template contracts** must be attached to tenders. If the template contracts do not meet requirements advice should be sought from Crown Law who will assist by directing you to the appropriate contracts or drafting a contract for you. The tender evaluation criteria must include a provision for the tenderer to accept the contract terms or to propose amendments.

7.7.4 A standard form should be drawn up that separates the **price** into relevant columns or sections and which matches the specifications. The tender team must be easily able to compare different tenders and understand if there is anything missing or additional in tenders that requires a price adjustment.

7.7.5 All tenders must clearly show the VAT exclusive price, the VAT amount and a total inclusive of VAT amount. All values must be shown in New Zealand Dollar (NZD) currency unless approved otherwise by the TC Secretariat.

7.7.6 Due diligence questions on aspects of technical and commercial performance must also be included such as history/background of tenderer, similar projects or successful contracts completed, quality of services or materials. It is necessary to gather all the relevant information on functionality/performance, commercial considerations, and technical aspects of the tenderers proposal, in order to assist the agency in ensuring that the right decision is made when choosing the successful tenderer. There should be no limit on the amount of information to be provided.

7.7.7 Evaluation criteria should be determined when tender documents are being prepared and included in the tender documentation. This will ensure that tenderers provide the correct information. Value for money must be integrated into the evaluation criteria otherwise you are free to set whatever criteria you believe will get the best result.

7.8 Step 6 - Tender Committee Secretariat Sign Off Prior to Advertising

7.8.1 Agencies must complete the internal checks and if satisfied, complete the documentation self-evaluation checklist (refer to templates). Documents should be proof read by the agency and at a standard ready for the market. The tender secretariat will review the documents, but is not a proof reader.

7.8.2 All tender documents should be forwarded to the tender secretariat with sufficient time to allow for a complete review. The review should be relatively quick if agencies have followed the policy requirements and used the template documents. Agencies who have not used the templates can expect a longer tender secretariat review time.

7.8.3 The review will ensure compliance with this policy including checks and endorsement of the documentation self-evaluation checklist. All documents will be returned to the agency upon the completion of the review.

- 7.8.4 Agencies must prepare a tender box, clearly marked “Tenders” with a slot and locked casing for the receipt of hard copy tender proposals.
- 7.8.5 Agencies must communicate with the tender secretariat to ensure an electronic tender account is made available to receive e-tenders. The tender documents should ensure that tenderers are advised of the availability of an electronic tender account.

7.9 Step 7 - Advertising Tenders

- 7.9.1 The tender advertisement must include:
- a) the name of the agency requesting the tender;
 - b) the contact person and details (telephone/email) for enquiries;
 - c) a brief description of the goods or service required;
 - d) details of where tender specification documents can be obtained; and
 - e) closing date and time for the lodgement of tender proposals.
- 7.9.2 All tenders must be advertised for a minimum of 10 working days. This will provide a reasonable period of time for potential tenderers in Rarotonga, the outer islands and overseas to submit proposals.
- 7.9.3 The request for tender should be advertised by way of at least three (3) different sources of public media services e.g. local newspapers, local television, Ministry notice boards, e-tender subscribers, website or distribution of flyers etc. Consideration for outer islands and overseas recipients should be taken into account and the appropriate media service should be chosen to cater for their needs.
- 7.9.4 The tender advertisement must include heading consistent with tender documentation so that tenderers receive tender documents consistent with the advertisement.
- 7.9.5 If at any time during the advertising of the tender, the tender team varies any aspect of the tender specifications or the timeframe for submissions, this must be communicated via Notice to Tenderers (NTT) to anyone who has expressed an interest and all other potential tenderers. If a tenderer has already submitted a tender, they must be allowed to resubmit the tender for the variation to the specifications. Information can be made available via web, or directly if specifically stated in the tender document.
- 7.9.6 Agencies must prepare a tender log form to register all parties that collect or request copies of the tender documents. This form must note the date taken, name of interested party, and contact details should there be a need to contact the party in the event there are any amendments to the tender process.
- 7.9.7 Agencies must prepare a tender log form to register all parties that deliver or have sent in their tenders. This form should note the date and time received, whether by post or in person, name of interested party, and contact details should there be a need to contact the party in the event there are any amendments to the tender process.
- 7.9.8 Negotiations **must not take** place between the tender team and any prospective tenderers during the advertising stage.
- 7.9.9 When there are queries for clarification about the tender from prospective tenderers the agency must respond to the queries in writing. The agency must make the same information available to all tenderers or potential tenderers by circulating the written response to those who have registered for tender documentation and attached to the tender documentation for those that have not yet collected the tender documentation.

7.10 Step 8 - Opening of Tender Proposals (Manual and Electronic Tenders)

- 7.10.1 The tender box should be opened as soon as possible after the closing date but in any event no more than two (2) working days after the closing date.
- 7.10.2 All tender team members present must have completed a conflict of interest and confidentiality declaration before the tender box is opened.
- 7.10.3 The tender box should be opened only at the tender opening and in the presence of relevant members of the tender team and at least one (1) other witness. Agencies may include as witnesses any one of the following people: Police Officer, Member of the Clergy, MFEM Finance or Procurement Officer, an Accountant, a Lawyer or a Justice of the Peace.
- 7.10.4 The tender log form for receiving tenders should be used to verify what is declared from the opening of the tender box. The tender should be opened and the names of each tenderer should be read out. The log form can be filled out by anyone attending the opening other than the person reading out the tender details.
- 7.10.5 Should any member present identify a possible conflict of interest during tender opening, this should be immediately declared and the declaration form updated before continuing.
- 7.10.6 The tender team must check the proposals to ensure that tenderers have conformed to the mandatory conditions of tender. Any offer that does not meet the mandatory conditions is non-conforming. Regardless of how attractive the proposal is it should be removed from the remaining evaluation process.
- 7.10.7 Notification must be sent out immediately to non-conforming tenderers, informing them of the failure of their tender proposal to conform to the mandatory conditions. The letter must advise the tenderer that their proposal will not be considered in the tender process. The letter must be sent out before the evaluation process begins. The letter should give the non-conforming tenderer 48 hours to respond with reasons for why the tender should be deemed conforming. The letter should also advise that the tender team may accept the reasons or may determine that the reasons do not affect the decision to deem the tender non-conforming and their decision is final and binding.
- 7.10.8 All conflict of interest forms should be reviewed by the tender team. The Chairman must reiterate the need for confidentiality and if after opening the tender bids conflicts are discovered the tender evaluation should be suspended until the Chairman has disclosed these to the Head of Agency and appropriate action has been taken.
- 7.10.9 If all tenders received are non-conforming a new tender process must be commenced. The agency should review the tender specifications to ensure it is possible for potential tenderers to comply with the requirements. The agency must advise the tender secretariat of the situation and the plans for moving forward.

7.11 Step 9 - Evaluation of Tenders

- 7.11.1 Should any member of the tender (evaluation) team present identify a possible conflict of interest, the tender evaluation should be suspended. The Chairperson must disclose the conflict of interest to the Head of Agency who will decide how the conflict of interest will be managed. The declaration form and explanation about how the conflict is to be managed must be recorded before the tender evaluation continues.
- 7.11.2 Tender Compliance
- a) The most critical part of the evaluation of tenders is ensuring that bids fully meet the specifications of the tender. The tender evaluation team is responsible for ensuring that there is fair comparison of tenders.
 - b) When the tender documents allow, tenders may be accepted for only part of the full tender specification.

- c) The tender evaluation team has the right to disqualify tenders which do not meet the specifications or do not offer to complete the full requirements of the tender. The disqualification is binding and no discussion will be entered into.
- d) The tender evaluation team has the right to alter tender prices where appropriate in order to properly meet the specifications of the tender. This should be achieved through using qualified estimates of cost. If there are no tender prices made the tender should be marked non-compliant and disqualified. The disqualification is binding and no discussion will be entered into. A full justification for any price adjustments must be recorded in the Tender Report.

7.11.3 Evaluation Criteria

- a) Tenders must be evaluated using the weighted scoring method. This method requires the assessment and grading of identified factors resulting in a score, usually out of 100 or 1000.
- b) If a request for tender is able to be carried out by a locally established company or if the request for tender has the ability to use local labour/resources, part of the evaluation criteria should include a weighted scoring for locally established companies.
- c) The format of the evaluation criteria should be set out in a way that will allow each evaluation team member to allocate points to a tenderer for each category assessed.
- d) If an agency has provided a contract with the tender documents, the tenderers acceptance of the terms of that contract must be assessed and weighted positively. A tenderers non-acceptance of the terms of the contract by making any amendments to the terms must be assessed and weighted negatively.

7.11.4 Short Listing

- a) Short-listing may be required for more complex purchases or where a large number of tender proposals are received. If the need to short-list eventuates, the process as outlined in the tender documentation must be followed to ensure a fair and just selection of short-listed tenderers has been conducted.

7.11.5 Tender Proposal Evaluation

- a) The tender proposals (or copies) may be handed out to the evaluation team members after the tender opening. Evaluation team members should be given enough time to review bids before assigning views.
- b) If the tenders are not to be evaluated immediately after the tender box is opened, a date, time and venue should be decided upon for the tender (evaluation) team to meet to evaluate the tenders. The evaluation of tenders should only be conducted after the Tender Compliance is completed.
- c) The tender documents must be made available to the evaluation team members as soon as possible or at least 24 hours prior to the evaluation process beginning. This allows the tender (evaluation) team members the opportunity to familiarise themselves with the process and tender documents. A set of these documents must also be made available during the evaluation.
- d) The evaluation process is a very sensitive procedure and must be conducted in strict confidence with minimal interruptions in preferably a private location.
- e) Limited access to any tender must be applied at all times. The original tender must be made available during evaluation for cross-reference or verification purposes. Tenders are confidential for the duration of the tender process.
- f) Tenders can be distributed confidentially in either electronic or hard copy.
- g) A member of the tender (evaluation) team should officially introduce the other evaluation team members to the process and hand out the necessary documentation required for the purpose

of evaluating the tenders. The evaluation team members must be reminded of their obligations and informed on how the evaluation will commence.

- h) The evaluation team members have the right to request further information or clarification on any areas, whether relating to the tenders or relating to the evaluation. The tender team should be available to provide any clarification sought.
- i) The evaluation team members may discuss openly any aspects throughout the process.
- j) At the completion of the evaluation for each tender, the chair of the evaluation team shall collect all documents from each member and make note of any recommendations.
- k) A Tender Report, endorsed by each member of the evaluation team must be completed and submitted with recommendations, for the attention of the respective Head of Agency.
- l) The tender that is the lowest (for purchases) may not always be the preferred tender but a comprehensive justification for why they are not preferred must be documented in the Tender Report.
- m) The Head of Agency must endorse the evaluation recommendation prior to it being sent for Tender Committee review.
- n) The evaluation of tenders should be conducted by applying only the evaluation criteria notified to the tenderers in the tender documentation. Under no circumstances should the evaluation criteria be amended from those provided to the tenderers outlined in the tender documentation.
- o) The tender evaluation team must assign a score to each tender that has been deemed compliant. Tenders should be scored in respect of each of the elements in the evaluation criteria stated in the tender document and must use a 'Weighted Scoring' method to ensure that Value for Money (VfM) is achieved, for example:

Criteria	Weight %	Tender 1	Tender 2	Tender 3
<u>Non-Price Criteria</u>				
1. Locally established company Locally supplied resources (labour and/or materials)	5	5	0	5
2. Acceptance of contract terms	5	5	5	5
3. Relevant skills	10	3	3	10
4. Past Performance	5	2	5	5
5. Technical Skills	10	4	5	10
6. Resources	5	2	5	5
<u>Total Non-Price Elements</u>	40	21	23	40
Price	60	30	40	25
TOTAL WEIGHTING	100	51	63	65

- p) Tender 3 scored the highest margin in comparison to the others. Although Tender 3 did not score the highest in the price criterion it gained the highest non-price score for this tender.
- q) The assignment of weightings is based on the following principles:

- i. The items that reflect the critical elements of the project will be assigned a weight
 - ii. Weightings will reflect the relative importance of each criterion
 - iii. Scores will be based on the information provided in the submitted Tender
 - iv. Non-price criteria will not have a value exceeding 50% unless justification for assigning a higher amount is provided and approved by the tender secretariat with Crown Law advice during section 7.8 (Step 6) of the tender process.
 - v. All tenders must include the following evaluation criteria: Locally established company/locally supplied resources (labour and/or materials), compliance with contract terms and price unless approved by the tender secretariat with Crown Law advice during section 7.8 (Step 6) of the tender process.
- r) The price should be scored without consideration of any non-price criteria.
 - s) The tender evaluation team should conduct a risk assessment for each tender submitted. This will identify the most significant risks presented by the tender and consider the likelihood of the risk occurring; the consequence of that risk; and a risk mitigation strategy. In conclusion, the mitigated risk will be determined to form an overall measure of the risk represented by each tender. The risk mitigation strategy may include the inclusion of specific clauses in the executed contract. Therefore, a Tender considered to be High Risk might still be selected subject to the Tenderer's willingness to accept the proposed contract amendments.

7.12 Step – 10 - Tender Committee Approval Prior to Awarding Contract

7.12.1 A tender is only to be awarded after the Tender Report and supporting documentation has been reviewed and agreed to by the tender committee. The following documentation must be submitted to the tender committee:

- a) Cover letter outlining tender with reference to Cabinet minute endorsing purchase of good/service, if required;
- b) Completed Document Checklist
- c) Tender Report;
- d) Completed Declaration of Confidentiality and Conflict of Interest forms
- e) Completed Self-Evaluation Checklist
- f) Tender Specification Document;
- g) Any notices or correspondence entered into with tenderers
- h) Copy of Advertisements of Tender in all media used;
- i) Copy of Advertisements to confirm content and placement requirements ([step 7](#))
- j) Tender Log (Registered Interest Log and Received Tenders Log);
- k) Original copy of Tender proposals received;
- l) Site visit report (only applicable if a tender is for works to be carried out in the Outer Islands);
- m) Any additional information as deemed relevant by the Agency.

7.12.2 To ensure a timely and effective review of tenders, the following documentation should be submitted to the tender committee:

- a) The completed Tender Report with justifications and supporting documentation attached.
 - b) A comprehensive justification if the lowest evaluated and responsive tender is not the preferred tender.
- 7.12.3 The tender committee may request any further information or other supporting documentation pertaining to the tender that would assist the tender committee in delivering a favourable review.
- 7.12.4 The information for the tender committee should be marked “Confidential”, “Tender Documents” and “Urgent” and delivered to the Financial Secretary’s office.
- 7.12.5 The Tender Documents will be reviewed for completeness and adherence to the policy by the tender secretariat. This process will take approximately (5) working days. As soon as practicable thereafter the tender documents will be submitted to the tender committee with a commentary from the Tender Secretariat. The Tender Secretariat has the right to request further information from the tender team as required to ensure that the tender committee is adequately informed.
- 7.12.6 The tender committee will report on its findings as soon as practicable but no later than five (5) working days after receipt of all the required documentation from the Tender Secretariat.

7.13 Step II - Awarding of the Contract

- 7.13.1 Only when the Tender Committee has approved the request to award the tender to the proposed successful tenderer, can the contract be awarded to the successful tenderer. All tenderers who submitted a tender proposal shall be immediately notified in writing, by the agency of their success or failure in being awarded the tender.
- 7.13.2 If approved by the tender committee, contract and/or post-offer negotiations may take place. Approval will not be given unless there is sufficient justification and this condition has been allowed in the tender documentation.
- 7.13.3 All tenders must be published on the CIG Procurement portal. Publication must include the successful tenderers’ name and the title of tender. It is the agency’s responsibility for ensuring that the correct and final information is provided to the Tender Secretariat to publish on the procurement website. Publication information must include:
- a) The tender reference ID number provided by the tender secretariat
 - b) Title of Tender Project
 - c) Quarter Contract Signed
 - d) Type of tender conducted i.e. Open Tender or Closed Tender
 - e) Name of tendering agency
 - f) Name of successful tenderer
 - g) Bid price amount (VAT Exclusive)

8 CLOSED TENDER

8.1 General

- 8.1.1 A closed tender refers to a tender process that restricts participation to specific parties selected by the agency to submit a proposal/response.
- 8.1.2 A closed tender must follow the same steps required for an open tender process (refer to section [7](#)) with the exception of only advertising to certain parties first approved by the Tender Committee Consent requirement as per section [8.2](#) below.

- 8.1.3 To participate in a closed tender, an agency must submit a formal letter to the Tender Committee (TC) requesting approval for consent to proceed with a closed tender process.

8.2 Tender Committee Consent

- 8.2.1 A closed tender process cannot be undertaken without the prior approval of the tender committee. In making the request to conduct a closed tender, information on the following must be provided to the Tender Committee:

- a) Why an open tender cannot take place.
- b) Budget/funding allocation; and
- c) List of suppliers which will be invited to tender.

- 8.2.2 Acceptable circumstances for undertaking a closed tender must include either one or more of the following:

- a) Emergency Situations that may adversely and unduly affect life, health or property.
- b) Limited local supplier options, specialized services, or single service providers on the island e.g. Air Rarotonga – only one supplier for domestic airline services.
- c) Restricted number of organisations who provide support, engineering or maintenance services.
- d) A list of reputable suppliers with established working relationships with government exists (updated as required) and has been lodged with the tender committee.

- 8.2.3 The maximum number of suppliers to be approached during a closed tender depends on the technical nature of the product/project.

- 8.2.4 The tender committee will report on their findings as soon as practicable after the receipt of all the required documentation depending on the technical nature of the product or project.

9 RELEASE OF INFORMATION

9.1 General

- 9.1.1 Tenderers are entitled to the release of their tender evaluation report on request.

- 9.1.2 Request for evaluation report of other tenderers must be processed under the Official Information Act 2008.

SALE OF GOODS

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10 SALE REQUIREMENTS

10.1 Recording

- 10.1.1 Details and all related documentation for the process of all sales must be labelled and filed clearly, and made available for inspection, review and audit.
- 10.1.2 All related documentation for the process of sales will be made available to the Office of the Ombudsman for investigation purposes if requested. All documentation is subject to review by the Audit Office under the provisions of the Public Expenditure and Review Committee Act 1995-96.

10.2 Confidentiality

- 10.2.1 Employees of agencies should not, except so far as may be necessary for the proper performance of the employee's duties, as authorised by the Head of Agency or as may be required by law:
 - a) Disclose to any person any official information that has come to the knowledge of the employee in the course of the sale process;
 - b) Use or attempt to use any such official information for personal benefit, or the benefit of any other person or organisation, or in any manner whatsoever other than in accordance with the duties, and consistent with the obligation, of honesty expected of a person holding a position with the Crown.

11 SALE BY TENDER

- 11.1.1 The following are the steps which should be undertaken when conducting a sale by tender of any agency assets.

Step 1: Ensure you have delegated authority to conduct the sale tender.

Step 2: Prepare asset for sale

Step 3: Obtain a valuation of the asset.

Step 4: Decide a reserve price.

Step 5: Advertise.

Step 6: Open tender box and evaluate tenders.

Step 7: Proceed to award.

11.2 Step 1-Delegated Authority

- 11.2.1 Prior to issuing any tender process all staff should ensure that they have the appropriate delegated authority in order to do so and also that they act within the limits of that authority.

11.3 Step 2 - Prepare Asset for Sale

- 11.3.1 After the decision is made that the surplus or replaced asset be sold by tender, the physical details of the asset and any residual book values should be confirmed. The asset should generally be prepared to its best possible condition (i.e. a motor vehicle should be groomed and have a current WOF).

11.4 Step 3 –Valuation

- 11.4.1 The asset should be valued by a competent authority to ascertain the current market value of the asset. This valuation should be checked by obtaining more than one valuation.

11.5 Step 4 – Reserve Price

- 11.5.1 After obtaining the valuation a decision on any reserve price (or any other conditions) should be confirmed and recorded in writing

11.6 Step 5 - Advertising

- 11.6.1 Advertising will depend on the original purchase value of the items being sold as defined in section [1.4](#) of this policy.
- 11.6.2 The advertisement must include: the name of the agency offering the tender, the contact person and details (telephone/facsimile/email) for enquiries, a brief description of the goods for sale, and the closing date and time of the lodgement of tender.
- 11.6.3 All goods being sold must be advertised for a minimum of 10 working days.
- 11.6.4 The advertisement must include the wording “highest or any tender not necessarily accepted” so that all tenders can be refused if none meet the reserve decided in section [11.5](#) above.
- 11.6.5 Tender box requirements are the same as for the purchase of goods, refer section [7.8.4](#).

11.7 Step 6 - Opening of Tender Proposals

- 11.7.1 All tenders should be listed as opened with the tenderers name and the amount offered.
- 11.7.2 The selection of the successful tenderer decided upon by agency will be able to withstand scrutiny if the evaluation process is conducted effectively.

11.8 Step 7 – Award of sale

- 11.8.1 When all tenders have been listed, the awarding of the tender is made to the highest tender, provided that the tendered amount meets any pre-determined reserve (based on current market value) and any other condition imposed (for example no time payment allowed).
- 11.8.2 All tenders should be notified in writing, by the agency of their success or failure in being awarded the tender, immediately.
- 11.8.3 Should the highest tender be less than 70% of the market value of the asset being disposed of, the agency should re-advertise the asset and all efforts must be made to ensure a sale price of not less than 70% of the market value of the asset.
- 11.8.4 Please note Part B of the CIG Financial Policies and Procedures Manual with regards to the treatment of sale proceeds applies.

12 SALE BY AUCTION

12.1 Mandatory Requirements

- 12.1.1 Cook Islands Government may run an auction of goods for sale only if requested by the Financial Secretary.
- 12.1.2 Information required for Financial Secretary approval:
- a) Description (including age, condition and book value) of items being sold
 - b) Proposed auction process
 - c) Proposed reserve prices
- 12.1.3 General principals outlined in this policy must be followed in any auction process.

PROCUREMENT COMPLAINTS

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13 COMPLAINT PROCESS

13.1 General

- 13.1.1 This policy is designed to ensure accountability and transparency across all Governments purchases and sales by providing guidance on how to manage complaints.
- 13.1.2 Government suppliers and potential suppliers have the right to approach the tendering agencies directly to have their concerns about a procurement process considered and investigated. All efforts to resolve a concern with an agency should be made before a formal complaint is made.
- 13.1.3 Agencies must allow this right and investigate complaints fairly, impartially and promptly. Agencies must not allow complaints to affect any other current or future opportunities with any government agency.

13.2 Documentation

- 13.2.1 Template documentation is available for complaints and should be used. These documents are:
 - a) Complaints Form
 - b) Complaints Register

13.3 Mandatory Requirements

- 13.3.1 All complaints regarding tenders must be dealt with in the manner set out in this policy. The process must be conducted in a manner that is honest, ethical and fair to all the stakeholders involved.
- 13.3.2 The Complaints Form as provided in the templates must be completed correctly before a complaint can be acknowledged. All complaints should first be lodged with the agency and if a complainant is not satisfied with the process or handling of their complaint, then they can refer the matter on to the Tender Committee and then to the Ombudsman if required.
- 13.3.3 Where the complainant is also an unsuccessful bidder then the response should include a summary report on issues and possible improvements that could be made to their respective tender submission.
- 13.3.4 A Complaints Register should be maintained and published. The register should be in the form of the template provided.
- 13.3.5 All documentation of the complaints process must be kept on file for inspection or review and audit verification purposes.

13.4 Formal Complaints Process

- 13.4.1 The following are the steps which must be undertaken when lodging a complaint.

Step 1: Lodging a complaint with the Agency

Step 2: Lodging a complaint with the Tender Committee

Step 3: Lodging a complaint with the Office of the Ombudsman

13.5 Step 1 - Lodging a Complaint with the Agency

- 13.5.1 Complaints must be lodged using the Complaints Form (refer to templates) and should be sent to the agency who issued the tender.
- 13.5.2 Upon receiving a complaint the agency in charge must issue a confirmation of receipt to contact details provided in the form.

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- 13.5.3 Within two (2) working days the agency must issue an acknowledgement on behalf of the agency which will include a reference number and information on the proposed review action.
 - 13.5.4 Should an extended period of time be required to address issues raised, the complainant will be advised in writing about this requirement.
 - 13.5.5 The agency's final decisions and outcome will be provided to the complainant in writing and will incorporate details of the assessments undertaken and conclusions reached. The agency must advise the complainant that if they are not satisfied with the outcome or handling of the complaint they can refer this matter to the tender committee. The case will then be closed.
 - 13.5.6 A Complaints Register should be kept by the agency (refer to templates).
 - 13.5.7 De-brief meetings with unsuccessful tenderers are encouraged to minimise and eliminate complaints.

13.6 Step 2 - Lodging a Complaint with the Tender Committee

- 13.6.1 Complaints must be lodged using the Complaints Form (refer to templates) and should be sent to the tender committee.
- 13.6.2 Complaints should include copies of correspondence to show compliance with the process in clause [11.5](#) above as the Tender Committee will not consider complaints until they have been first determined by the agency.
- 13.6.3 Upon receiving a complaint the tender committee secretariat is required to issue a confirmation of receipt to contact details provided in the form.
- 13.6.4 Within three (3) working days the tender committee secretariat is required to issue an acknowledgement letter of response on behalf of the tender committee which will include a reference number and information on the proposed review action.
- 13.6.5 Should an extended period of time be required to address issues raised, the complainant will be advised in writing about this requirement.
- 13.6.6 The Tender Committee's final decision will be provided to the complainant in writing and will incorporate details of assessments undertaken and conclusions reached. The Tender Committee must advise the complainant that if they are not satisfied with the outcome or handling of the complaint they can refer it to the Office of the Ombudsman. The case will then be closed.
- 13.6.7 A Complaints Register should be kept by the Tender Committee (refer to templates) and published quarterly on the procurement website.

13.7 Step 3 - Lodging a Complaint with the Office of the Ombudsman

- 13.7.1 Upon receiving a complaint the Office of the Ombudsman must issue a confirmation of receipt.
- 13.7.2 Within two (2) working days the Office of the Ombudsman must issue a formal response to the complainant which will include a reference number and information on the proposed review action.
- 13.7.3 Should an extended period of time be required to address issues raised, the complainant will be advised in writing about this requirement.
- 13.7.4 The Ombudsman's final decisions and outcome will be provided to the complainant in writing and will incorporate details of assessments undertaken and conclusions reached.
- 13.7.5 A Complaints Register should be kept by the office of the Office of the Ombudsman (refer to templates) and published via the procurement website. The case will then be closed.

SCHEDULE ONE

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14 MANDATORY TENDER REQUIREMENTS FOR PURCHASES

14.1 Mandatory Terms and Conditions

14.1.1 There are terms and conditions that must be contained in all tender documents. These terms are all contained in the template documentation which you should use when preparing a tender.

- a) Cover sheet containing basic information – tender title, tender reference number, name of tendering agency, date release.
- b) The name of the agency responsible for the tender must be clearly stated.
- c) The venue for lodgement, date and time for closure of acceptance of Tenders.
- d) It is the tenderer's responsibility to ensure that their proposal reaches the designated venue by the specified date and time.
- e) Tenders must be completed in the format contained in "Attachment #". If offers do not comply with the format contained in Attachment #, they will be deemed non-compliant and may not be accepted.
- f) It must be clearly stated that all tenders and related documentation may be presented in the English or Maori language. Tenders in Maori must be translated into English.
- g) It is the tenderer's responsibility to carry out any site visits in order to assess the true costs to complete the project where necessary.
- h) It must be clearly stated whether tenders will be accepted for all or part of the specifications listed for the tender. The specifications may include statements such as: 'The Tenderer must tender to provide services or supply materials for the whole contract works...' or 'Tenderers may tender to supply services or materials for sections of the entire specifications but must tender for the whole requirements of that section.'
- i) Notes the need for compliance with Business Trade and Investment Board (BTIB) requirements. "In order for foreign companies to carry on business in the Cook Islands, an application must be made to the Business Trade and Investment Board for registration as a foreign enterprise. Any fees associated with the registration are to be covered by the tenderer."
- j) A template for costing and other details should be prepared for tenderers to complete and submit. This will ensure that the tenderer submits the required information and that all tenders are consistent for the purposes of evaluating the tenders.
- k) Whether electronic and hard copy, or electronic only or hard copy only tenders are permitted.
- l) Negotiations will not be permitted between the tender/evaluation team and any prospective suppliers during the advertising period.
- m) Information on how the tender will be assessed and how the successful tenderer will be chosen must be included.
- n) The tender documents must include, if applicable, a request for details of financial or contractual requirements that the tenderer will apply if awarded the tender.
- o) If there is likely to be a short listing of tenderers, then terms and conditions for this process must be clearly stated.
- p) The process for informing the successful tenderer must be clearly stated.
- q) The process for informing unsuccessful tenderers, if applicable, and a statement that they have the right to make a complaint under the complaints process must be stated.

- r) There must be a statement of the agency's intentions to contact referees, competitors or customers to enquire about the performance of the tenderer.
- s) Tenderers are entitled to the release of their evaluation report on request. Any requests for evaluation reports of other tenders must be processed under the Official Information Act 2008.
- t) That no gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: tenderers or potential tenderers, tender team members, evaluation team members, the Head of Agency, or any other member or organisation that may have an involvement with any aspect of the tender process.
- u) Tenders must be inclusive of freight landed in Rarotonga (or the relevant island) for ease of comparing local and overseas tenders.
- v) At the conclusion of the tender process the outcome must be published on the procurement website showing the names of the successful tenderer.