



MANUAL

FOR PUBLIC PROCUREMENT IN
THE REPUBLIC OF KIRIBATI



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Version history

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1. Introduction

Public Procurement is an important activity, representing a large share of the economy. In Kiribati it is as high as 40% of the GDP, excluding donor funded projects. Around AUD70M are subject to Public Procurement, based on national public funds (tax incomes) and traditionally around the same amount from international donors.

As such, Public Procurement is an important upstream input to economic growth. Wisely performed, efficient and effective Public Procurement offers substantial savings and quality increase of public services. It is also a tool for domestic economic and social growth, for instance by providing opportunities for local suppliers, e.g., by market alignment, training and information, market creations, domestic preferences, such as benefits to international tenderers offering domestic subcontracting, joint ventures, technology transfer, etc.

One important role of the Public Procurement professional is to increase the selection of viable solutions by means of well-performed and structured market assessments and to enhance competition. Early involvement of Public Procurement professionals, preferably as ‘procurement project managers’, will open up for new possibilities of improved outputs of the Public Procurement Contracts or Framework Agreements, leading to better outcomes of the related projects or services where the Public Procurement is an input. Such opportunities found later in the process, e.g., after receiving proposals in Tenders, are not possible to be considered at that stage, but a cancellation and a new process must be initiated, losing time as well as trust and good-will with the Tenderers, who had already invested time and money to prepare Tenders.

It is therefore important that the Procuring Entities are familiar with the benefits of early involvement from Public Procurement professionals and that time and resources are sufficiently allocated. Every Procuring Entity need to establish a Procuring Office and have at least one responsible Procuring Officer, depending on the Public Procurement volume and complexity. This Procuring Officer must be trained on this Procurement Manual and have access to necessary support from the Central Procurement Unit, CPU, but also has a responsibility to seek information and knowledge necessary to fulfil the principles of Public Procurement, as defined in Key Principles of Public Procurement in Kiribati, chapter 3.

Other people within the Procuring Entities also need relevant knowledge on Public Procurement, which is to be coordinated by the Procuring Office, and be trained by the Central Procurement Unit.

This Public Procurement Manual (Manual) is interpreting and implementing the Public Procurement Act 2019 (PPA19) and the Public Procurement Regulations 2020 (PPR20), to provide guidance, advice and support for all stages and processes of Public Procurement in Kiribati. The PPA19 regulates the important principles and procedures on a strategical level and is subject to approval by the House of Assembly. The PPR20 clarifies some important principles and responsibilities that may be subject to modifications decided on a Ministerial level.

This Manual provides detailed practical instructions to efficiently and effectively execute all types and procedures of Public Procurement and includes references to relevant templates. The Chief Procurement Officer (CPO) at the Central Procurement Unit (CPU) is responsible for the content and updating of the Manual. It is to be used as an ‘encyclopaedia’, meaning that it should not necessarily be read from first to last chapter. Instead, the relevant process can be found by using the Index and only such parts need to be studied and followed for the actual Public Procurement case.

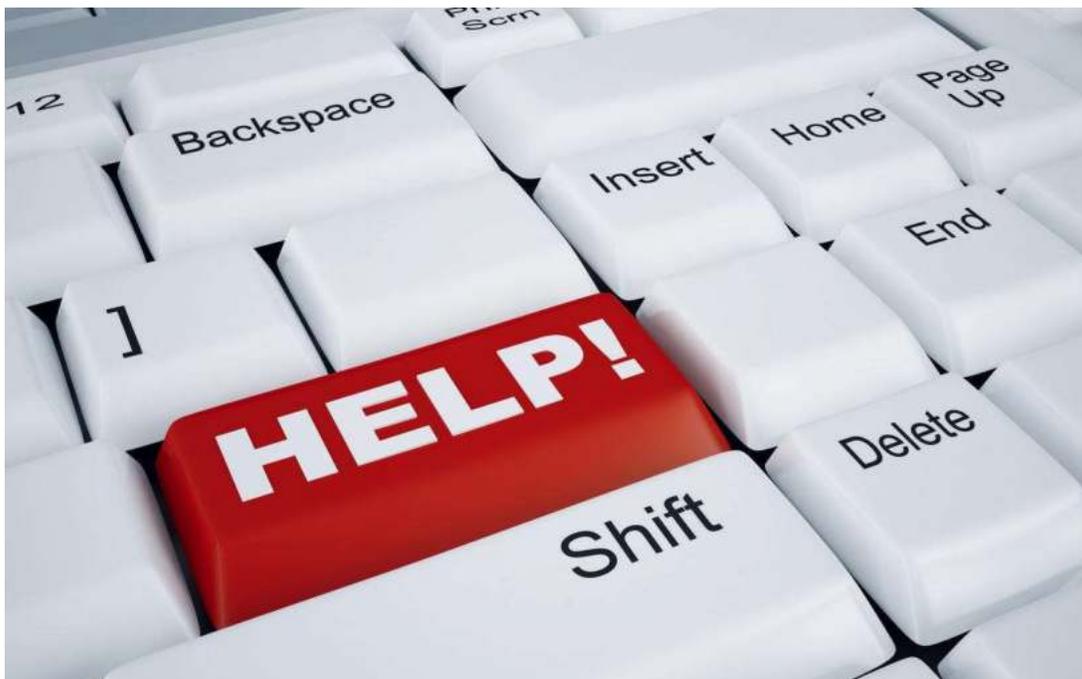
The Manual is based on best international practice and adjusted to the special conditions and prerequisites of Kiribati. A very strong ambition has been to keep the Public Procurement Framework, including the new Public Procurement Act, the new Public Procurement Regulations and the Manual, as simple and user friendly as possible, avoiding the situation illustrated in fig. 1, still ascertaining the overall interests of the public and GOK efficiency, effectiveness and Value for Money. The legal framework is structured in an efficient manner, i.e., an Act containing the necessary rules for upholding the Public Procurement policy and interest of the House of Assembly, Regulations, as an outflow of the Act, for the Government of Kiribati to safeguard the Ministerial interests and policies, whereas the Manual is the main instrument to guide the Procuring Entities and Procuring Officers to comply with the Act and Regulations and, not least, to obtain Value for Money for the public spend and thereby contribute to the improvement of public services.



Fig. 1

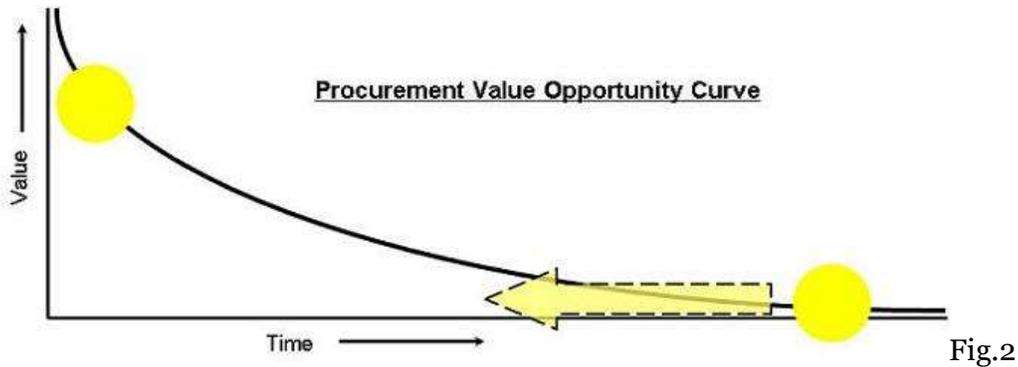
This Manual was drafted by Sven Erik Hargeskog, Senior Procurement Policy Specialist, as part of an Asian Development Bank Technical Assistance for the Kiribati Public Procurement Reform Program, KPPRP, 2018-2021.

The Central Procurement Unit (CPU) at MFED will answer and explain any questions or unclarities.



2. Public Procurement from A to Z

The Public Procurement process starts already at the early planning stage and continues until the closing out of the Contract or Framework Agreement. Public Procurement is based on the principle of the process being well prepared and planned from the beginning, to uphold control and minimize the risk or consequences of unexpected changes at later stages of the process. Early engagement by Public Procurement professionals, the 'input', increases the possibility of successful 'outputs' and 'outcomes'. The later in the process, the less possibility for positive impact, i.e., Value for Money, see fig. 2 and fig. 32.



This correctly implies that Public Procurement professionals should be actively engaged already in the process of defining the needs and the market assessment, see fig. 4. It will lead to a structured process where opportunities are investigated and developed in a fair and equal manner, ascertaining that the most optimal solutions for satisfying the needs of the Procuring Entity (and the public) are used to define the Tender specifications, Terms of Reference or Scope of Work.



We should not overestimate our own knowledge and not underestimate the need for professional support but understand and accept our shortcomings. Public Procurement is an area where the more you learn, the more you will understand how little you actually knew, as illustrated in fig. 5.



Fig. 5

It is also imperative that the Public Procurement process is managed as a project, with all relevant stakeholders engaged at different stages of the process, in a cooperative way, not in a separated, relayed ‘over-the-wall’ process, as illustrated in fig. 6, although for a different business process, but still applicable in principle. Working like this, without cooperation and understanding between the different process stakeholders increases the risk of misunderstandings and eventually compromised outputs.

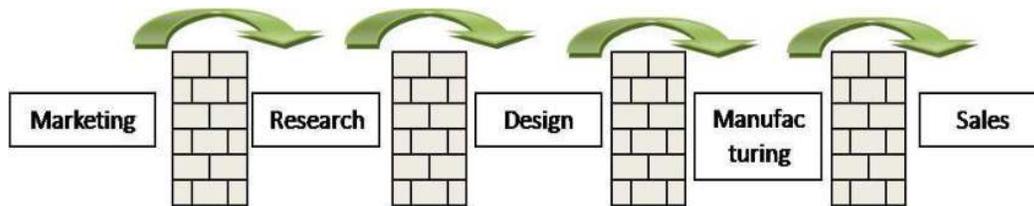


Fig. 6

At the other end of the Public Procurement process, Contract Management and closure of the Contract is crucial, however, too often neglected. With lacking or poor Contract Management, project costs may expand beyond control and quality may be compromised.

During and after the Public Procurement process, documented Monitoring & Evaluation is important, to gain experience and learning, but also to evaluate the performance of the Economic Operators in fulfilling the Contracts or Framework Agreements, for future grading, selection and evaluation.

In conclusion, the Public Procurement process must be managed as a complete, overlapping and holistic process, under full control of the Procuring Entity, with strong professional support and guidance. This Public Procurement Manual provides assistance, but guidance and support from the Central Procurement Unit, CPU, is also required, the extent depending on the level of competence within the Procuring Entity.

2.1. How long does Public Procurement take?

It is often complained that Public Procurement takes too long. This can be derived from poor insight and optimistic planning. It is crucial to be aware of and plan for all components of the Public Procurement process. If not, there will be consequential delays at the end of the process, when the necessary times required during the process will be added on, with further time for reverting the process, lack of quality Tenders, leading to extended clarification requests and possibly loss of good Tenders, or no Tenders at all, whereas the process has to start all over again.

Since there are phases in the process that vary, depending on the prerequisites and circumstances, it is not possible to define a firm time schedule for how long the Public Procurement process takes. However, minimum durations can be indicated, as follows:

2.1.1. Request for Quotation (RFQ)

A minimum duration of **approximately three (3) months** should be considered, from when the basic documents are ready, i.e., the Specification or Terms of Reference (TOR), the Evaluation Criteria and Method, and the Time Schedule for the Procurement. This is calculated on the following estimated durations:

1. Preparation of the draft Invitation to Tender (in this case the RFQ) by the Procuring Entity – 1 week
2. Approval of the RFQ by the CPU – 1-2 weeks (depending on quality and availability)
3. Posting or submission of invitation (for Limited Competitive Procurement) – 1 week
4. Tender time for Tenderers – 4 weeks (25 calendar days)
5. *Complaints or clarifications during the process, which might postpone the last date for submission – unknown*
6. Receipt, Opening, registration and distribution to the Procuring Entity (PEPO)– 2 days
7. Evaluation by the Procuring Entity – 1-2 weeks (depending on availability of the Evaluation Committee members, unclarities leading to clarification requests, etc.)
8. Award by the CAC or the CCAB, including communication of the award decision – 1 week (depending on availability of the CAC or the CCAB)
9. ‘Stand still’ period for possible complaints – 2 weeks (14 calendar days)
10. If complaints received, the settlement time, including appeals – 1-3 weeks (depending on the complexity of the case)
11. Finalisation of the Contract by the Procuring Entity – 1 week (unless the Contract Terms & Conditions have to be approved by the OAG, if the Standard Contract templates have not been used, then a delay will depend on the time needed for the OAG)
12. Signing process by both parties – 1 week
13. Lead time for start of execution/establishment time/delivery time (if relevant) – unknown (case dependent)

2.1.2. Request for Proposal (RFP)

A minimum duration of **at least three-and-a-half (3,5) months** should be considered, from when the basic documents are ready, i.e., the Specification or Terms of Reference (TOR), the Evaluation Criteria and Method, and the Time Schedule for the Procurement. This is calculated on the following estimated durations:

1. Preparation of the draft Invitation to Tender (in this case the RFP) by the Procuring Entity – 1 week
2. Approval of the RFP by the CPU – 1-2 weeks (depending on quality and availability)
3. Posting or submission of invitation (for Limited Competitive Procurement) – 1 week
4. Tender time for Tenderers – 6,5 weeks (45 calendar days)
5. *Complaints or clarifications during the process, which might postpone the last date for submission – unknown*
6. Receipt, Opening, registration and distribution to the Procuring Entity (PEPO)– 2 days
7. Evaluation by the Procuring Entity – 1-2 weeks (depending on availability of the Evaluation Committee members, the complexity of the Procurement, unclarities leading to clarification requests, etc.)
8. Award by the CAC or the CCAB, including communication of the award decision – 1 week (depending on availability of the CAC or the CCAB)
9. ‘Stand still’ period for possible complaints – 2 weeks (14 calendar days)
10. If complaints received, the settlement time, including appeals – 1-3 weeks (depending on the complexity of the case)
11. Finalisation of the Contract by the Procuring Entity – 1-2 weeks (unless the Contract Terms & Conditions have to be approved by the OAG, if the Standard Contract templates have not been used, whereas a delay will depend on the time needed for the OAG)
12. Signing process by both parties – 1 week
13. Lead time for start of execution/establishment time/delivery time (if relevant) – unknown (case dependent)

2.1.3. Request for Prequalification (RFPQ)

If a Prequalification procedure is used before the RFQ or RFP, the **time added will be approximately 3 weeks**. This, because the additional time for the RFPQ is 20 calendar days, but also the time for the RFQ or RFP is shortened with 10 and 15 days, respectively. Also, there is time required for evaluation of the submitted Applications for Prequalification’s, estimated to 1 week. In conclusion:

- RFPQ and RFQ – approximately 3,5 months in total
- RFPQ and RFP – approximately 4 months in total

3. Key Principles of Public Procurement in Kiribati

The Public Procurement Act 2019, Section 4, mandates all public officers involved in Public Procurement to “pursue their duties in respect of the Public Procurement principles, and in particular shall respect the anti-corruption policies, shall act with the highest integrity and impartiality, shall respect the principles of transparency, shall exercise their functions in a transparent and objective way and without being affected by conflict of interest and shall respect the rules on confidentiality and the principles of fair competition”. Needless to say, the Procuring Entities shall comply with the Public Procurement Act, the Public Procurement Regulations and the Public Procurement Manual and instructions from the Central Procurement Unit.

The PPA19 further highlights 7 important principles for Public Procurement:

1. Value for Money
2. Anti-corruption
3. Integrity
4. Conflict of Interest
5. Transparency
6. Confidentiality
7. Fair competition

Value for Money is the overarching goal of Public Procurement, which comprises several interconnected components that have to be considered to obtain the best outcome. The seven principles form the main Public Procurement Strategy of the Government of Kiribati and are described and explained in the following. Each principle is preceded by quotes from and references to the Public Procurement Act 2019 (PPA19) and the Public Procurement Regulations 2020 (PPR20).

3.1. Value for Money (VFM)

PPA19, Section 4.1:

Procuring Entities, including public officers executing Public Procurement, are under the obligation to ensure that Public Funds are used in the most efficient and effective manner possible taking into account the purpose and objective of the Procurement activity and, when possible, the protection of the Social Considerations of the people of Kiribati.

PPR20, Sections 5.1-5.3

Procuring Entities shall always ensure Value for Money under a risk-managed approach to comply with the overarching scope of Public Procurement by implementing the rules, methods and principles defined by the Act, the Regulations and the Manual. Public Procurement shall always consider Value for Money, which shall be achieved through the effective, efficient and economic use of resources and the evaluation of relevant costs and benefits, along with an assessment of risks and life-cycle costs, such as fitness for purpose, experience and performance history of a Tenderer, flexibility (including innovation and adaptability over the lifecycle of Public Procurement), environmental sustainability (such as energy efficiency and environmental impact), maintenance and service. Value for Money can be obtained either by applying technical scoring criteria above mandatory technical criteria (i.e., best

price-quality ratio) or without additional scoring criteria in cases where mandatory technical criteria sufficiently fulfil the needs of the Procuring Entity (i.e., the lowest price).

Procuring Entities shall not limit Public Procurement evaluations to the price for acquisitions but shall also consider all other possible costs that may refer to warranties time and scope, service and maintenance, operational costs, disposal (recycling, deposit, demolition, dismounting, destruction, etc.), delivery time and terms of payment, technology transfer, countertrade, local content of manufacture, labour and material, etc.

The award criteria shall be precise, non-discriminatory, proportional and competitive. The Procuring Entity shall specify the award criteria in the Invitation to Tender as the relative weighting of each of the technical criteria chosen as well as the relation between the technical and financial components.

The concept of Value for Money (VFM) is widely accepted and acknowledged as the main target of procurement. In Public Procurement other values may be added or included in this concept, having a bearing on the public interest, such as environmental protection, social inclusion, workers conditions, etc.

VFM takes a 'whole-of-life' approach on the subject of Public Procurement, beyond the mere acquisition cost. It includes all relevant aspects, consequences and ownership costs of the result of the Contract or Framework Agreement, in addition to the acquisition price, such as the quality and increased efficiency and outcome, but also costs for operation, service, maintenance, after sales service, spare parts, transportation, storage, depreciation, disposal/destruction/recycling, etc. This is generally referred to as Life-Cycle Cost (LCC) considerations.

So, it's understood that the Public Procurement should not forget the quality and other aspects of LCC. However, in ascertaining the VFM, one must not be blind to the connection between quality and cost. As such, there need to be a clearly defined relation between these factors. This is to be reflected in the evaluation criteria, which should value all quality aspects to be evaluated, but also connect these to a common measure of the costs, either in monetary units or points, or a similar conversion method, to balance quality and cost. If this balance is not well considered, the risk is that we pay too much – or too little, to the detriment of the quality or LCC.



It's unwise to pay too much, but it's also *unwise to pay too little*. When you pay too much you lose a little money, that is all. When you pay too little, you sometimes lose everything, because the thing you bought was in-capable of doing the thing it was bought to do. The common law of business balance prohibits paying a little and getting a lot – it can't be done. If you deal with the lowest bidder, it is well to add something for the risk you run. And if you do that, you will have enough to pay for something better.

John Ruskin (1819-1900)

To obtain VFM the Public Procurement has to be well prepared and carefully thought-through from the beginning, considering all aspects of and components contributing to VFM. Contrary to how it sounds, value for money isn't just about saving money! It is about ensuring that the Public Procurement is efficient, effective, and economical.

3.1.1. Economy, Efficiency & Effectiveness

An established concept used to summarise VFM is 'the three E's', Economy, Efficiency and Effectiveness, see fig. 7. It reflects the flow and dependence between the components i.e., sufficient resources to be efficient and create effective outputs that satisfies the users, providing the right outcomes. If one link is weak, the outcome will suffer.

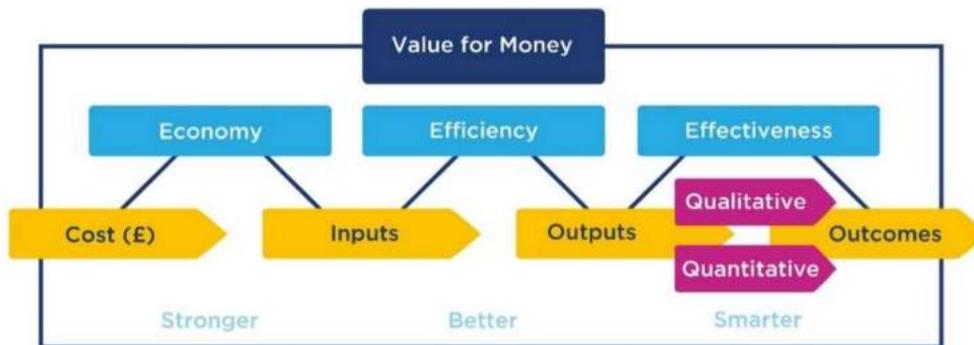


Fig. 7

3.1.1.1. Economy

Economy is attaining the appropriate quantity and quality of inputs at lowest cost. Therefore, economy is concerned with the cost of inputs. This is the price paid (the impact on people as well as actual money spent) for providing a service at best value, taking price and quality into account.

For Public Procurement, this means that there has to be enough skilled people engaged, having the right resources and be organised for optimised allocation of competence. Through different stages of Public Procurement, different skillsets are required, e.g., for specifying the needs, for enhancing competition, for risk management and legal certainty, etc.

3.1.1.2. Efficiency

Efficiency is the relationship between inputs and outputs. It is concerned with maximizing output for a given input. This is a measure of productivity – how much you get out in relation to what you put in. It is the efficiency of converting resources (inputs) into results (outputs).

For Public Procurement it means having lean processes that are simple to use, a low level of bureaucracy, good supporting and institutional systems and sufficient competence in the right places. This Manual, including templates, constitutes an important prerequisite for high efficiency, together with the central support to a decentralised operation, providing training and daily support as necessary.

3.1.1.3. Effectiveness

Effectiveness is the relationship between an organisation's outputs and its objectives. It ensures that the outputs of a service or programme succeed in achieving defined objectives. This measures the impact of obtaining value for money. It can be quantitative (the amount of effectiveness) or qualitative (the value of effectiveness).

The basis for achieving positive effects on the society, by means of Public Procurement, is to properly define the real needs and make use of the competition on the market. With the right resources and an efficient system, the prerequisites for an effective outcome are beneficial.

3.1.2. Sustainability

The word 'sustainable' means durable and has a long-term purpose. Following the United Nations Conference on Environment and Development (UNCED), also known as the Rio de Janeiro Earth Summit, the Rio Summit, the Rio Conference, and the Earth Summit, a major United Nations conference held in Rio de Janeiro from 3 to 14 June in 1992, the word became more or less synonymous with activities and initiatives for environmental protection.

With today's awareness of the climate change and effects already being experienced, it is crucial that an instrument as effective as Public Procurement is being used to reduce the impact on climate and the environment, in particular for Kiribati, being one of the first nations that may suffer dearly. Even though the impact of sustainability criteria in Kiribati Public Procurement may not be very large on a global perspective, it is important that Kiribati does what is possible to avoid being accused of not taking responsibility, sending a signal to the main actors that they should also do what they can, having substantial positive effects if they do.

Thus, social considerations, which include environmental protection, should be included in the needs specifications, and are supported with this Manual.

3.1.3. Green Growth

Economic growth is an important goal for Kiribati. However, economic growth should not be to the detriment of the environment. The new legal framework allows for domestic preference, using various methodologies, creating incentives for development of domestic business and use of domestic manpower and other resources, which may also provide technology and knowledge transfer. By defining criteria that include social considerations, see above, domestic growth may be promoted in parallel with e.g., environmental protection.

3.2. Anti-corruption

PPA19, Section 37

All Procurement Officers and any public officer executing Public Procurement shall incur the obligations of Leaders as established under articles 4 – 11 of the Leaders Code of Conduct Act.

Failure of Procurement Officers and public officers to comply with the Act, the Regulations or the Leaders Code of Conduct Act, as above, may constitute a criminal or administrative misconduct and may be subject to a criminal or a disciplinary action, in line with section 38 or section 39.

Wikipedia defines corruption as follows:

In general, corruption is a form of dishonesty or criminal activity undertaken by a person or organization entrusted with a position of authority, often to acquire illicit benefit, or abuse of entrusted power for one's private gain. Corruption may include many activities including bribery and embezzlement, though it may also involve practices that are legal in many countries. Political corruption occurs when an officeholder or other governmental employee acts in an official capacity for personal gain.

Corruption includes all activities that puts personal gains before the public interest. There are different 'levels' of corruption, from 'petty corruption', to 'grand corruption', but also 'systemic corruption' and 'political corruption'.

Instruments used can be bribery; embezzlement, theft and fraud; graft; extortion and blackmail; influence peddling; networking; abuse of discretion; favouritism, nepotism and clientelism.

Corruption is strongly negatively associated with the share of private investment and, hence, it lowers the rate of economic growth. For instance, international donors are very wary of corruption or even opportunities, whereas they may become hesitant on further investments in Kiribati, should they suspect corrupt practices or cases, which would jeopardise the economic growth.

The Public Procurement Act 2019 differentiates between Criminal and Administrative Misconduct, rendering different remedies. Corruption falls under Criminal Misconduct, whereas other misconduct, such as not following the rules of the Public Procurement legal framework, is considered Administrative Misconduct. However, it's a thin line, since intentionally breaking the rules may be considered as Criminal Misconduct.

3.2.1. Criminal Misconduct

PPA19, Sections 38.1-38.6

An infringement of, or a failure to comply with, one or more provisions, by a Procurement Officer or a public officer executing Public Procurement, that incurs a criminal responsibility shall be punished in accordance with the Penal Code and other existing acts of Kiribati.

Without prejudice to the applicability of any provision of the penal code or of other applicable acts, it shall be a violation punishable and enforceable in accordance with the relevant applicable acts for any natural or legal person to:

- a. Provide, offer, solicit or accept or indicate a readiness to provide, offer, solicit or accept anything of value (including, but not limited to, money, an offer of employment, tangible or intangible property, a favour or service) for a direct or indirect benefit for the purpose of influencing or attempting to influence a decision or action affecting or connected with the initiation, implementation or decision of a Public Procurement or a review procedure; or*
- b. To take any actions, or to express or indicate a readiness to take any action, for the purpose of intimidating, coercing, harming or causing harm (physically, financially, or otherwise) to any natural or legal person for the purpose of influencing, attempting to influence a decision or action related to the initiation, implementation or decision of Public Procurement or a review procedure.*

Remedies against criminal misconduct

Any Procurement Officer or public officer who becomes aware, by any means, of an offence described in Section 38 shall immediately notify the Chief Procurement Officer.

The Chief Procurement Officer shall immediately conduct a preliminary investigation into the matter and shall, if it is determined that there is any credible evidence indicating that such a violation has occurred, immediately refer the matter to the Office of the Attorney General. If requested by the informant, the Chief Procurement Officer shall take measures to protect the identity of the informant.

The Chief Procurement Officer shall also, if the matter involves misconduct by a public officer, refer the matter to the authorities responsible for disciplinary action against public officers.

Globally, Public Procurement is the area most exposed to corruption. However, governments, international donors and other stakeholders have increased their measures to eradicate corruption, e.g., by implementing laws, regulations, auditing and sanctions. Therefore, the new legal framework on Public Procurement in Kiribati is, likewise, implementing measures to minimise the exposure as well as sanctions.

In consistency with the principle of early detection and correction, attempts on corruption should be detected and mitigated as early as possible. Thus, audits is too late, even if very important. Instead, it is the responsibility of every public officer to keep an eye open and immediately report any suspected corruption to the Chief Procurement Officer, for further investigation. The informant has the right to remain anonymous¹.

The sanctions for criminal misconduct in Public Procurement will be in accordance with the already established laws, relevant for other criminal convictions, e.g., the Penal Code.

3.2.2. Administrative Misconduct

PPA19, Sections 39.1-39.2

A Procurement Officer or a public officer executing Public Procurement who infringes or fails to comply with one or more provisions of Public Procurement, as established by the Act and the Regulations, is liable for administrative misconduct and subject to disciplinary actions as outlined in the Kiribati National Conditions of Service or the like.

A Procurement Officer or a public officer who reiterates the administrative misconduct and has not been subjected to removal or dismissal from the public service in accordance with the terms of the Kiribati National Conditions of Service, shall be liable to permanent removal from the position or dismissal from public service.

For misconduct related to breaches or non-compliance with the Public Procurement legal framework the sanctions will be in accordance with the rules established in the National Conditions of Service. It escalates from a warning from the line manager, through salary deduction, reduction of professional responsibilities, removal from Public Procurement responsibilities and/or position, to, in grave cases, dismissal from public service/Government.

Intentional breach or non-compliance with the Public Procurement legal framework, which can be considered as corruption, may, however, constitute a criminal misconduct.

3.3. Integrity, Ethics & Code of Conduct

PPA19, Section 4.3:

The essence of holding a public office is the duty to uphold dignity and independence, to execute tasks and responsibilities with a strong sense of commitment to-

¹ A formal 'whistle-blower protection policy' is under development by the PSO and will also be indicated in a new Public Service Act

ward the public interest and to refrain from taking decisions affected by self-interest. Respect of the law, respect for the people and the general public and guaranteeing economic and efficient processes are mandatory elements of integrity.

All individuals engaged in Public Procurement must uphold the highest ethical standard and integrity. For key elements of Public Procurement, such as evaluation of Tenders and Award of Contracts or Framework Agreements, a commitment has to be made to this, by signing of a Code of Conduct, which includes a commitment to confidentiality, a commitment to Ethical practice and Integrity, and a declaration of no Conflict of Interest.

The Code of Conduct to be followed in Public Procurement can be determined from the important principles of the Leaders Code of Conduct Act 2016, and a separate policy on Code of Conduct, which has been drafted, been approved by the Cabinet and is undergoing an awareness phase, as of October 2019. In practice, the Leaders Code of Conduct is applicable to all civil servants engaged in Public Procurement, by indicatively replacing the word 'government' with 'Public Procurement' in relevant places:

The Maneaba ni Maungatabu declares and recognizes the right of the people of Kiribati to a responsible and an ethical government [Public Procurement] and the obligation of the government to take every step reasonable and necessary to conduct government [Public Procurement] in accordance with the Constitution and the Laws of Kiribati.

The essence of holding public office is the duty of trust which is attached to the office. Public Office Holders, as Leaders, have the duty to uphold the dignity and independence of their offices, to discharge their duties with a strong sense of commitment to the public interest and to steer clear of decisions that are motivated by self-interest.

From the Leaders Code of Conduct Act 2016, on Government Contracts, where the word 'Leaders' can be extended to include e.g., all engaged in Public Procurement:

A Leader must not be involved at all in the approval process of any commercial contract or agreement with the Government or Government Agency, where that Leader has a personal interest.

The policy, Kiribati Public Service Code of Conduct (KPSCC), is published for the public service to uphold the standard of integrity and conduct. It requires that all 'Public officials shall sign a disclaimer form of this code confirming that they fully understand the contents of the code thereof and that's bound them to comply with its terms'. It also specifically states, on nepotism and favouritism, that a 'Public Servant shall not favour friends, family or other close personal relations in the recruitment process, procurement, aid delivery, consular services or other situations'.

This is a general commitment. For evaluation committees and Award authorities, a separate declaration, as above, has to be signed before engagement, which includes also other declarations.

The main criteria for Ethics and Integrity, applied to all procurement activities – private or public – copied and modified from the Chartered Institute of Procurement & Supply, CIPS, are:

Enhance and protect the standing of the profession, by:

Never engaging in conduct, either professional or personal, which would bring the profession or the Government of Kiribati into disrepute

Not accepting inducements or gifts (other than any declared gifts of nominal value which have been sanctioned by the Government of Kiribati)

Not allowing offers of hospitality of those with vested interests to influence, or be perceived to influence, my decisions

Being aware that my behaviour outside my professional life may have an effect on how I am perceived as an employee of the Government of Kiribati

Maintain the highest standard of integrity in all Public Procurement relationships, by:

Rejecting any practice which might reasonably be deemed improper

Never using my authority or position for my own financial gain

Declaring to my line manager any personal interest that might affect, or be seen by others to affect, my impartiality in decision making

Ensuring that the information I give in the course of my work is accurate and not misleading

Never breaching the confidentiality of information I receive in a professional capacity

Striving for genuine, fair and transparent competition

Being truthful about my skills, experience and qualifications

Promote the eradication of unethical business practices, by:

Fostering awareness of human rights, fraud and corruption issues in all my business relationships

Responsibly managing any business relationships where unethical practices may come to light, and taking appropriate action to report and remedy them

Undertaking due diligence on appropriate supplier relationships in relation to forced labour (modern slavery) and other human rights abuses, fraud and corruption

Continually developing my knowledge of forced labour (modern slavery), human rights, fraud and corruption issues, and applying this in my professional life

Enhance the proficiency and stature of the profession, by:

Continually developing and applying knowledge to increase my personal skills and those of the organisation I work for

Fostering the highest standards of professional competence amongst those for whom I am responsible

Optimising the responsible use of resources which I have influence over for the benefit of my organisation

Ensure full compliance with laws and regulations, by:

Adhering to the laws of the Government of Kiribati

Fulfilling agreed contractual obligations

Integrity means the practice of being honest and showing a consistent and uncompromising adherence to strong moral and ethical principles and values.

Ethics in the public sector means a set of principles that guide public officials in their service to their constituents, including their decision-making on behalf of their constituents. Fundamental to the concept of public sector ethics is the notion that decisions and actions are based on what best serves the public's interests, as opposed to the official's personal interests (including financial interests) or self-serving political interests.

Code of Conduct means a set of rules outlining the norms, rules, and responsibilities of, and or proper practices for, an individual, commonly written for employees of an organisation, which protects the business and informs the employees of the organisation's expectations.

3.3.1. Accountability

The Public Procurement Framework is designed to safeguard the public interest and Value for Money, and to prevent corruptive actions. Legal Compliance is therefore important, and all involved in the Public Procurement procedures are accountable for their actions. Public Procurement is mainly monitored by audits, both Internal Audit and National Audit, and by the CPU.

Accountability is the readiness to have one's actions, judgments, and failures to act to be questioned by responsible stakeholders; to explain why deviations from the reasonable expectations may have occurred; and to respond responsibly when errors in behaviour or judgment have been detected. Accountability, a critical component of professionalism, is closely related to the principles of morality, ethics, and legal obligations.

3.4. Conflict of Interest

PPA19, Section 4.4:

Any public officer executing Public Procurement shall avoid situations that put his/her impartiality at risk. Public officers shall immediately declare any possible incompatibility with other positions and any possible personal interest in Tenders or personal or family connection with Tenderers that are part in Public Procurement.

To ensure that Tenderers are not subject to any Conflict of Interest, the Procuring Entities shall include in the Invitation to Tender an obligation for Tenderers to sign a written declaration that they are not in any Conflict of Interest.

3.4.1. Procuring Entities

The Procuring Entity must prevent, identify and remedy conflicts of interest arising in the conduct of Public Procurement so as to avoid any distortion of competition and to ensure equal treatment of all Economic Operators.

The concept of conflicts of interest shall at least cover any situation where staff members of the Procuring Entity or of a procurement service provider acting on behalf of the Procuring Entity who are involved in the conduct of Public Procurement or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the Public Procurement.

A Conflict of Interest can be summarised to describe a situation where a public officer puts self-interest before the interest of the public (see Ethics 3.3). Self-interest is

not limited to the individual her-/himself, but includes people or organisations related to the individual, such as family members, close friends, etc., who may benefit from decisions in Public Procurement, most usually Contract or Framework Agreement Awards. Family members normally include spouse, children, parents, siblings, but can be extended in case by case. The main criterion is whether or not a judgment or decision by the public officer is considered non-objective and a disadvantage to the public.

Kiribati is a small and isolated nation, with relatively low population, whereas many people are connected, friends, related or know each other. This increases the risk of potential Conflicts of Interest, in particular when domestic tenderers are involved. Due to this circumstance, the rule on Conflict of Interest has to be applied with care. What is important is that any individual that may be in a Conflict of Interest must openly declare this, in each situation. It is, then, a judgment by a responsible person whether this would substantially limit the quality of the judgment or decision, e.g., if the individual subject to a Conflict of Interest may be difficult to replace. In such case, the individual should either be excused from participating in any decision or sign a declaration [<http://www.procurement.gov.ki>] to guarantee no bias in case of participation in a decision.

A Conflict of Interest may arise from e.g., ‘soft bribes’ creating invisible dependencies, like lunches, dinners, travels, etc., paid by a Tenderer or an Economic Operator under a Contract or Framework Agreement. A common-sense approach is necessary to know when to decline such offers to avoid suspicion.

3.4.2. Economic Operators

For Tenderers, a separate Certificate of Compliance form has to be signed and submitted with the Tender or Application for Pre-Qualification, which includes a declaration of no Conflict of Interest. Such can be Tenders that follow preparations of Specifications or TOR made by the Tenderer under a Contract or Framework Agreement, cases where the Tenderer may have received more information than other Tenderers, Procurement based on a previous Contract or Framework Agreement, conflicting Contracts or Framework Agreements with the GoK or other customers for the same Goods, Services or Works. This is most prevalent in consultancy services but may occur in other types of Procurement.

3.5. Transparency & Openness

PPA19, Section 4.5:

Public Procurement policies, procedures, decisions and documents shall be made available to the general public, to ensure openness and clarity, except in the case of information of a confidential nature, which shall not be published, as further detailed in the Regulations.

Public Procurement is by definition using the money of the public, i.e., the taxpayers, including Donors’ taxpayers. Thus, the taxpayers and the Donors have the right to know how they are used and have trust that the money is wisely spent. Therefore, it is important to provide insight to the public on how Public Procurement works as well as the results of individual Public Procurements.

Further, to foster good competition, the Economic Operators need to have trust in the system. As such, they must be clearly informed of the requirements and the criteria for evaluation and selection, as well as the results of the evaluations. They also need information on how the system works and why some requirements are necessary to fulfil.

The main rule of Public Procurement is that open Tender procedures are to be used, to make use of the market competition and knowledge. Only under certain exceptional circumstances are Tender invitations restricted to a limited number of selected Tenderers, see 7.6.3.2.1. This means that all Invitations to Tenders should be published and made known as widely as possible. The main publication is the Kiribati Public Procurement Web Portal (the Portal), hosted by the CPU, where all Public Procurement of Medium and High Value shall be published, unless exempt. However, publishing only in the KPPWP is not enough, since it is not known to many Tenderers, whereas other publications and announcements should be considered, in particular until the KPPWP is more established and well-known.

3.6. Confidentiality

PPA19, Section 4.6:

Public officers executing Public Procurement shall act in respect of the principle of confidentiality by protecting information that needs to remain private, in line with the procedures established by the Regulations.

PPR20, Section 22:

Upon request of any interested party to obtain information concerning the Public Procurement, Procuring Entities shall decide on the confidentiality of the requested information.

Procuring Entities may present requirements to Economic Operators aimed at protecting the confidential nature of information, which the Procuring Entities make available throughout Public Procurement.

Procuring Entities shall decide that information is confidential when they judge that its release could compromise the Public Procurement or Tenderers' commercial or trade secrets.

The main rule of Public Procurement is transparency, see 3.5. However, some information included in Public Procurement may need to be kept confidential, e.g., for protection of national safety or security or to protect sensitive commercial information.

3.6.1. Confidentiality during the Public Procurement process

In brief, confidentiality is a requirement throughout the Public Procurement process, from the preparation until a Contract or Framework Agreement is Awarded. This is to uphold the principle of equal treatment, so that all Tenderers receive the same information at the same time, but also to prevent collusion and increase the conditions for competition.

3.6.1.1. During preparation

Preparing a clear and understandable Specification or TOR, reflecting the real needs, is crucial to ascertain that the Contract or Framework Agreement is Awarded to and signed with the Economic Operator that best fulfils the needs.

To make sure there are no irrelevant or non-proportional criteria in the Specification or TOR, and reduce the risk of undue and inappropriate influencing, it is important that any contacts with the market actors are in the form of open assessments. There should be no privileged information or indication on the content of the upcoming Specification or TOR to any potential Tenderer, that is not available to all interested

Tenderers. This is to give all the same time frame to prepare their Tenders and to secure that the Specifications or TOR are not biased towards a specific Tenderer or solution that unduly restricts competition or benefits a particular Tenderer.

Before the formal issue of the Invitation to Tender, the process of developing the criteria in the Specification or TOR is, for the reasons above, confidential, only subject to requested inputs from the market. It is preferred to handle the market communication through the Kiribati Public Procurement Web Portal, to make sure all information requests and other communication is open to all.

3.6.1.2. *During the Tender period*

From the time of the publication or submission of an Invitation to Tender until the specified time for submission, the only external communication allowed is questions from potential Tenderers and answers from the Procuring Entity, see 7.8.3, and clarifications, see 7.4.14.2.

What is important is not to disclose any information that may increase the risk of collusion, e.g., not which or how many Tenderers have shown interest or have been invited. Answers to questions are to be provided in the same manner and recipients as the Invitation to Tender was submitted and be cleared from information indicating who submitted the question.

3.6.1.3. *During the evaluation*

During the evaluation, the only communication with the Tenderers allowed is requests for clarifications from individual Tenderers on unclear Tenders. There should be no 'status reports' on the process, or information on which or how many has Tendered, etc. This is important to avoid any suspicion of external influence, bribing, etc.

3.6.1.4. *At the Award*

On the Award, see 7.10.3, the communication is with each individual Tenderer, comprising only the proprietary information, i.e., who is the winner and why the Tenderer did not succeed. The intention of this is twofold, to provide information for possible complaint and to help them improve. There should be no information on the other Tenders, except a summary of the scoring. At this stage, information on which Tenderers have participated is no longer confidential.

3.6.1.5. *After signed Contract*

After a Contract or Framework Agreement has been concluded, the need for confidentiality disappears, except for protection of business or trade secrets, requested and approved, , see 3.6.3, which decreases over time. Some business or trade secrets are no longer in need of protection after the Contract or Framework Agreement has been concluded, whereas others may still need to be confidential for some further time. The latter has to be decided on a case-by-case basis, following negotiations with the Economic Operator and a judgment of reasonableness.

In some cases, also confidentiality remains, to protect national security and safety, see 3.6.3.

3.6.2. *Confidential Public Sector information*

Information that may jeopardise national security or safety need to be confidential. Before submitting the Invitation to Tender, interested Tenderers should, in such cases, first sign a commitment on confidentiality, where after they can receive the Invitation to Tender. In an Open Procedures, this requirement can be published, together with a brief description of the subject of the Public Procurement. In rare cases, it may be advisable to restrict the number of Tenderers that receive sensitive information, by using a Limited Procedure, see 7.6.3.2.1.

3.6.3. Confidential Tenderer information

A Tenderer request for confidentiality is reasonable when such information would seriously harm their business, should it be available to their competitors, e.g., business or trade secrets of innovative character.

Information that may be considered confidential by Tenderers, following a request for confidentiality, should be marked 'CONFIDENTIAL'. However, it should be clarified to the Tenderer that this is not a guarantee for confidentiality but will be assessed and decided upon someone's request to receive such information. Then, a judgment of the relevance and a decision on the need for confidentiality will be taken. This, to safeguard the main principle of transparency and avoid overuse of confidentiality.

It would be most critical and relevant during the Tender phase, until an Award decision is taken, and a Contract or Framework Agreement is concluded. If the Tenderer with the innovative solution is Awarded the Contract or Framework Agreement, the need for confidentiality may cease or, in some cases, still be relevant for a limited time, depending on the nature of the innovative solution and whether it will, anyway, become known during or after the execution of the Contract or Framework Agreement. It is not possible to provide any detailed guidance on this, but it has to be decided on a case-by-case basis.

3.7. Fair Competition

PPA19, Section 4.7:

Public Procurement shall promote fair competition. Public Procurement shall not be made with the intention of artificially narrowing competition or unduly favouring or disadvantaging certain Economic Operators.

3.7.1. Objectivity & Proportionality

All criteria and requirements defined in Specifications or TOR must be based on the real and objective needs of the Procuring Entity. It is not allowed to include criteria or requirements that are not relevant or needed but they must be proportional to and not exceed the needs. This, to prevent giving advantage to preferred Economic Operators, e.g., existing ones, by defining criteria that are not needed, but only the preferred Economic Operator can fulfil. Including criteria that are not needed will also unnecessarily increase the cost.

3.7.2. Equal Treatment & Non-discrimination

It is important to provide the same information to all Tenderers and not to discriminate any Tenderer, to give all the same opportunity for competing for Contracts or Framework Agreements. If the same information is not given to all, it is not possible to ascertain whether or not Value for Money has been obtained.

Also, information must be given at the same time to all Tenderers, to give them equally long time to prepare their Tenders. The Tender times may seem sufficiently long, but you never know how much time a Tenderer may need to produce a competitive Tender of good quality. So, if Tenderers need to investigate solutions that may take much time, to provide a good qualitative Tender, it would be unfair to allow some Tenderers more time than others.

4. Exceptions

The following exceptions listed in the Public Procurement Regulations 2020, Section 3, shall not be subject to application of the procedures of the Public Procurement Act and Regulations.

However, despite the fact that they are not subject to application of the procedures, such procurement is still to respect the Principles of Public Procurement defined in section 4 of the Act, unless clearly unsuitable. In some cases, f, g, i and j, as described under each relevant chapter in the following, the processes and approval procedures must also be followed. Depending on the conditions and what has been regulated in the cases of c and d, they may also be subject to the processes and approval procedures.

- a) Public employment contracts (excluding the engagement of Consultants);
- b) Projects financed by International Donors, where money and financial assets are not part of Kiribati Public Funds;
- c) Procurement subject to international treaties;
- d) Bilateral agreements between the Government of Kiribati and foreign public entities or authorities;
- e) Gifts, donations and any form of unconditional grants, including international training, medical expenses from foreign health care systems or tuition fees from foreign universities, with which the Government of Kiribati has signed a Memorandum of Understanding;
- f) Purchase of Goods, Services or Works outside of Kiribati for use outside of Kiribati;
- g) Financial investments, loans and guarantees;
- h) Regulatory fees, permits or other public or mandatory fees;
- i) Purchasing or renting of land or existing buildings or other immovable property, exclusive of refurbishment works or new construction works; and,
- j) Travel expenses, that are regulated in the Travel Policy of the Government of Kiribati.

4.1. Rationale

Some types of acquisition are, for various reasons, exempt from the detailed procedures of the Public Procurement Act and Regulations. However, since it is still public funds (tax money) they remain subject to the Principles of Public Procurement, as defined in the Act, i.e.:

- Value for Money
- Anti-corruption
- Integrity
- Conflict of Interest
- Transparency
- Confidentiality
- Fair competition

4.1.1. Public Employment Contracts

Employment Contracts are subject to separate rules and institutional procedures that safeguard similar principles as for Public Procurement.

4.1.2. Donor-funded Procurement

Donors have their own rules, similar to the Kiribati Public Procurement legal framework, and may prefer that they are applied. However, since the Public Procurement Act and Regulations has been drafted under close consultation with the main donors, at the time, they are likely to decide that the Kiribati legal framework shall apply. However, it is up to their discretion to decide for each case if their rules shall apply. This should be clarified with the respective donor at the time of the agreement of the funding. The CPO should be informed by the authority within the Government of Kiribati which has been decided in the funding agreement and also request that such a decision has been made. If nothing is regulated in the agreement, it should be presumed that the legal framework of Kiribati applies.

Donor funded Procurement agreed to follow the Donor rules are exempt from the Public Procurement Act and Regulations of Kiribati, whereas if this is not the case, the Kiribati Public Procurement legal framework shall apply in full.

4.1.3. International treaties

The Government of Kiribati may sign or have signed international treaties which may regulate Public Procurement. An international treaty may regulate trade between Kiribati and one or many other countries, including special agreements on exchange of Goods, Services or Works. Such rules must then be followed.

The CPU should regularly check for such treaties, including establishing agreements with any relevant Ministry to receive information on new or existing treaties that may have an impact on Public Procurement. Depending on what is regulated in the treaty, the Kiribati Public Procurement legal framework may still apply on e.g., the process and/or the approval procedures. This shall be clarified by the CPU for each case.

4.1.4. Bilateral agreements

The Government of Kiribati may establish agreements with other Governments that have an impact on Public Procurement. The CPU should regularly check for such bilateral agreements, including establishing agreements with any relevant Ministry to receive information on new or existing bilateral agreements that may have an impact on Public Procurement. Depending on what is regulated in the agreement, the Kiribati Public Procurement legal framework may still apply on e.g., the process and/or the approval procedures. This shall be clarified by the CPU for each case.

4.1.5. Unconditional grants

The Government of Kiribati often receive unconditional gifts, donations or grants, including agreements, e.g., by means of a Memorandums of Understanding, on international education and training, medical referrals and treatment, etc.

Such beneficiaries are more or less unilateral and can, consequently, not be put under competition.

4.1.6. Foreign procurement

Purchase of Goods, Services or Works outside of Kiribati for use outside of Kiribati, e.g., for Consulates, Embassies, etc., is not suitable to follow the detailed procedures of the Kiribati legal framework. However, the Kiribati Public Procurement legal framework shall be followed regarding the process and approval procedures.

4.1.7. Financial investments

The financial market is such a fast-moving market that it is not possible to be managed through the normal Public Procurement procedures. Instead, still subject to the main Public Procurement principles, procurement of financial investments, loans or guarantees has to be handled separately, subject to negotiations. In particular, competition should be utilised, when available.

4.1.8. Regulatory fees, permits or other public or mandatory fees

Regulatory fees, permits or other public or mandatory fees, normally established by Law, Ordinance, by-laws or Regulations, etc., cannot be negotiated and are normally connected to a public service or equivalent, i.e., a 'monopoly-like fee', and are exempt.

4.1.9. Immovable property

Rental, lease or procurement of land or property is normally geographically restricted, with limited or no alternatives, whereas the procedures of the legal framework for Public Procurement are not fit for purpose. However, the principles of Public Procurement, as defined in the Act, and the processes and approval procedures of the Kiribati legal framework shall apply.

4.1.10. Travel expenses

Even though most travel expenses, e.g., flight tickets, ship passenger transportation and hotels, each are less than AU\$10,000, and the rules for Low-Value Procurement apply, they are often difficult to manage through quotes.

Flight tickets are subject to constant fluctuation and limited when it comes to competition for many destinations. It is, thus, not meaningful to follow normal procedures of competition.

Hotels are geographically restricted and not sensitive to competition. An important factor is the location, perhaps close to a meeting venue, or even being the place of a conference.

For flights and hotels, publicly available booking sites are easily available, to find the most suitable solution, representing best Value for Money.

Instead of being subject to the Public Procurement legal framework, all travel related procurement, irrespectively of value, are regulated in a Government Travel Policy, including procedures for booking, setting rules for public officials' travel. However, the Kiribati Public Procurement legal framework shall be followed regarding the approval procedures.

In parallel, the CPU or a relevant Procuring Entity, in cooperation with the CPU, should establish Framework Agreements or other arrangements with travel agents, flight operators, shipping companies, etc., for common destinations. If such Framework Agreements are available, they shall be used by the Procuring Entities.

5. Definitions and abbreviations

The definitions here contain the definitions of the Public Procurement Act 2019 and the Public Procurement Regulations 2020, relevant to the Manual, with further explanations, if required. Definitions from the Act or Regulations are within frames. Some definitions, not relevant to the Manual, are not repeated here.

Abbreviations are expressed within brackets at the definitions

Annual Procurement Forecast (APF)

Before every new fiscal year, equal to calendar year in Kiribati, every Ministry shall submit a budget request to the Ministry responsible for Finance (MFED). Goods, Services and Works to be procured constitute a substantial part of the budget, whereas an Annual Procurement Forecast needs to be included in the budget request.

Annual Procurement Plan (APP)

Upon approval of the budget for a new fiscal year, including what has been approved from the Annual Procurement Forecast, an Annual Procurement Plan is finalised. It is an itemised schedule showing the approved allocation of Public Funds for Procuring Entities' needs for procuring Goods, Services or Works. Public Procurement can then be initiated for each of the approved positions of the Annual Procurement Plan.

Applicant

An Applicant is a firm or individual which has submitted an Application for Prequalification.

Application for Prequalification (AFPQ)

In some cases, to avoid receiving too many and perhaps non-eligible Tenders, a Prequalification phase may be utilised. Then, some basic requirements are described, which interested Economic Operators need to respond to, to verify whether they are eligible to participate in the Public Procurement. An Application for Prequalification is a response to a Prequalification Procedure where the Economic Operator expresses its interest to take part in Public Procurement by providing evidence of eligibility.

Award

An Award of a Contract or Framework Agreement is a decision communicated to all Tenderers, as a result of the evaluation, on whom a Contract or Framework Agreement is intended to be signed with. It is not a commitment to sign a Contract or Framework Agreement.

Bank Guarantee

A Bank Guarantee is an arrangement with a bank, to ensure performance of the obligations of a party undertaking, agreeing to provide the guarantee. In the Public Procurement context, a successful tenderer may be required to provide a bank guarantee for a sum commensurate with the value of his obligations to perform under the public Contract. In the event of default, the Procuring Entity can invoke the guarantee against the bank.

Advance payment is a requirement which needs to be secured with a Bank Guarantee, corresponding to the amount to be paid in advance. The cost of a Bank Guarantee is to be borne by the Economic Operator with the Contract. Should a delivery or performance not be fulfilled, the Procuring Entity has the right to withdraw the advance payment in full.

To secure performance of a Contract, sometimes Bank Guarantees are used for defined parts of the Contract, e.g., in accordance with checkpoints. It is normally used for e.g., Works, where partial performance may have no or limited use for the Procuring Entity, should the Economic Operator not fulfil the Contract.

Central Contract Award Board (CCAB)

The Central Contract Award Board is the awarding authority for Contracts or Framework Agreements for High-Value Procurement (HVP).

Central Procurement Unit (CPU)

A Central Procurement Unit is established within the Ministry responsible for Finance (MFED) as the centre of excellence for Public Procurement in Kiribati and is responsible for providing operational advice and support to Procuring Entities in the execution of Public Procurement.

Chief Procurement Officer (CPO)

The Chief Procurement Officer (CPO) is the official appointed by the Beretitenti as Head of the Central Procurement Unit (CPU).

Consultant

A Consultant is any legal person, i.e., a firm, or natural person, i.e., an individual, providing Consulting Services under a Contract or Framework Agreement.

Consulting Firm

A Consulting Firm is any legal person, i.e., a registered firm, providing Consulting Services.

Consulting Services

Consulting Services are Services that are typically of an intellectual and advisory nature, aiming at providing advice on a problem or preferred development or solution, contrary to Standard Services.

Contract

A Contract is an agreement concluded in writing between an Economic Operator and a Procuring Entity having as its object the obligation to supply Goods, provide Services or execute Works.

Contract Amendment

A Contract Amendment is a written consecutively numbered amendment of a Contract or Framework Agreement, agreed and signed by both parties. The Contract or Framework Agreement shall be valid in accordance with the latest version of Contract Amendments being agreed.

Contract Award Committee (CAC)

The Contract Award Committee is the awarding authority for Contracts or Framework Agreements for Medium-Value Procurement (MVP).

Contract Management

Contract Management is the continuous and formal monitoring and management of performance and compliance with the terms and conditions of a Contract or Framework Agreement.

Contractor

A Contractor is an Economic Operator Awarded a Works Contract or Framework Agreement.

Corrupt Practice

A Corrupt Practice shall have the meaning defined in section 367 of the Penal Code.

Criminal Organisation

A Criminal Organisation means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit.

Delegation of Authority (DOA)

The Delegation of Authority is the definition of responsibilities, actions and communications aspects involving all public officers participating in Public Procurement. It is found as Annex 1 to the Public Procurement Regulations 2020.

Domestic Economic Operator

A Domestic Economic Operator is an Economic Operator that is a national of Kiribati or that has established and registered its main business centre in Kiribati.

Economic Operator (EO)

An Economic Operator is any natural or legal person, which is capable of supply of Goods, provision of Services or execution of Works, a general description of Suppliers, Service Providers, Consulting Firms, Individual Consultants and Contractors. The term is applied before submission of a Tender, whereas they are referred to as Tenderers. After the conclusion of a Contract or Framework Agreement they are referred to the relevant specific description, depending on the scope of the Contract or Framework Agreement.

Evaluation Committee (EC)

The Evaluation Committee is a committee, as defined by the Regulations and described in 7.4.15, responsible for evaluating Tenders and provide an Evaluation Report to the relevant awarding authority.

Evaluation Report

The Evaluation Report is an integrated part of the Procurement Report submitted to the relevant awarding authority detailing the result of the evaluation of Tenders received as part of Public Procurement.

Extremely critical situation

An Extremely critical situation is a situation caused by an unforeseeable sudden natural or human disaster that may impact the normal functioning of the community and requiring an emergency intervention.

Extremely urgent situation

An Extremely urgent situation is a situation caused by unforeseeable events requiring immediate action, which does not allow the normal Public Procurement procedure timelines to be applied.

Finance Regulations

The Finance Regulations are the Republic of Kiribati Government Finance Regulations, issued by the Ministry responsible for Finance (MFED).

Financial Evaluation

A Financial Evaluation is an evaluation that follows after the completed Technical Evaluation and provides scores on the financial part of Tenders received, in accordance with the criteria and methodology defined in the Invitation to Tender.

Framework Agreement

A Framework Agreement is an agreement executed between one or more Procuring Entities and one or more Economic Operators, for a defined selection and volume of Goods, Services or Works, establishing the terms and conditions governing Suborders to be Awarded during an agreed period of time.

Goods

Goods means tangible items, including assets and expendable items that are purchased, hired, leased or rented and related services, provided that the value of the Goods is higher than the value of the service.

High Value Procurement (HVP)

High-Value Procurement is defined in Annex 1 to the Public Procurement Regulations.

In Writing or Written

“In Writing” or “Written” means any expression consisting of words and/or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

Individual Consultant

An Individual Consultant” is any natural person, not engaged by a Consulting Firm, providing a Consulting Services.

Invitation to Tender (ITT)

An Invitation to Tender is a procedure according to which a Procuring Entity invites Economic Operators to take part in Public Procurement by submitting a Tender. It can take the form of a Request for Proposal, Request for Quotation or Request for Offer, depending on the subject of the Public Procurement.

Limited Competitive Procedure

A Limited Competitive Procedure is an exceptional Public Procurement procedure where only a selected number of Economic Operators are invited to submit a Tender.

Low Value Procurement (LVP)

Low-Value Procurement is defined in Annex 1 to the Public Procurement Regulations.

Medium Value Procurement (MVP)

Medium-Value Procurement is defined in Annex 1 to the Public Procurement Regulations.

Model Documents

Model Documents are a set of standard Invitation to Tender and evaluation templates issued by the Chief Procurement Officer and of standard Contract or Framework Agreement templates issued by the Office of Attorney General for use in Public Procurement.

Open Competitive Procedure

An Open Competitive Procedure is a Public Procurement procedure which is open for all Economic Operators to submit a Tender or an Application for Prequalification being widely published.

Performance Guarantee

A Performance Guarantee is a financial security instrument used to safeguard compliance with terms and conditions during a Contract execution, in particular agreed delivery times and quality requirements.

Prequalification Procedure

Prequalification means a procedure to identify, prior to an Invitation to Tender, Economic Operators that are qualified to provide certain Goods, Services or Works.

Procurement Complaints Board (PCB)

The Procurement Complaints Board is the permanent authority responsible for appeals on Medium and High Value Procurement and Contract or Framework Agreement Award decisions.

Procurement Officer (PO)

A Procurement Officer is a public officer in the Central Procurement Unit.

Procurement Report

The Procurement Report is a report which reflects all decisions, including underlying background and analysis, during the entire Public Procurement procedure and includes e.g., the Evaluation Report, Award, Complaints, Contract and contract Management Report and Performance Evaluation.

Procuring Entity (PE)

A Procuring Entity is any governmental department, agency, organ or their unit, or any subdivision or multiplicity thereof, that engages in Public Procurement.

Procuring Entities are Ministries, Departments, State-Owned Enterprises (SOE) and Statutory Corporations, owned and controlled to 50% or more by the Government of Kiribati, or the funding of which is by 50% or more from public funds (national or international), as designated by Annex II of the Regulations.

Procuring Entity Procuring Officer (PEPO)

A Procuring Entity Procuring Officer is a public officer in a Procuring Entity Procuring Office responsible for Public Procurement.

Procuring Office

A Procuring Office is a dedicated office within each Procuring Entity responsible for Public Procurement.

Public Funds

Public Funds are public money or public financial assets deriving from the state budget or from approved International Donors' funding, being subject of a bilateral agreement with GoK, and available for the Government or under the control of the Procuring Entity.

Public Procurement

Public Procurement means acquisition, including buying, hiring, leasing or renting of Goods, Services or Works utilising Public Funds that has to follow the Public Procurement legal framework of Kiribati, i.e., the Public Procurement Act 2019, the Public Procurement Regulations 2020 and the Public Procurement Manual.

Public Procurement Act 2019 (PPA19)

The Act means the Public Procurement Act 2019.

Public Procurement Manual (Manual)

The Public Procurement Manual or Manual is the guidelines and advice, issued by the Chief Procurement Officer pursuant to the Regulations, providing practical instructions to efficiently and effectively execute Public Procurement.

Public Procurement Regulations 2020 (PPR20)

The Regulations means the Public Procurement Regulations 2020.

Purchase Order

A Purchase Order is a simple Contract used for Low Value Procurement transactions of Goods, Services or Works.

Request for Information (RFI)

A Request for Information is a non-committing market assessment used to determine a realistic budget estimate and to develop Specifications and Terms of Reference.

Request for Offer (RFO)

A Request for Offer is a set of documents used for a simplified Invitation to Tender for Low Value Procurement used by Procuring Entities.

Request for Pre-qualification (RFPQ)

A Request for Pre-Qualification is a set of documents used for an invitation for Economic Operators to prequalify to be eligible to submit a Tender for specified Goods, Services or Works.

Request for Proposal (RFP)

A Request for Proposal is a set of documents used for an Invitation to Tender to invite Economic Operators to submit a proposal for a solution to fulfil requirements defined by the Procuring Entity for Goods, Services or Works.

Request for Quotation (RFQ)

A Request for Quotation is a set of documents used for an Invitation to Tender to invite Economic Operators to submit a quotation for standard Goods, Services or Works.

Request for Sub-Tender (RFST)

A Request for Sub-Tender is a set of documents used for an Invitation to Tender to invite Economic Operators within a Framework Agreement to submit a Sub-Tender for the Goods, Services or Works included in the Framework Agreement.

Service Contract

A Service Contract or Framework Agreement is a Contract or Framework Agreement concluded between a Procuring Entity and a Service Provider or Consultant that relates exclusively or mainly to the provision of Consulting or Standard Services other than those referred under Goods and Works.

Service Provider

A Service Provider is an Economic Operator that is Awarded a Service Contract or Framework Agreement other than for Consulting Services.

Services

Services means the object of Public Procurement other than Goods and Works and includes both Consulting Services and other services, that are contracted on the basis of performance of measurable outputs.

Single-Source Procedure (SSP)

A Single-Source Procedure is an exceptional Public Procurement procedure, requiring a formal approval, in which only one Tenderer is invited to submit a Tender. The procedure may be used under certain exceptional circumstances, where standard Public Procurement procedures are not possible or are inefficient to use.

Social Considerations

Social Considerations include, but are not limited to, environmental protection, energy and water efficiency, climate change, gender equality, workers conditions, child labour, accessibility for persons with disabilities, social inclusion of indigenous people and reduction of domestic unemployment.

Specification

A Specification is a technical description of the requirements for Goods or Works.

Standard Goods

Standard Goods are Goods already available on the market and are not produced specifically for the Procuring Entity.

Standard Services

Standard Services means services already available on the market that can be clearly identified and consistently applied like for example legal services, cleaning services, maintenance and repair services

State-Owned Enterprise (SOE)

A State-Owned Enterprise is an entity owned and controlled to 50% or more by the Government of Kiribati, or the funding of which is by 50% or more from public funds (national or international). State Owned Enterprises fulfilling these criteria and, thus, are subject to Public Procurement, are defined in Annex II of the Public Procurement Regulations 2020.

Statutory Corporation

A statutory corporation is a corporation created, owned and controlled to 50% or more by the Government of Kiribati, or the funding of which is by 50% or more from Public Funds. Statutory Corporations fulfilling these criteria and, thus, are subject to Public Procurement, are defined in Annex II of the Public Procurement Regulations 2020.

Suborder (SO)

A Suborder is a Contract between a Procuring Entity and an Economic Operator under a Framework Agreement.

Sub-Tender (ST)

A Sub-Tender is a Tender following an invitation to the parties of a Framework Agreement to submit a Tender, in accordance with the terms and conditions of the Framework Agreement, for evaluation and Award of a Sub-Order.

Supplier

A Supplier is an Economic Operator Awarded a Contract or Framework Agreement for the supply of Goods.

Technical Evaluation

A Technical Evaluation is an evaluation that considers eligibility and provides scores on the technical part of Tenders received, in accordance with the technical evaluation criteria and methodology defined in the Invitation to Tender.

Tender

A Tender is a technical and a financial offer prepared in response to an Invitation to Tender by a Procuring Entity.

Tenderer

A Tenderer is an Economic Operator that has submitted a Tender in response to an Invitation to Tender by a Procuring Entity.

Tender Security

A Tender Security is a financial security instrument used to secure that Tenderers do not withdraw their Tenders after the last date and time for submission.

Terms of Reference (TOR)

Terms of Reference means a technical description of the requirements for Services.

Value for Money

Value for Money means the optimum combination of whole life cycle costs and quality.

Value for Money Evaluation

The Value for Money Evaluation is the procedure where the technical and financial parts of the Tenders are aggregated to determine the Tender that provides the best Value for Money.

Very Low-Value Procurement

Very Low-Value Procurement is defined in Annex 1 to the Public Procurement Regulations.

Web Portal

The Web Portal is short for the Kiribati Public Procurement Web Portal, which is the main source for publication of Public Procurement related information and communication.

Works

Works means the construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services.

6. Kiribati organisation of Public Procurement

The lack of Public Procurement tradition, competence, experience and a well-designed system in Kiribati requires, apart from a new Public Procurement framework, a centralised support for a foreseeable time. In particular, during the development, implementation and establishment phases, the guiding hand of the CPU will be necessary.

At the same time, the subject knowledge of the Procuring Entities is the basis for the Public Procurement. To get the most out of the Public Procurement, this knowledge should be refined with professional procurement knowledge, i.e., to achieve Value for Money and less problems. Thus, depending on the complexity and value of the Public Procurement, the CPU will need to be more or less involved, as relevant.

Over time, with experience and training, Public Procurement skills will increase in the Procuring Entities. To make this more effective and efficient, every Procuring Entity is required to have a Procuring Office, with a Procuring Officer clearly dedicated to Public Procurement, depending on the extent of Public Procurement. The Procuring Office and the Procuring Entity Procuring Officer expert will be the interface to the CPU.

6.1. Central versus decentral

The technical and budgetary responsibility is with the Procuring Entity, irrespective of the level of engagement from the CPU. The role of the CPU is to ascertain legal compliance and Value for Money. This can be achieved if the Public Procurement legal framework and system is being utilized, in accordance with this Manual.

One major component for efficiency is good planning. For this, all Procuring Entities must submit Annual Procurement Plans, requested, coordinated and monitored by the CPU.

The level of engagement from the CPU depends on the value and the complexity of the Public Procurement, which often are connected. Thus, Low-Value Procurement (LVP) is almost entirely managed by the Procuring Entity, whereas for Medium-Value Procurement (MVP) the CPU provides more support and monitoring. For High-Value Procurement (HVP) early involvement of the CPU is mandatory.

For commonly purchased standard Goods and Services, the CPU may establish Framework Agreements, for easy access for the Procuring Entities. This can be for the whole government, selected PE's or one PE.

In cooperation with the Procuring Entities, services that may be suitable for outsourcing will be defined and the process for this will be managed by the CPU.

6.2. Organisational structure

The Public Procurement legal framework is built on a decentralised structure. As such, the Procuring Entities have the full responsibility and accountability for their budget, execution of Public Procurement and that Value for Money is achieved. The Permanent Secretary, CEO or equivalent is responsible for the Public Procurement activities by the Procuring Entity.

However, for control, advice and oversight, they are supported by the Central Procurement Unit, CPU, within the Ministry responsible for Finance, MFED.

To ensure coherent cooperation and to optimise the use of resources, experience and competence every Procuring Entity shall have a dedicated Procuring Office, with a

Procuring Officer, closely cooperating with the CPU. This provides a seamless application of Public Procurement, utilising the competence of the Procuring Entities to define the real needs together with Public Procurement competence on how to increase competition and other means to best cover the needs at lowest cost.

The Public Procurement system is based on the principle of ‘early detection and correction’, to reduce consequences of possible mistakes or wrongdoings, as well as to minimise the risk of fraud and corruption. It is far better to allocate a little time to detect and correct mistakes at an early stage instead of having to discover them at the end and have to restart from very early in the process, or even cancel and reopen the Public Procurement.

6.3. Overview of actions and responsibilities

It is crucial that the role and responsibility of is clear to every public officer involved in Public Procurement and not overlapping, to avoid gaps, unnecessary double work or conflicting activities. To secure this, a Delegation of Authority (DOA), as Annex I to the Regulations, allocates roles and responsibilities for different activities.

To support the early detection and correction, but still decentralised system, the cooperation between the Procuring Entities and the CPU has to be clear, not to create unclarity on the responsibilities and actions.

6.3.1. Delegation of Authority (DOA)

The Delegation of Authority, as per Annex I to the Regulations [http://procurement.gov.ki/attached_files/Signed%20Public%20Procurement%20Regulation%202020.pdf], establishes roles and responsibilities and provides levels of delegated authority for Public Procurement. The DOA covers various areas, from handling of the legal framework and Annual Procurement Plans to different Public Procurement procedures and Contract Management.

The procedures are in essence similar, albeit slightly simplified for Very Low (VLVP) and Low Value Procurement (LVP) than for Medium (MVP) and High Value Procurement (HVP), where more control is required, i.e., the higher the value, the more centralised the decision-making becomes, whereas for lower values, more responsibility lies with the Procuring Entities.

6.3.1.1. Very Low (VLVP) and Low Value Procurement (LVP)

In brief, for VLVP and LVP, the Public Procurement is done completely by the Procuring Entity, only providing necessary information to the CPU and Treasury, at MFED.

6.3.1.2. Medium Value Procurement (MVP)

In MVP, the CPU is more involved, implementing the principle of early detection and correction, e.g., for approving the Invitation to Tender (ITT) and Contract or Framework Agreement, managing the publishing and receipt of Tenders, coordinating Questions and Answers and the evaluation, as well as that the CPU, Treasury and NEPO, at MFED, are being informed at various stages. Importantly, though, the Award decision is taken by the Contract Award Committee, see 7.10.3.

6.3.1.3. High Value Procurement (HVP)

For HVP, more or less the same principle and structure applies, as regards Procuring Entity and the CPU involvement, with escalation of some decisions within each of them, e.g., that the Minister of the PE signs the Contract or Framework Agreement,

and the CPO takes over some approvals from PO's and that the Central Contract Award Board takes the Award decision.

6.4. Institutional support

Public Procurement involves many internal stakeholders and actors, to form an all-encompassing system from law and policy makers to oversight and audit, as illustrated in Fig. 8.



Fig. 8

6.4.1. Ministry responsible for Finance (MFED)

The Minister of Finance and Economic Development is responsible for an efficient and effective Public Procurement system and authorized to promulgate Public Procurement Regulations to fulfil the objectives and carry out the provisions of the Public Procurement Act.

The Central Procurement Unit, headed by the Chief Procurement Officer, providing support to Procuring Entities, is organised within the Ministry responsible for Finance.

6.4.2. Office of Attorney General (OAG)

The Office of the Attorney General is responsible for the implementation of the Public Procurement legislative framework and for approval and modification of Standard Contract or Framework Agreement templates, including review and approval of proposed deviations from the approved templates, for individual Contracts or Framework Agreements.

6.4.3. Central Procurement Unit (CPU)

The Central Procurement Unit, a Division within the Ministry responsible for Finance (MFED), with the overall responsibility for Public Procurement in Kiribati, is the centre of excellence for Public Procurement and is responsible for providing operational support to Procuring Entities in the execution of Public Procurement.

The Central Procurement Unit is not operatively executing any Public Procurement, with the exception of Public Procurement executed for the MFED and Framework Agreements.

The CPU is led by the Chief Procurement Officer (CPO) who is the highest authority responsible for developing and maintaining an efficient and effective Public Procurement system, including advice, supervision, monitoring and evaluation of compliance of Public Procurement with the Act and Regulations, including ascertaining Value for Money. The CPO is also responsible for this Manual.

The CPU also has a Legal Officer, responsible for Public Procurement Policy, i.e., that the Public Procurement Framework is efficient and effective, and support on legal matters to the Procuring Entities, including complaints.

CPU Operations has a number of Procurement Officers, with high knowledge on Public Procurement, mainly responsible for training and support to the Procuring Entities, but also coordination, supervision, monitoring and evaluation.

Introduction, implementation and content management of e-procurement is also the responsibility of the CPU.

6.4.4. Chief Procurement Officer (CPO)

The Chief Procurement Officer is the head of the Central Procurement Unit and the ultimate expert on Public Procurement within the Government of Kiribati, with the highest level of integrity and, fulfilling the requirement of segregation of duties, shall not be subject to any conflict of interest, which includes having no vested interest in any Tenderer or any Procuring Entity.

The Chief Procurement Officer:

- a) Is responsible for developing and maintaining an efficient and effective Public Procurement system, including proposing necessary improvements to the Minister of Finance and Economic Development;
- b) Is responsible for monitoring the application of the Manual and for updating its contents, for better clarity and improved efficiency and effectiveness, to obtain better Value for Money, in line with the Act and Regulations; and
- c) Submits an Annual Public Procurement Report to the Minister of Finance and Economic Development, on the facts and figures, outcome and development of Public Procurement in Kiribati.

6.4.5. Procuring Entities (PE)

All Public Procurement for a Procuring Entity is executed by the Procuring Entity, with support from the Central Procurement Unit. The Procuring Entity has the responsibility and is accountable for their Public Procurement. This responsibility includes seeking necessary advice from the Central Procurement Unit.

6.4.5.1. Procuring Office

Each Procuring Entity shall establish a Procuring Office and appoint at least one Procuring Officer with the responsibility to coordinate Very Low and Low-Value Procurement, and to initiate and carry out all Medium and High Value Procurement, under the support and supervision of the Central Procurement Unit.

6.4.5.2. Procuring Officer

The Procuring Entity Procuring Officer (PEPO) can be engaged on full or part time, depending on the Public Procurement volume of the Procuring Entity. The Procuring Officer is the point-of-contact with the CPU with the main role to coordinate all Procuring Entity Public Procurement.

6.4.5.3. Project Manager

No later than at the signature of a Contract, the Procuring Entity shall appoint a project manager with functions and responsibilities as described under 7.13.1.

6.4.5.4. Contract Manager

No later than at the signature of a Contract or Framework Agreement, the Procuring Entity shall appoint a Contract Manager with functions and responsibilities as described under 7.13.2.

6.4.6. Central Contract Award Board (CCAB)

The Central Contract Award Board is the permanent body for review and Award decisions on High-Value Procurement Contracts or Framework Agreements. The Central Contract Award Board operates in accordance with the rules established by the Regulations, see 7.10.

6.4.7. Contract Award Committee (CAC)

The Contract Award Committee is the body, in each Procuring Entity, for review and Award decisions on Medium-Value Procurement Contracts or Framework Agreements. The Contract Award Committee operates in accordance with the rules established by the Regulations, see 7.10.

6.4.8. Procurement Complaints Board (PCB)

The Procurement Complaints Board is the semi-permanent appeals body for review complaints regarding HVP received from Tenderers and it operates in accordance with the rules established by the Regulations, see 7.11.5.2.

6.4.9. Independent Oversight

Besides the general and daily monitoring of Public Procurement, there are two formalised audit functions; the national audit and the internal audit. The national audit is conducted by the Kiribati Audit Office doing financial and compliance auditing, reporting to the Parliament. Internal audit is conducted by the Internal Audit division, organised within the Ministry responsible for Finance (MFED), thus, reporting to the Minister of Finance and Economic Development.

6.4.9.1. Kiribati Audit Office (KAO)

The responsibility of the KAO is best illustrated by a quote from the KAO official website (<https://kao.gov.ki/index.php>):

“KAO is an independent state Organization headed by the Auditor General who is responsible to carry out audits for Government Departments, Government Companies, Annual Accounts (Treasury), Local Government or Island Councils, Development Project, Special Audits and Performance and IT Audits.

The Public Office of the Auditor General is established under Section 14(1) of the constitution. According to Section 114 (2) of the Constitution allows the Auditor General to audit the Public Accounts of Kiribati and of all departments, Offices, courts, and authorities of the Government, including statutory corporations and Government owned companies.”

The KAO is preparing audit reports on compliance with the mandatory rules for the public administration for annual submission to the Parliament. An important area is Public Procurement and whether it is conducted in compliance with the legal framework and provides Value for Money. To enable this, the Public Procurement Act 2019 regulates, in Section 13, that *“Procuring Entities shall make available all requested*

Public Procurement information and documentation to the Kiribati Audit Office upon written request.”

6.4.9.2. Internal Audit (IA-MFED)

The Internal Audit describes its responsibilities as follows, on their website <http://www.mfed.gov.ki/our-work/internal-audit>:

Mission: "To safeguard public funds and assets from misuse and ensure that Regulations (Financial and Stores) and Laws (CAP 79) governing the use and custody of public funds and stores are strictly adhered to."

Responsibilities: The main responsibilities of the Internal Audit division are:

1. Ensure safeguard of Public Funds and Assets
2. Ensure that regulations and Laws are followed
3. Where necessary, provide advice to Output Managers over budgets, and
4. Carry out investigations into alleged fraudulent activities

The above are carried out through Internal Audit inspections at all Government offices and at outer islands State Fund accounts.

The Internal Audit conducts audits in close dialogue with the Government entities and should be considered a resource for improvement.

7. How to do Public Procurement in Kiribati

This chapter provides detailed guidance and instructions on how to conduct Public Procurement in Kiribati. Properly following the procedures described will ascertain compliance with the Public Procurement Act and the Public Procurement Regulations. However, if you are in doubt on how to interpret or apply the instructions, it is important that you consult the CPU for further guidance. Your experience or example of implementation may also lead to improved guidance and instructions in the Public Procurement Manual.

7.1. Overview of the Public Procurement process

The Public Procurement process can be described as seven interconnecting main procedures, see fig. 9. For easy guidance, this Manual is structured in accordance with this workflow.

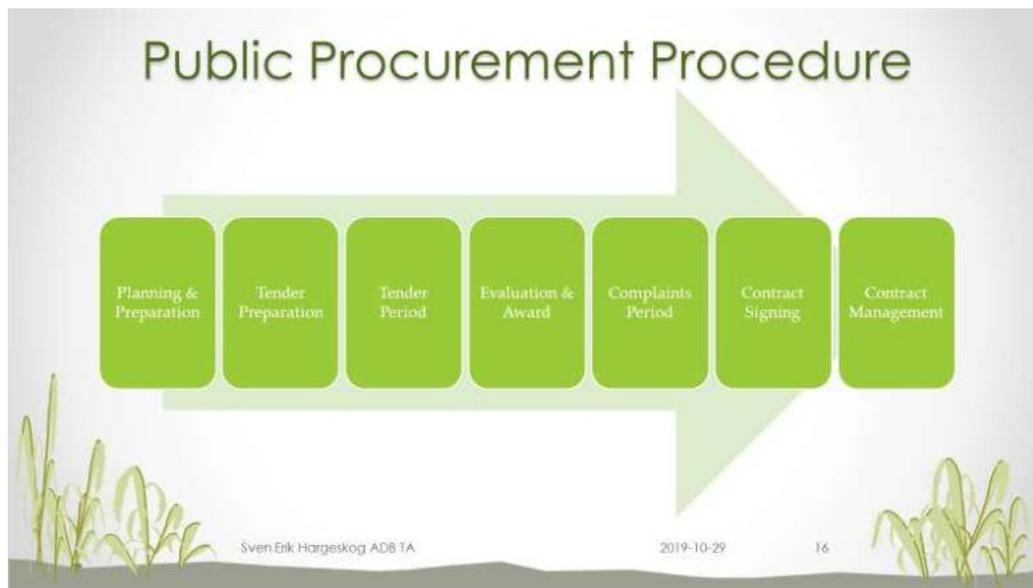


Fig. 9

7.1.1. But before it even begins...

It is crucial to have a structured approach to Government/Public Procurement. Thus, the Public Procurement procedure in Kiribati is to follow a logical and sequential process, with approvals at each stage before continuing to the next. For instance, no Procurement procedure should be initiated before it has been approved, including full funding secured. This is referred to as 'early detection and correction'.

7.1.2. ...it has to be fully approved

No Public Procurement shall be initiated unless Public Funds are specifically and completely allocated and approved in an Annual Procurement Plan.

Having Public Procurement procedures started, or perhaps even almost finalised, before all necessary approvals have been obtained is a waste of money and time and is also jeopardising trust with stakeholders.

After budget approvals, the preparation of each Public Procurement can commence, in accordance with the Annual Procurement Plan. Public Funds provided or made available under a Contract or Framework Agreement shall be used only within the scope of and for the purposes specified in such Contract or Framework Agreement.

The individual(s) responsible for deciding to initiate Public Procurement, without being completely and accurately approved and included in the Annual Procurement

Plan, may be held accountable, in accordance with the rules on Misconduct in section 37 of the Public Procurement Act.

7.1.2.1. Why not start the Public Procurement before budget approval?

There are many reasons for not initiating a Public Procurement until it has been approved, including budget secured.

First of all, it would be a waste of time and money to work on something that may not happen, perhaps delaying other tasks.

Secondly, should it go so far that an Invitation to Tender is issued, and later cancelled, interested Tenderers may have spent much time and money into preparing Tenders, which may not lead to anything, or may need to be modified or replaced, subject to a changed scope of the Public Procurement in a reopened procedure.

Besides creating unnecessary costs for Tenderers, their interest in future Tenders may decline, not being sure they will actually happen. Should they, anyway, in the future, be interested in submitting Tenders, they may wait until as late as possible to start preparing their Tenders, which may have a negative impact on the quality and increase the risk of too late submissions. All this is detrimental to good competition and Value for Money.

Should it go as far as an Award of a Contract or Framework Agreement, or even signing of a Contract or Framework Agreement, before necessary approvals, not only is it a breach of common-sense rules, but the Government of Kiribati becomes subject to an inadvertent and unauthorised financial commitment.

7.1.3. Early detection and approvals

Below, in fig. 10, is an overview process flow chart for the main approval procedures, which will be further described in this Manual. A decision has to be taken at each step for the process to continue to the next step. The earlier an error is detected, the less the consequences to correct.

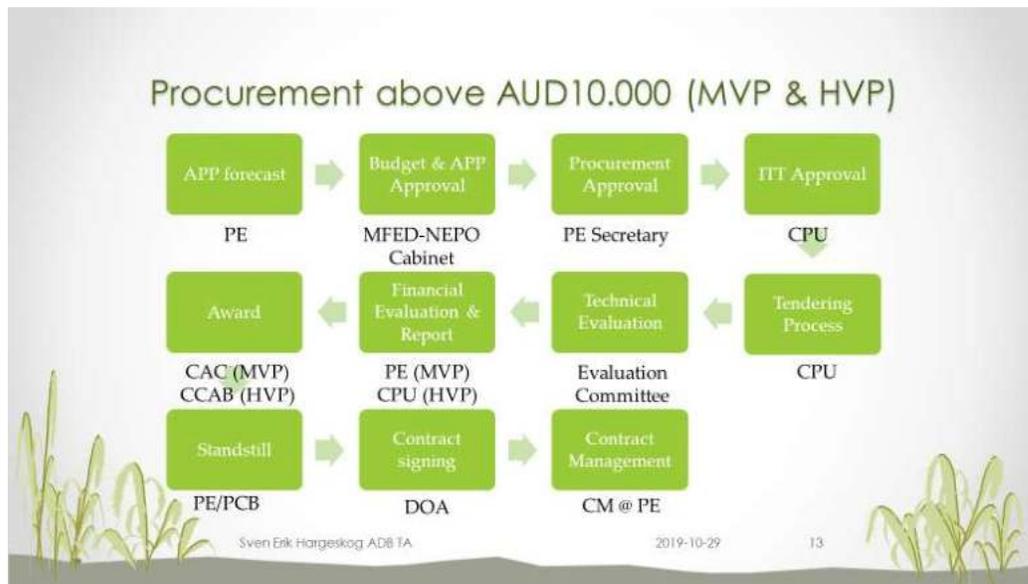


Fig. 10

7.1.4. The approval process

The different parts of the process are described in detail under respective area in this Manual. This introduction is merely to provide a holistic view of how the approvals

are consecutively related to each other. E.g., no Tender process shall be initiated before a budget approval has been verified, and no Contract or Framework Agreement shall be signed before a proper Award has been decided and the stand-still period for complaints is exhausted.

7.1.5. Overview of the different sub-procedures

The following workflow should be followed for any MVP or HVP Public Procurement in Kiribati. Each step is explained and described in detail under each heading in the following.

1. Preparation of an Annual Procurement Forecast
2. Inclusion in Budget Approval Request
3. Budget Approval = Approval of Annual Procurement Plan and to initiate Procurement Planning & Preparation
4. Tender Approval = Approval of 'scope of Procurement' inputs to Invitation to Tender
5. Preparation of complete Invitation to Tender
6. Tendering Process
7. Questions & answers
8. Receipt and opening of Tenders
9. Technical Evaluation
10. Financial Evaluation
11. Value for Money Evaluation = Consolidated Technical & Financial
12. Evaluation Report and Award Recommendation
13. Award by the relevant Authority
14. Information to all Tender participants
15. Stand-Still Period for possible complaints handling
16. Contract or Framework Agreement Signing
17. Contract Management

7.1.6. Thresholds

The thresholds for approvals during the Public Procurement process are defined in Annex I of the Regulations (please, verify with the latest version of the DOA):

VLVP	AUD<1.000
LVP	AUD1.000-9.999
MVP	AUD10.000-49.999
HVP	AUD50,000>

It should be noted that the values are accumulated for the total Contract or Framework Agreement. For example, the engagement of a consultant at a value of AUD4.000 per month during 18 months results in a threshold value of AUD 72.000 and is to follow the rules for HVP.

7.2. Planning and Preparation

There are many benefits with good planning, in particular for Public Procurement. Some of the benefits are described in the following.

7.2.1. More precise budgeting

Better planning makes budgeting more precise and reduces the duration of the planning process and thereby makes it more efficient. It also makes it easier to consider possible necessary needs for changes and consequences thereof.

7.2.2. Reallocation of budget

A possibility of reallocation of budget, for projects not being activated or delayed, to other activities.

7.2.3. Cash Flow Management

A large and somewhat irregular source of Government expenses is Procurement Contracts or Framework Agreements. With good planning, and consecutive information on the development of the process, Contract payment conditions and Contract amendments, pay-outs can be scheduled periodically. This will enable Treasury at MFED to schedule the best use of funds from time to time.

7.2.4. Timely payment to Economic Operators

As a result of improved cash flow management, timely payment can be prepared in accordance with the Procurement Contract or Framework Agreement payment schedules. This will enhance the trust with Economic Operators, increasing their willingness to Tender for Public Procurement in Kiribati. Poor payment discipline is a common reason for reluctance with, in particular small, Economic Operators to abstain from participating in Public Procurement.

7.2.5. Better matching with Tenders

Realistic planning and costing of Public Procurement projects will reduce unplanned changes to the scope of the project, e.g., if received Tenders all exceed the budget. It will also reduce cost overruns with APP's that are well prepared, planned and performed.

7.2.6. More and better Tenders

By publishing APP's, the Tenderers will have more time to prepare for upcoming Tenders, e.g., by ascertaining sufficient resources and competences, creating consortia or joint ventures, finding international or domestic partners, etc.

7.2.7. More Value for Money

Fewer urgency situations leading to poor Public Procurement and less VFM. With sufficient time allocated, the quality of preparations will increase, leading to Invitations and Tenders that better reflect the needs.

7.2.8. Avoiding meeting bottlenecks

The planning of evaluation and Award meetings and workload will improve, reducing delays. Also, the decisions will most likely more often be concluded within one meeting, being well presented and prepared beforehand.



7.2.9. Optimising Resources

The dimensioning of the Public Procurement organisation at PE's as well as the supporting functions (CPU) will be optimised. Ad hoc activities are inefficient and also creates tensions.



7.3. Annual Procurement Plans (APP)

An important input to the budget planning process are the expenses related to Public Procurement. Any Contract or Framework Agreement following Public Procurement will result in a cost. As such, it must be planned and approved ahead as an input to the annual budget approval process of each Procuring Entity, by means of Annual Procurement Plans (APP). The basis for the Public Procurement to be conducted are Annual Procurement Plans, for all MVP and HVP, which are itemised schedules listing the approved allocation of Public Funds for each Procuring Entity for procuring Goods, Services or Works.

A consolidated APP, for all GoK Public Procurement, will be published on the Kiribati Public Procurement Web Portal, and updated following new approvals or modifications.

It is important that the APP's are as accurate as possible, based on proper and verified Market Assessments, to determine a realistic budget estimate for each component of the APP. If not, after receiving Tenders, the approved and allocated budget may not be enough. Then, either the Public Procurement has to be cancelled and start all over or postponed for further funding. Such postponement cannot be for too long, since the Tender validity may expire.

7.3.1. Annual Procurement Forecasts (APF)

In advance of each new fiscal year, as an integrated part of the budget process, every Procuring Entity shall prepare an Annual Public Procurement forecast of its expected needs for each Medium and High Value Procurement of Goods, Services and Works, needed for the upcoming fiscal year. It is important to involve all stakeholders already at this stage, e.g., people who will eventually be engaged in the process, once approved.

The APF shall be submitted to the Central Procurement Unit, in line with the templates provided by the CPU. The APF's will be requested by the CPU from all Procuring Entities around October for the upcoming year, in relation to the ordinary budget process.

The forecast shall include at the minimum the following information:

- The name of the responsible Procuring Entity submitting the APF
- A brief description of the Goods, Services and Works needed
- Cost estimates for each Public Procurement
- In case of Goods, the number of items
- Time schedules for each Public Procurement
- Identification of the source of funding for each Public Procurement

For Low Value Procurement, a lump-sum forecast of expected needs shall be provided.

Unless the Procuring Entity has good knowledge of the market, a non-committing Market Assessment (see 7.4.5) should be conducted, well in advance of preparing the Annual Procurement Plans, to provide as precise an input as possible to the necessary budget.

7.3.2. Annual Procurement Plans (APP)

Following budget approval, the Central Procurement Unit will finalise the Procuring Entities approved Public Procurement Plans and publish a consolidated Annual Procurement Plan for the Government of Kiribati Public Procurement.

Approved APP's, as part of the budget approval, are the starting point for preparing the Public Procurement. Public Procurement shall not be initiated before the full budget for the Goods, Services and/or Works in question has been approved and included in the Annual Procurement Plan.

In case there are adjustments needed to the Procurement requirements of a Procuring Entity following budget approval the Annual Procurement Plan may be updated during quarterly budget reviews.

In the absence of a designated budget allocation, Public Procurement may exceptionally be initiated, subject to a written approval by the National Economic Planning Office within the Ministry responsible for Finance, and notification to the Chief Procurement Officer.

Unexpected/unforeseen additional funding may become available. If it cannot wait until the quarterly update of the budget and APP it can go through a separate approval, as above, and be updated in the next revision.

7.4. Preparing the Public Procurement

7.4.1. Introduction

It is crucial to prepare well before approaching the market with an Invitation to Tender (ITT). If not, surprises may surface, making it difficult, not to say impossible to evaluate and determine which Tender provides the best solution and Value for Money. Also, surprises may be presented in Tenders, representing proposals that could be useful and valuable, but cannot be considered, since they were not included in the ITT.

Actually, much of this planning and preparation should be done already as inputs to the Annual Procurement Forecast, see 7.3.

For the Invitation to Tender, the Procuring Entity is expected to prepare the following:

- A Specification or TOR document
- Evaluation criteria
- A time schedule
- Appointment of Evaluation Committee members

Fig. 11 illustrates the process of planning and preparing the important scope of the relevant Public Procurement.



Fig. 11

7.4.2. Outputs

The first planning and preparation process is the responsibility of the Procuring Entity (PE), however, with support from the CPU. The outputs of this phase are:

- A documented Market Assessment analysis, if applicable
- Specification or Terms of Reference, describing the subject of the Public Procurement
- Evaluation criteria and weighting
- A time schedule for the Public Procurement process and the Contract
- Nomination and appointment of the Evaluation Committee members

7.4.3. Model Documents (templates)

In all stages of Public Procurement Procuring Entities shall, where available, utilise Model Documents promulgated by the Chief Procurement Officer. Any request to amend the Model Documents shall be submitted to the Chief Procurement Officer for approval. The Chief Procurement Officer approves Invitation to Tender templates and coordinates the approval of Standard Contract or Framework Agreement templates by the Office of Attorney General.

In the absence of Model Documents for a specific Public Procurement, an approval shall be requested from the Chief Procurement Officer, for the use of alternative Public Procurement documents. For Contract or Framework Agreement documents the CPO will coordinate an approval from the Office of Attorney General.

The use of established and approved Model Documents reduces the risk exposure for the Government of Kiribati and minimises the risk of omissions or wrongdoings. They will also become familiar with the Procuring Entities and be recognised by the Economic Operators, which makes Public Procurement more efficient but also more effective by creating incentives for receiving more Tenders and increased competition. Further, evaluations will become clearer, easier and less likely to be subject to complaints.

The Model Documents are further described in 7.7.3 and listed in 11.

It should be noted that the Model Documents are templates which need to be adjusted to the relevant Public Procurement. They include instructions and guidance on how to adjust as well as alternatives for different situations.

Using the Invitation to Tender templates, in particular, requires going through all the documents, to check the relevance of all parts, including selecting the Model Documents for the proper procedure, as described in 7.7.1.

7.4.4. Definition of the needs

Specifications and Terms of Reference shall clearly and completely describe the needs of the Procuring Entity. They shall be non-discriminatory, proportional and relevant.

The first thing you need to do is to define what you need, i.e., what you *really* need. Perhaps you should also consider if you need to buy at all, or if there are other possible solutions. So, instead of merely copying previous Specifications or Terms of Reference (TOR), the actual needs should first be defined.

Thereafter, or slightly in parallel, what the market can offer should be investigated, in a pre-study. This can be done by (i) benchmarking with other buyers with similar prerequisites and (ii) contacts with Economic Operators, and (iii) in some relevant cases also with research institutes, to investigate new innovative solutions.

The input from the user or user representative is, of course, crucial. However, many times the user is conservative and wants to stay with the same solution as before – “I know what I’ve got but I don’t know what I’ll get”. This is relevant but may not allow development towards a more efficient and effective solution. It does also not provide any knowledge whether the cost or the technical solution offers the best Value for Money. The professional Public Procurement expert will ask the user what s/he is satisfied with and what the user wants to achieve with the solution to be procured. This information can be the first input to a specification of the needs. Thereafter, s/he can be asked about any problems encountered with the current solution, which may be converted to a list of desired improvements.

7.4.4.1. User groups

A good way of obtaining the users’ needs is to establish user groups, if possible, for some defined areas of Public Procurement, to be involved in the definition of user needs, which will provide inputs as above but also continue during the Public Procurement and Contract or Framework Agreement execution and to evaluate the result of the Public Procurement, the Contract or Framework Agreement and the delivery outputs and outcomes. A user group can also provide input to the evaluation of

Tenders, e.g., by having a representative in the Evaluation Committee, if feasible and practical.

7.4.4.2. Other buyers

For a small economy like Kiribati, it is recommended to establish a network with other similar countries' Public Procurement organisations, but also with larger countries or countries that are on the forefront of innovative solutions for public services.

7.4.5. Market assessment

Once the needs are defined, as above, a market sounding should be done, to investigate the markets ability to satisfy the needs. This should be done in a way so that different solutions can be found and be well documented, in a written report, as to which steps were taken, the dissemination methodology and which market actors were contacted, how the questions were asked, the outcomes of the Market Assessment, etc.

It should be understood that Economic Operators are keen to keep their competitive edge and, as such, may not disclose possible innovative solutions, afraid that it would benefit their competitors. The market assessment should therefore be done under confidentiality, i.e., not to disclose any findings between market actors consulted, and that this is clarified to the Economic Operators, or they may not disclose sensitive solutions, afraid of leakage to their competitors.

Before any contacts with market actors, a structured plan for how to approach Economic Operators has to be developed. This, to make it more efficient and effective, but also to secure equal treatment and clarity with the purpose of the dialogue being to develop a Specification/TOR for an upcoming Public Procurement, not to create wrong expectations, e.g., that a formal Public Procurement process has been initiated.

At the same time, it is important to point out that the information obtained will be used to define the needs for an upcoming Public Procurement. If innovative solutions have been found, it is important to design the Specification or Terms of Reference (TOR) in a manner that doesn't disclose unique competitive edges, yet still leaves it open for Tenderers to propose such solutions and value them in evaluations.

Either as an instrument for the market assessment procedure, in case the needs are well described, or after a first round of an investigatory market assessment, a Request for Information (RFI) could be issued, either posted or submitted to a selection of potential Tenderers, to receive comments and suggestions. This RFI should clearly describe the desires of the Procuring Entity, e.g., with a preliminary Specification or TOR or with a description of the desired outcome, to promote innovative solutions. The RFI should be posted on the Kiribati Public Procurement Web Portal, to be open to all interested parties.

What needs to be analysed is also the competitive potential of the market and determine which factors could be limiting competition, to try to avoid these. It is important to get a fair picture of what the market looks like. Is it competitive, monopolised or oligopoly? Is one actor dominant, with a de facto monopoly? Or are there many small actors, perhaps too small to compete by themselves, needing to find partners? Is there a risk of collusion between actors, e.g., dividing the market, or other collusive activities? How can the findings be mitigated by a Public Procurement strategic approach?

A Market Assessment can be rather simple, for standard Goods or Services, or more complex, when innovative solutions are desired. Regardless, it is important to consider the relevant instructions in this Manual.

It should also be pointed out that, in the upcoming Invitation to Tender process, only the defined criteria for evaluation are to be evaluated and that possible innovative solutions, not being defined in the Specification or TOR, will not be evaluated. If unique solutions are likely to be Tendered, it should be considered how to define the needs not to eliminate such. There are four levels of defining needs, which require different techniques in defining and evaluating the criteria:

1. Detailed requirements
2. Functional requirements
3. Performance (output) requirements
4. Outcome requirements

The higher the number, the more complex it becomes when it comes to defining evaluation criteria that ascertains the most fit for purpose solution, the lower the number, the less innovation is allowed, and vice versa. However, each level has pros and cons and should be used for different prerequisites. Of course, it's a thin line between the levels and not extremely important to define each Public Procurement within one or another of the levels. It is merely to illustrate that requirements can be defined in different ways and have different prerequisites.

7.4.5.1. Detailed requirements

Detailed requirements should be used for Standard Goods, Services or Works that are well established and/or easy to define, e.g., by common descriptions used by most Economic Operators, and are relatively easy to evaluate. They can refer to a standard, a well-known definition or a price list.

7.4.5.2. Functional requirements

Functional requirements describe the functions of what is being procured, whereas performance, or 'output', requirements go one step further, to define the performance of the Goods, Services or Works when being implemented. These requirements differ by functional requirements normally being able to evaluate at the time of the evaluation, whereas performance requirements may not be fulfilled until after some time of operation or implementation.

Example:

The car should run on petrol, have a 100l boot, automatic transmission, 4 doors, GPS, RDS radio system, 90kW 4-stroke engine (and other similar requirements)

7.4.5.3. Performance requirements

Performance, or output, requirements describe the result of the Contract, expected to contribute, often together with other means, to a result in public performance, infrastructure or services, an outcome.

Example:

The car should be able to transport 2-4 persons, 3-5 days a week, 12000 km per year, at a total cost of AUD1,2/10km

7.4.5.4. Outcome requirements

Outcome requirements go yet one step further, defining the contribution of the procured Goods, Services or Works to an overall objective of the organisation. Here you describe what you want to achieve, i.e., a solution to a problem or situation to be resolved instead of with what or how. The result (outcome) may be determined only after some time of operation or implementation but may also be subject to and dependent on other components, with which it creates a holistic result, an outcome.

Example:

The GoK wants to reduce plastic pollution.

Potential proposals: Education in schools, dissemination of waste bins, information campaigns on the consequences e.g., no tourism, deposit on plastic bags and responsibility for sellers to clean up and recycle, etc.

7.4.6. Agents

In Kiribati, due to the limited local production and a small market, much is procured through importing agents. Some agents have stores, whereas others will only order upon a Contract or Framework Agreement. It has then to be considered whether a longer delivery time can be accepted, whereas more beneficial terms and conditions may be offered. For Goods stored in warehouses, with locked-in capital, it may become more expensive. A short delivery time – poor planning – may have a higher cost than e.g., direct delivery from the source or production.

7.4.7. Research & Development

For some areas it might be relevant to investigate the international development of R&D on new innovative solutions on problems or needs. Often, users or user representatives do this out of interest or as part of their work, but to establish networks within relevant areas could be coordinated by the Procuring Office at the Procuring Entity, or the CPU.

7.4.8. Choice of Invitation to Tender method

Procuring Entities shall choose the most efficient and effective method for launching Requests for Invitations to Tender; Requests for Offer (RFO), Requests for Quotation (RFQ) or Requests for Proposal (RFP) in accordance with the complexity and value of the Contract or Framework Agreement. The suitable Model Documents should be selected for drafting the ITT.

The value determines between the use of RFO or either RFQ or RFP. RFO is used for LVP, whereas either RFQ or RFP is used for MVP and HVP, depending on the complexity and character of the Public Procurement, irrespective of the value. This, since the structure of the Model Documents is suitable for either Standard or customised Goods, Services or Works. The RFQ is intended for Standard Goods, Services or Works, whereas the RFP is for customised Goods, Services or Works, i.e., where the Procuring Entity specifies a desired solution to be proposed, see also 7.4.5.

The application of RFO, RFQ and RFP respectively is described in 7.7.1.

7.4.8.1. E-Tendering

To make the Public Procurement procedure more efficient, the use of electronic tendering is commonly introduced internationally. There are many systems available on the market, offering e-tendering. However, e-tendering, being a subset of e-procurement, is subject to communication and transfer of information to other systems, such as Financial Management and Information Systems (FMIS). Thus, introducing e-tendering and e-procurement need to undergo a thorough analysis, including a revision of the procedures, definition of interfaces and information transfer, etc. As this is a lengthy process, e-tendering should be introduced with consideration of these aspects, not to create lock-in effects or investments which may be in vain. Of course, the selection of a system needs to follow the legal framework for Public Procurement, i.e., be subject to a competition, since there are many qualified systems and actors available, including some being a module of potential FMIS.

The new legal framework, including the Model Documents, are prepared for e-tendering, however, to be initially introduced with a simplified, but fully satisfactory and compliant, technique, using e-mail. E-tendering through e-mails will be managed by the CPU, as described in the Public Procurement Regulations 2020, regulation 21, which says “the Chief Procurement Officer shall be responsible for disseminating all available Public Procurement information and documentation respectively to Economic Operators”.

7.4.8.1.1. Interim e-Tendering

For Open Procedures, Tenders shall be submitted by e-mail to the official e-mail address of the CPU, as stated in the Model Documents. For Limited Competitive or Single-Source Procedures, also the ITT shall be submitted by e-mail to potential Tenderers, who shall submit Tenders via e-mail to the official e-mail address. Tenders shall be marked and submitted as instructed in the ITT, e.g., separate Technical and Financial Components.

The CPU shall have a separate folder under the official e-mail address inbox, named Open Tenders. When each ITT is submitted, the CPU shall create a separate folder under the Open Tenders, with the name and number of the Procurement, and where relevant, a subfolder for Technical and Financial Components under each Procurement.

An automatic verification of receipt should be activated, confirming receipt of the submission. However, it should be clear from this response that this is merely a receipt, not an approval of the Tender being neither complete nor accepted.

Tenders received before the final date for submission shall remain unopened but moved to the relevant Procurement folder and/or subfolder. For Tenders received after the deadline, a separate folder shall be created under each Procurement.

After the final date of submission, the CPU shall move the relevant complete Procurement folder to a folder named “Closed Tenders”.

The morning after the final date for submission, the CPU shall open and register all Tenders received in time and submit a copy of the Technical Components, and in case of only one submission being requested, the complete Tenders, to the secretary of the Evaluation Committee (normally the Procuring Entity Procuring Officer). In parallel, the Opening Minutes, constituting the first version of the Procurement Report, shall be submitted to the secretary of the Evaluation Committee.

After the finalisation of the Technical Evaluation, the secretary of the Evaluation Committee shall request the CPU to send copies of the Financial Components, as the case may be.

7.4.9. Specification and Terms of Reference (TOR)

The Specification or TOR must provide a clear and unambiguous description of the scope of Public Procurement, so that the Tenders received are based on the same requirements. The Specification or TOR [*links to the Model Documents are found here 11*] should follow the Model Documents and describe the Procuring Entity, provide a background to the Public Procurement, specify the requirements and deliverables, and define a timetable for deliveries, as instructed in the Model Documents.

The difference between Specification and Terms of Reference (TOR) is described in the Definitions, above. But in brief, a Specification is used for Goods, Works and Standard Services, whereas TOR are to describe Consulting Services. Templates to assist in developing these are found here 11. Please note that they are developed to assist and if more descriptions are needed, or if they are not found suitable, other

means of describing the needs can be used. What is important is that the Tenderers clearly understand what they should Tender and how it will be evaluated. No criteria can be added during the evaluation, no matter how beneficial they may be. They must be non-discriminatory, proportional and relevant (see 7.4.4)

Example:

It is not allowed to refer to a specific brand, e.g., Toyota, unless it is unambiguously proven that no other brand is able to fulfil the specification. Such evidence is required. The main rule is open competition. Thus, other brands should be considered, if possible. If no competition, the supplier will certainly make use of their 'monopoly' situation and offer a high price and disadvantageous terms and conditions.

Referring to a brand name will significantly reduce competition and become single sourcing. In such case, first of all, the conditions for single sourcing have to be fulfilled, i.e., why no other brands are of interest, as well as potential urgency or other possible single-source conditions.

Exception: The mechanics are familiar with the existing brand for maintenance and repair. Also, spare parts for the new Public Procurement will be similar or same to our existing brand which will make orders for parts easier and coordinated, and the mechanics are familiar with the parts. The rationale for the brand selection here makes sense, which, in this particular case, may motivate single sourcing.

7.4.10. Administrative criteria

The Invitation to Tender shall specify mandatory administrative criteria, which the Tenderer has to comply with, e.g., the last date and time for complete submission for Tenders, how and where to, form of submission, marking of Tenders, validity of Tenders and the requirements of the Certificate of Compliance. Specifying these mandatory administrative criteria is supported within the Model Documents.

Economic Operators shall not be allowed to submit more than one Tender per each Public Procurement, either individually, in consortia or in similar cooperation. Procuring Entities shall disqualify Tenderers that have submitted more than one Tender for the same Public Procurement.

This provision does not apply to subcontracting procedures or in specific cases approved by the Chief Procurement Officer. Such cases could be an intentional invitation to submit alternative proposals, in parallel with the main proposal, where innovative solutions may be presented.

Tenders or Tenderers not fulfilling or not complying with the mandatory administrative criteria, e.g., if a Tender is received after the date and time of submission, shall be excluded from the evaluation.

7.4.11. Exclusion criteria

Procuring Entities shall exclude from Public Procurement, Economic Operators that are ineligible to participate in Tenders due to criminal conviction. The Chief Procurement Officer shall be responsible to maintain and update a list of known ineligible Economic Operators.

Procuring Entities may exclude an Economic Operator from Public Procurement where the Procuring Entity can demonstrate, by any appropriate means, that the Economic Operator has not fulfilled its obligations relating to the payment of taxes or social security contributions.

7.4.11.1. Mandatory exclusion

Economic Operators that have participated in a Criminal Organisation or have been found guilty of corruption, fraud to the detriment of the Government of Kiribati's financial interests, terrorist offences, money laundering or terrorist financing should be excluded from Public Procurement.

The obligation to exclude an Economic Operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that Economic Operator or has powers of representation, decision or control therein.

Procuring Entities may provide for a derogation from the mandatory exclusion, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

The Procuring Entity shall exclude an Economic Operator from participation in Public Procurement that has been the subject of a conviction by final judgment for one of the following reasons:

Participation in a Criminal Organisation;

Corrupt Practice

As defined in section 367 of the Penal Code as well as corruption as defined in the national law of the Economic Operator;

Fraud within the meaning of and in respect of:

- i. Expenditure, any intentional act or omission relating to:
 - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the Government of Kiribati or budgets managed by, or on behalf of, the Government of Kiribati,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - the misapplication of such funds for purposes other than those for which they were originally granted.
- ii. Revenue, any intentional act or omission relating to:
 - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the Government of Kiribati or budgets managed by, or on behalf of, the Government of Kiribati,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - misapplication of a legally obtained benefit, with the same effect.

Terrorist offences or offences linked to terrorist activities, by actions with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

The following actions shall be deemed to be terrorist offences, including inciting or aiding or abetting or attempting to commit a terrorist offence:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (i) threatening to commit any of the acts listed in (a) to (h).

Terrorist-linked offences include the following acts:

- (a) aggravated theft with a view to committing one of the acts listed above;
- (b) extortion with a view to the perpetration of one of the acts listed above;
- (c) drawing up false administrative documents with a view to committing one of the acts listed above.

Money laundering or terrorist financing, defined as:

- a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of a third country.

For the purposes of these rules, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the Terrorist offences listed here ***Terrorist offences*** in this Manual.

Knowledge, intent or purpose required as an element of the activities mentioned above may be inferred from objective factual circumstances.

Child labour and other forms of trafficking in human beings defined as:

(a) The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

(b) A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(c) Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, the exploitation of criminal activities, or the removal of organs.

(d) The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph (a) has been used.

(e) When the conduct referred to in paragraph (a) involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph (a) have been used.

(f) For the purposes of these rules, 'child' shall mean any person below 18 years of age.

7.4.11.1.1. Other exclusion grounds

An Economic Operator shall be excluded from participation in Public Procurement where the Procuring Entity is aware that the Economic Operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or in Kiribati.

Although non-payment of taxes or social security contributions should lead to mandatory exclusion, as above, a Procuring Entity should, however, be able to provide for a derogation from these mandatory exclusions in exceptional situations where overriding requirements in the general interest make a Contract or Framework Agreement Award indispensable. This might, for example, be the case where urgently needed vaccines or emergency equipment can only be purchased from an Economic Operator to whom one of the mandatory grounds for exclusion otherwise applies. Such an exception requires an approval from the Chief Procurement Officer.

Procuring Entities may also provide for a derogation from the mandatory exclusion, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the Economic Operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures before expiration of the deadline for requesting participation or, in an Open Procedure, the deadline for submitting its tender.

7.4.11.2. Possible exclusion

Procuring Entities may exclude Economic Operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an Economic Operator's integrity questionable and thus render the Economic Operator unsuitable to receive the Award of a public Contract or Framework Agreement irrespective of whether the Economic Operator would otherwise have the technical and economical capacity to perform the Contract or Framework Agreement.

Bearing in mind that the Procuring Entity will be responsible for the consequences of its possible erroneous decision, Procuring Entities should also remain free to consider that there has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that the Economic Operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by national law. They should also be able to exclude candidates or tenderers whose performance in earlier public Contracts or Framework Agreements has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the Economic Operator.

In applying facultative grounds for exclusion, Procuring Entities should pay particular attention to the principle of proportionality. Minor irregularities should only in exceptional circumstances lead to the exclusion of an Economic Operator. However repeated cases of minor irregularities can give rise to doubts about the reliability of an Economic Operator which might justify its exclusion.

Furthermore, Procuring Entities may exclude an Economic Operator where the Procuring Entity can demonstrate by any appropriate means that the Economic Operator is in breach of its obligations relating to the payment of taxes or social security contributions. This shall not apply when the Economic Operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

Procuring Entities may any exclude Economic Operator in any of the following situations:

(a) where the Procuring Entity can demonstrate by any appropriate means a violation of applicable obligations to ensure that, in the performance of a Contract or Framework Agreement, Economic Operators comply with applicable obligations in the fields of environmental, social and labour law established by national law, collective agreements or by the following international environmental, social and labour law provisions:

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;

- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

Nawaia Arawatau, MEHR (lo.wr@employment.gov.ki) can be of further assistance.

(b) where the Economic Operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under national laws and regulations;

(c) where the Procuring Entity can demonstrate by appropriate means that the Economic Operator is guilty of grave professional misconduct, which renders its integrity questionable;

(d) where the Procuring Entity has sufficiently plausible indications to conclude that the Economic Operator has entered into agreements with other Economic Operators aimed at distorting competition;

(e) where a conflict of interest, as described in 3.4, cannot be effectively remedied by other less intrusive measures;

(f) where a distortion of competition from the prior involvement of the Economic Operators in the preparation of the Public Procurement, as follows, cannot be remedied by other, less intrusive measures:

- Where an Applicant or Tenderer or an undertaking related to an Applicant or Tenderer has advised the Procuring Entity, whether or not in the context of a market assessment or RFI or has otherwise been involved in the preparation of the Public Procurement, the Procuring Entity shall take appropriate measures to ensure that competition is not distorted by the participation of that Applicant or Tenderer.
- Such measures shall include communication to the other Applicants and Tenderers of relevant information exchanged in the context of or resulting from the involvement of the Applicant or Tenderer in the preparation of the Public Procurement and the fixing of adequate time limits for the receipt of Tenders. The Applicant or Tenderer concerned shall only be excluded where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.
- Prior to any such exclusion, Applicant or Tenderer shall be given the opportunity to prove that their involvement in preparing the Public Procurement is

not capable of distorting competition. The measures taken shall be documented.

(g) where the Economic Operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior Contract or Framework Agreement, a prior Contract or Framework Agreement with a Procuring Entity which led to early termination of that prior Contract or Framework Agreement, damages or other comparable sanctions;

(h) where the Economic Operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents required; or

(i) where the Economic Operator has undertaken to unduly influence the decision-making process of the Procuring Entity, to obtain confidential information that may confer upon it undue advantages in the Public Procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or Award.

7.4.12. Eligibility criteria

Procuring Entities shall comply with the principle provided in the Act that no Tenderer can be excluded from Public Procurement on the basis of its nationality or the place where its business is registered.

The eligibility criteria define the capacity of the Tenderers, including that they have a proper Business Registration, to comply with the requirements defined in the Invitation to Tender or the Request for Pre-Qualification in a complete and effective way and within the set timeframes.

As a basis, all eligible Economic Operators may participate in Standard Public Procurement procedures, see 7.6.3.1. To be eligible, however, Tenderers may need to fulfil some criteria defined by the Procuring Entity. Such Eligibility criteria may relate to:

- suitability to pursue the professional activity
- economic and financial standing
- technical and professional ability

Procuring Entities may only impose these criteria, as further described in the following, on Economic Operators as requirements for participation. They shall limit any requirements to those that are appropriate to ensure that an Applicant or Tenderer has the legal and financial capacities and the technical and professional abilities to perform the Contract or Framework Agreement to be Awarded. All requirements shall be related and proportionate to the subject-matter of the Contract or Framework Agreement.

7.4.12.1. Suitability to pursue the professional activity

With regard to suitability to pursue the professional activity, Procuring Entities may require Economic Operators to be enrolled in one of the professional or trade registers kept in their country of establishment.

In Public Procurement procedures for Services, in so far as Economic Operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform the Service concerned in their country of origin, the Procuring Entity may require them to prove that they hold such authorisation or membership, e.g., that a Kiribati firm is duly registered with MCIC/KCCI.

Procuring Entities shall specify the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the Invitation to Tender or Request for Prequalification.

7.4.12.2. Economic and financial standing

With regard to economic and financial standing, Procuring Entities may impose requirements ensuring that Economic Operators possess the necessary economic and financial capacity to perform the Contract or Framework Agreement. For that purpose, Procuring Entities may require, in particular, that Economic Operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the Contract or Framework Agreement. In addition, Procuring Entities may require that Economic Operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

The ratio, for instance, between assets and liabilities may be taken into consideration and such methods and criteria shall be transparent, objective and non-discriminatory.

The financial capacity criteria should be relevant for performance of the actual Contract or Framework Agreement. For example, requirements of annual turnover should not be set too high, but only at a level that secures their financial sustainability. The minimum yearly turnover that Economic Operators are required to have shall not exceed two times the estimated Contract or Framework Agreement value, except in duly justified cases such as relating to the special risks attached to the nature of the Goods, Services or Works. The Procuring Entity shall document the main reasons for such a higher requirement.

Verified annual financial reports, showing solvency and liquidity from the latest 3 years should be sufficient to prove this. If the Economic Operator has not been operative for three years, the reports from the operative years should be submitted.

The solvency criterion should not be set higher than 20% and the liquidity, or working capital ratio, criterion ($\text{current assets} / \text{current liabilities} = \text{working capital ratio}$) should not be required to exceed 2,5, but e.g., higher than 1,5 or 2,0. While high working capital, in most cases, is preferable to low, a current ratio that is too high can actually be a sign of underutilised capital. Assets that could be deployed to generate additional revenue are instead simply accumulating, leading to a poor return on assets (ROA) and a potentially negative impact on the company's perceived profitability.

A working capital ratio can be evaluated as follows:

- Less than 1,0: A company cannot meet its current financial obligations. Liquidity problems are likely in the near or immediate future. This may also be referred to as a *negative working capital ratio*.
- 1,5 to 2,0: Short-term liquidity is optimal. The company is on firm financial footing and has *positive working capital*.

In particular not to fence out small firms, the mandatory administrative criteria should be carefully designed.

Where Contracts based on a Framework Agreement are to be Awarded following a Sub-Tender procedure, the maximum yearly turnover requirement referred to in this paragraph shall be calculated on the basis of the expected maximum size of specific Contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the Framework Agreement.

7.4.12.3. Technical and professional ability

With regard to technical and professional ability, Procuring Entities may impose requirements ensuring that Economic Operators possess the necessary human and technical resources and experience to perform the Contract or Framework Agreement to an appropriate quality standard.

The technical requirements could be that the Tenderer has the production capacity, i.e., the quantity and quality of human resources, machines, quality and environmental management systems, and references to verify this as well as that previous performance in similar relevant projects has been good. Such references should be from a maximum of 3-5 years back, depending on the development of the market for which the Public Procurement is relevant. If new technology or techniques have evolved, projects longer past would not be as relevant. Also, requesting references could hamper new innovative proposals for solutions that has not been widely tested.

Procuring Entities may require, in particular, that Economic Operators have a sufficient level of experience demonstrated by suitable references from Contracts or Framework Agreements performed in the past. A Procuring Entity may assume that an Economic Operator does not possess the required professional abilities where the Procuring Entity has established that the Economic Operator has conflicting interests which may negatively affect the performance of the Contract or Framework Agreement.

In Public Procurement procedures for Goods requiring siting or installation work, Services or Works, the professional ability of Economic Operators to provide the Service or to execute the installation or the Work may be evaluated with regard to their skills, efficiency, experience and reliability.

7.4.13. Evaluation criteria and weighting

Procuring Entities shall ensure that evaluation criteria are established and approved by the Chief Procurement Officer before commencing Public Procurement.

The criteria shall be clear, reflecting and not going beyond the scope of the Specification or the Terms of Reference, for the purpose of assessing that Tenderers have sufficient financial, economic, technical and professional capacity to implement the tasks required under the Contract or Framework Agreement and that the Tenders will be evaluated on criteria providing the best Value for Money.

The Procuring Entity shall define in the Invitation to Tender the relevant evidence to be provided by Tenderers to demonstrate fulfilment of each criterion.

Once the Specification or TOR has been drafted, evaluation criteria, based on these, must be developed. They can comprise (i) mandatory technical capacity requirements, (ii) minimum financial capacity requirements, (iii) minimum technical requirements, (iv) technical scoring criteria and (v) a description of the relative the weight of the technical and financial components.

These requirements and criteria are the most critical parts of the Invitation to Tender (ITT), whereas they must be thoroughly defined. No other criteria than the ones defined as evaluation criteria are allowed to be considered. It is also paramount to set the importance between the technical criteria for scoring, to reflect the actual needs, and the allocation between the value of the accumulated technical scores and the financial component. Please, refer to 7.9.2.5.1 for detailed instructions and example.

Obviously, it is crucial that these parameters are correctly reflecting the needs, or the result may be a Contract or Framework Agreement which may not be the best choice. For instance, if the financial weight is too high, it may result in a cheap but also not

technically fully satisfactory Contract or Framework Agreement. If the financial weight is too low, the result may be a technically very good solution, however at a very high cost.

A way to find a good balance before determining the allocation between technical and financial is to use the evaluation template, found in the list of templates under 11.13.4 to simulate different scenarios. This may take time but may very well be worth it at the end.

Another, equally important document, is the description of how the Tenders will be evaluated, the Model Document 'Evaluation Criteria and Method'. The consecutive steps in the evaluation process are described in the following.

7.4.13.1. Minimum Financial and Technical qualification requirements

These requirements have to be fulfilled for the Tender to be eligible for evaluation. They are not evaluated with a score but merely a 'yes' or 'no'. However, some of the technical criteria may provide further benefits, above the minimum requirement, and such benefits can be included also in the subsequent Technical Evaluation.

7.4.13.2. Technical criteria

The needs should be set in an order of priority, preferably with a relative weight, such as: criterion 1 – 20%; criterion 2 – 15%; criterion 3 – 15%; criterion 4 – 12%; criterion 5 – 10%; criterion 6 – 10%; criterion 7 – 8%; criterion 8 – 5%; criterion 9 – 5%, etc., adding up to 100%. Alternatively, points could be allocated, with a similar weighting as above. However, you have to bear in mind that these technical scores are to be consolidated with the financial score, normally by means of a percentual allocation for each, e.g.: the technical score is worth 65% and the financial score 35%. This means that if the technical score has been set in points, they need to be converted to a percentage. Please, see the example on Evaluation under 7.9.2.5.1, for details and a better understanding of the necessity and importance of this being well thought through.

It may be tempting to allocate a very high portion, perhaps even 100% of the value to the technical component. In such case, the financial component will have very little or no influence. This can be applied in exceptional cases, e.g., if the desire is to get as much technical features as possible for a predetermined value, where the maximum Contract or Framework Agreement price could be fixed and disclosed, and the technical criteria are clearly graded and/or prioritised. The Tenderer may be asked to include as much as possible within the budget and will get a technical score based on this. The Tender with the highest technical score will be Awarded the Contract or Framework Agreement, regardless of if other Tenders had a lower financial Tender. The risk with this solution is that you may pay for features that are not needed, i.e., a breach of the principle of proportionality. To avoid that, only relevant technical criteria should be included and only criteria that are included and graded can be evaluated.

Normally, this concept is not suitable, since the Government also wants to save money, keeping a balance between cost and quality, i.e., Value for Money. Needless to say, this solution is currently not recommended for Public Procurement in Kiribati.

On the other hand, the financial component can be set to 100% in cases where only the necessary technical requirements need to be fulfilled, and there are no advantages with additional technical features. This is normally referred to as 'lowest price tendering', which is a bit misleading, since other cost components should also

be considered, such as delivery costs, maintenance, life-cycle costs, etc. For example, buying a printer at lowest price may lead to high operational costs, if e.g., the toner is very expensive and not durable.

7.4.13.3. Performance scoring

As part of Contract Management, see 7.13.2, the performance under the Contract or Framework Agreement of the Economic Operator will be evaluated and graded. This grading is recommended to be included as one of the Technical Evaluation criteria, as a 'self-reference', at least for High-Value Service or Works Procurement, where the grading level can be determining additional scoring, so that good performers get additional scorings, and the other way around for poor performers, e.g., grade level '-1' could mean that the Economic Operator is 'blacklisted'. This grading will be included in a Procurement Database managed by the CPU, see also 7.13.3.

7.4.13.4. Criteria that can be scored and evaluated

For the Technical Evaluation, all requirements that are to be evaluated must be described and given a relative weighting in relation to all other technical requirements. Here is an example on how criteria can be set, which is also used to illustrate a complete evaluation in the examples on how it is applied in the description of the evaluation, in 7.9.2.5.1 and 7.9.2.5.2.

7.4.13.4.1. Example:

- Criterion 1 – maximum score 40 points
- Criterion 2 - maximum score 30 points
- Criterion 3 - maximum score 30 points
- Criterion 4 - maximum score 24 points
- Criterion 5 - maximum score 20 points
- Criterion 6 - maximum score 20 points
- Criterion 7 - maximum score 16 points
- Criterion 8 - maximum score 10 points
- Criterion 9 - maximum score 10 points

The maximum score for a Tender completely fulfilling all these would be 200 points.

7.4.13.5. Technical score weight versus cost

In order to determine the total Value for Money, the result of the Technical Evaluation must be combined with the result of the financial Tenders. The financial Tenders can be evaluated by comparing all submitted Tenders with the one that has the lowest financial Tender. Alternatively, a nominal value for evaluation can be determined beforehand, e.g., the budget, whereas the formula below need to be modified accordingly, reflecting the opposite direction of the benefit, i.e., the furthest lowest from the budget with x and y changing places. The first alternative is most commonly used.

A formula that can be used for the first alternative is:

$$E = (ts * tw) + ((tc / lc) * fw), \text{ where}$$

E = evaluation result for the relevant Tender

ts = technical result (technical score)

tw = technical weight in % (technical weight)

lc = cost of the lowest financial Tender (lowest cost)

tc = cost of the Tender being evaluated (tender cost)

fw = financial weight

The example from above is also used in the evaluation example, see 7.9.2.5.1, where we have set the allocation of the technical component to 65% and financial to 35%, alternatively 75% and 25%, to illustrate the effect different allocations may have.

In some cases, e.g., for standard ‘off-the-shelf’ Goods or Services, or where the technical description is rather simple, and no additional features have any value, only the Minimum Technical requirements need to be specified in a Request for Quotations (RFQ), whereas all Tenders fulfilling the Minimum Technical requirements will be evaluated entirely on the cost.

7.4.13.6. Equal scoring result

In rare cases, the result of the value for money evaluation, where the financial and technical criteria are aggregated, is that two or more Tenders get identical final scores. To minimise this risk, the points for the different technical criteria should, in particular, be fairly detailed.

Even so, there is still a risk of equal scoring results, whereas there need to be a ruling in the ITT to handle such situations. There are various ways to define such a rule, depending on the prerequisites. Below are some examples:

- If the allocation of points between financial and technical scores is higher for the technical score, it could be indicated in the ITT that, in case of equal total scoring, the highest technical score is awarded the Contract. If still equal, another rule should apply. Of course, the financial scores would be the same, in this case, whereas, perhaps, the BAFT below could be the final determinant.
- If, on the other hand, the financial component is higher than the technical, the above could be similarly applied, i.e., the Tender with the lowest price amongst the ones with equal scoring, could be awarded the Contract.
- The Tenders with equal final scoring results could be re-evaluated, to ascertain proper scoring. However, since the financial scores are now known, this constitutes a risk of arbitrariness or subjectivity, or at least a suspicion thereof, whereas this is not recommended.
- In exceptional cases, e.g., if the technical or financial scores are also identical, for the equally scored Tenders, the Tenderers could be invited to submit a ‘Best and Final Tender’, preferably on the financial component.

Should the above, very exceptionally, not result in determining the best value for money, the award of a Contract could be decided by drawing of lots. i.e., putting the names of the Tenderers of the equally scored Tenders in a box and draw the winner. This should be done by the Awarding committee – CCAB or CAC, following a clear description in the Evaluation Report on all measures to separate the Tenders.

7.4.13.7. Life-Cycle Cost

The financial component of the Tender should reflect the Total Cost of Ownership (TCO) or preferably the Life-Cycle Cost (LCC). The difference between these is that LCC takes into consideration also costs and effects beyond the immediate control of the Procuring Entity, such as environmental considerations, climate effects, social aspects, etc., before and after the ‘ownership’. This is motivated by the global public responsibility vested with governments, in solidarity.

Further, besides the price for the acquisition, other costs must be considered and included in the evaluation, since they can differ substantially between different solutions. Such costs are related to, but not limited to, the following examples: warranty time and scope, service and maintenance, operational costs, training, disposal (recycling, deposit, demolition, dismounting, destruction, etc.). Also, delivery time and terms of payment, etc., can be considered.

Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

(a) costs, borne by the Procuring Entity or other users, such as:

- costs relating to acquisition
- costs of use, such as consumption of energy and other resources
- maintenance costs
- end of life costs, such as collection and recycling costs

(b) costs imputed to environmental externalities linked to the Goods, Service or Works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Where Procuring Entities assess the costs using a life-cycle costing approach, they shall indicate in the Invitation to Tender the data to be provided by the Tenderers and the method which the Procuring Entity will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

- it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain Economic Operators
- it is accessible to all interested parties
- the data required can be provided with reasonable effort by normally diligent Economic Operators

Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the Government of Kiribati, that common method shall be applied for the assessment of life-cycle costs.

Technology transfer, countertrade, local content of manufacture, labour and material, etc., are other areas that can be considered, either as discovered during market assessment or by own initiative, being included as evaluation criteria, giving bonus to international Tenders which offer such benefits, see 7.4.13.9. However, they should not be accepted as unsolicited Tenders, but be put under competition.

7.4.13.8. Social considerations in Public Procurement

Social considerations means Public Procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR), while observing the Public Procurement Act 2019 and Public Procurement Regulations 2020. It can be a powerful tool

both for advancing sustainable development and for achieving the Government of Kiribati's social objectives. Social considerations in Public Procurement covers a wide spectrum of social considerations, which may be taken into account by Procuring Entities at the appropriate stage of the Public Procurement procedure. Social considerations can be combined with green considerations in an integrated approach to sustainability in Public Procurement.

Procuring Entities should decide case by case which social considerations are relevant to their Public Procurement, depending on the subject-matter of their Contract or Framework Agreement and on their objectives. The following social considerations could be considered and relevant for Public Procurement:

Promoting '**employment opportunities**', for example:

- promotion of youth employment
- promotion of gender balance (e.g., work/life balance, fighting against sectoral and occupational segregation, etc.)
- promotion of employment opportunities for the long-term unemployed and for older workers
- diversity policies and employment opportunities for persons from disadvantaged groups (e.g., migrant workers, ethnic minorities, religious minorities, people with low educational attainment, etc.)
- promotion of employment opportunities for people with disabilities, including through inclusive and accessible work environments

*Promoting '**decent work**':*

This universally endorsed concept is based on the conviction that people have the right to productive employment in conditions of freedom, equity, security and human dignity.

Four equally important and interdependent items make up the Decent Work Agenda:

- the right to productive and freely chosen work
- fundamental principles and rights at work
- employment providing a decent income
- social protection and social dialogue

Gender equality and non-discrimination are considered cross-cutting issues on the Decent Work Agenda. In the context of Social Considerations in Public Procurement, a number of issues can play an important role, such as:

- compliance with core labour standards
- decent pay
- occupational health and safety
- social dialogue
- access to training
- gender equality and non-discrimination
- access to basic social protection

Promoting compliance with '**social and labour rights**', such as:

- compliance with national laws and collective agreements
- compliance with the principle of equal treatment between women and men, including the principle of equal pay for work of equal value, and promotion of gender equality
- compliance with occupational health and safety laws
- fighting discrimination on other grounds (age, disability, race, religion and belief, sexual orientation, etc.) and creating equal opportunities

Supporting ‘**social inclusion**’ and promoting social economy organisations, such as:

- equal access to Public Procurement opportunities for firms owned by or employing persons from ethnic/minority groups – cooperatives, social enterprises and non-profit organisations, for example
- promoting supportive employment for persons with disabilities, including on the open labour market

Promoting ‘**accessibility and design for all**’, such as:

- mandatory provisions in technical specifications to secure access for persons with disabilities to, for example, public services, public buildings, public transport, public information and ICT Goods and Services, including web-based applications. The key issue is to buy Goods, Services and Works that are accessible to all

Taking into account ‘**ethical trade**’ issues, such as:

- the possibility, under certain conditions, to take into account ethical trade issues in tender specifications and conditions of Contracts or Framework Agreements.

Seeking to achieve wider voluntary commitment to ‘**corporate social responsibility**’ (CSR), i.e., companies acting voluntarily and going beyond the law to pursue environmental and social objectives in their daily business, such as:

- working with Economic Operators under Contract or Framework Agreement to enhance commitment to CSR values.

Protecting against **human rights** abuse and encouraging respect for human rights.

Universal Declaration of Human Rights

[link: <https://www.un.org/en/universal-declaration-human-rights/>]

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and

women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not

constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.*
- (2) Everyone has the right to leave any country, including his own, and to return to his country.*

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Article 15

- (1) Everyone has the right to a nationality.*
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

Article 16

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.*
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Article 17

- (1) Everyone has the right to own property alone as well as in association with others.*
- (2) No one shall be arbitrarily deprived of his property.*

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.*
- (2) No one may be compelled to belong to an association.*

Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
- (2) Everyone has the right of equal access to public service in his country.*
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and

resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Promoting ‘**SMEs**’ in so far as they can be connected with the considerations set out above:

- provisions giving SMEs greater access to Public Procurement by reducing the cost and/or burden of participating in socially responsible Public Procurement opportunities, as above. This can be achieved, for example, by ensuring, where possible, that the size of the Contract or Framework Agreement is not an obstacle in itself to participation by SMEs, by giving sufficient time to prepare bids, by ensuring payment on time, by setting proportionate qualification and economic requirements, etc.
- equal opportunities by making subcontracting opportunities more visible

7.4.13.9. Domestic Market preference

Public Procurement has a big potential in supporting domestic economic growth. It is therefore allowed by the Public Procurement Act and Regulations 2020 to privilege domestic Tenderers or use of domestic resources, to promote economic growth and strengthen the domestic market economy.

Procuring Entities may decide to privilege domestic Tenderers or international Tenderers committing in their Tenders to use domestic resources. Procuring Entities shall specify the reasons and methodology for such domestic preference in the Invitation to Tender.

7.4.13.9.1. Low-Value Procurement (LVP)

For Low Value Procurement, Procuring Entities may limit Public Procurement to Domestic Economic Operators.

For LVP, the international interest in Tendering is very limited, not to say non-existing. Also, delivery costs and lead times are unproportionally high and long. Invitations to Tender may therefore invite only domestic Tenderers, without prior approval from the CPO.

7.4.13.9.2. Medium (MVP) and High-Value (HVP) Procurement

For Medium and High Value Procurement, Procuring Entities may privilege Domestic Economic Operators or International Economic Operators using domestic resources. Procuring Entities may privilege Domestic Economic Operators or international Economic Operators, with specific scoring criteria, that promote business cooperation with Domestic Economic Operators or the use of domestic human and technical resources.

For **MVP**, it is highly recommended to include a scoring benefit for international Tenderers committing in their Tenders to use domestic resources. This additional scoring should be included amongst the Technical Evaluation criteria, as a separate criterion, allocated a reasonable value. This value shall be proposed by the Procuring Entity, including a justification, and be approved by the CPO.

The justification should be based on an analysis on the domestic market potential and availability, not to increase the risk for the international Tenderer, which could lead to either no Tenders or very expensive Tenders. The additional scoring points to promote domestic use of resources is recommended to represent 5-15% of the total technical criteria, depending on the analysis and on the weight of the technical component versus the financial – the lower technical weight, the higher the points for domestic preference.

Procuring Entities shall specify in the Request for Pre-Qualification and/or Invitation to Tender the reasons for a domestic preference. In case of domestic Economic

Operators being privileged, Procuring Entities shall also specify in the Request for Pre-Qualification and/or Invitation to Tenders the preference scoring criteria and the methodology for evaluation of domestic Economic Operators or International Tenderers using domestic resources.

For **HVP**, the judgment is case dependent and must be subject to a thorough analysis, as for MVP. The result shall be proposed by the Procuring Entity, including a justification, and may be used upon approval by the CPO.

Further than for MVP, a construction where a part of the Contract or Framework Agreement is mandatorily using domestic resources, through local partners, consortia, Joint Venture, or similar, and another part gives additional scoring in the evaluation, may be considered.

HVP often concerns Works, whereas local labour may more easily be used.

It is recommended to include technology and knowledge transfer as a requirement in the requirements and in the Contract or Framework Agreement, perhaps even transfer of assets as a benefit giving additional scores, to ascertain long-term domestic development.

Example: A project comprises two phases; first a one-time engagement to solve a long-standing accumulated problem, then a long-term sustainable solution to prevent the problem from reoccurring. For the first phase, machinery and equipment may be used during a limited period of time. During this first phase, local labour should be trained on the use, to enable them to manage the machinery and equipment for the second phase. As part of the concept, the machinery and equipment needed for the second phase should be included in the Tender, with a transfer cost (which could be zero), after the first phase is concluded. Of course, it is crucial with good competition for such a concept, to keep the costs down, e.g., for the transfer of assets. Since Kiribati is remote, transportation of heavy equipment is expensive, which creates an opportunity for a beneficial transfer cost.

Procuring Entities shall obtain a pre-approval of the domestic limitation or preference by the Chief Procurement Officer before initiating MVP or HVP.

It is important also that the Contract Management includes following up on such criteria, to ascertain that international Tenderers do fulfil the requirement to use domestic resources, for which they received additional benefits in the evaluation.

7.4.14. Time schedule

Procuring Entities shall provide sufficient time for Economic Operators to prepare and submit their Tenders.

Time constraint or optimistic time schedules are most likely having a negative effect on the quality of the result of Public Procurement. It is important to consider sufficient time and setting a realistic time schedule for the process. Besides disregarding the need for thorough needs and market assessment, time schedules for the Tender process are often too optimistic.

The different phases after launching the Invitation to Tender (ITT) are (i) deadline for receiving questions, (ii) last date for answers and modifications, (iii) deadline for Tender receipt, (iv) evaluation and Award, (v) standstill period, (vi) finalisation of the Contract or Framework Agreement, (vii) Contract or Framework Agreement signing, and (viii) possible lead time to project start. All these are phases most often underestimated.

A time schedule for the Public Procurement procedure should be included in the ITT, using the Model Document 'Time Schedule', including all dates and times from the

submission to preliminary dates for Award and Contract or Framework Agreement start date.

7.4.14.1. Questions

Although the Invitation to Tender (ITT) seems clear to the Procuring Entity, it may not be fully understood by potential Tenderers, who want to make sure their Tender is not rejected due to any misunderstanding. In some cases, the ITT also leaves room for alternative solutions, whereas the Tenderer needs to know if their ideas are within the requirements.

Sufficient time must be provided for the Tenderers to go through the ITT and possibly find unclarities and submit questions.

7.4.14.2. Clarifications and modifications

Possible clarifications or modifications of the ITT should be provided to the Tenderers in time for them to be able to consider them and finalise their Tenders before the deadline. This should be at least 5 days before the final submission date, preferably longer for more complex Public Procurement, e.g., when an RFP is used, and in particular for complex Works. The time for the Procuring Entity to analyse and prepare answers must also be considered when drafting the 'Time Schedule'.

7.4.14.3. Receipt of Tenders

Common mistakes are giving too short a time for preparation and for the Tenderers to prepare Tenders. The more complex the subject of Public Procurement, the more time is, of course, required. It may be necessary for Tenderers to establish cooperation's, in particular if the Invitation to Tender includes bonuses for initiatives to include Domestic Economic Operators, or for domestic Tenderers to find and establish partnerships or joint ventures, or simply having sufficient time to find the most competitive solution. A site visit may sometimes be required to prepare a Tender for Works, which extends the time for Tender preparation.

Too short Tender times either leads to poor quality or expensive solutions, or few or no Tenders at all. It can be illustrated by the sign in fig. 12, where the first option is the preferred one, the second option for exceptional situations and the third option not to be considered:



Fig. 12

The required Tender time is regulated in the Public Procurement Regulations 2020 and is related to the complexity and, to some extent, the value of the subject of Public Procurement. Public Holidays should be taken into consideration. The method for invitations depends wholly on the complexity, as is described in 7.4.8, in 7.7.1 and in 7.7.2, and thereby the minimum Tender times. The different methods are further described under 7.6.

More complex Public Procurement should be solicited as Request for Proposal (RFP) and the Tender time, i.e., between the time when the Invitation to Tender has been properly published and the date and time for submission of Tenders, must be a minimum of 45 calendar days. It should, however, be extended depending on complexity, required and desired time for establishing cooperation, consortia, joint venture, or similar, technology transfer, countertrade, possible inclusion of domestic partners, site visits, etc.

For standard Goods or Services, i.e., where they are not subject to a particular and customised specification, design or construction, adjusted to the Procuring Entity, but 'off-the-shelf' Goods or Services, a Request for Quotations (RFQ) should be used for High-Value (HVP) and Medium-Value Procurement (MVP), as defined in the Public Procurement Regulations. The Tender time for RFQ must be at least a minimum of 25 calendar days, where factors like complexity, required and desired time for establishing cooperation, consortia, joint venture, or similar, technology transfer, countertrade, possible inclusion of domestic partners, site visits, etc., should be considered.

For standard Goods or Services of Low-Value (LVP) a Request for Offers (RFO) can be used, where a minimum of 15 calendar days must be applied.

When using Request for Prequalification (RFPO) a minimum of 20 calendar days must be applied.

Please, refer to 0 for guidance on minimum timelines and how to draft the time schedule for the Public Procurement process. The minimum Tender times are summarised in 7.8.1.

In exceptional cases of unforeseen extreme urgency, not caused by poor planning by the Procuring Entity, and if the reasons for extended Tender times, as above, are not relevant, and subject to pre-approval by the CPO, the Tender time may be reduced.

7.4.14.4. Evaluation and Award

Dates for the evaluation should be agreed beforehand with the Evaluation Committee members, in case of separate Technical and Financial Evaluations, sufficient time should be allocated for the Technical Evaluation, which is normally more complex and time consuming, e.g., with a need for clarifications from Tenderers, however, with some flexibility, not to unnecessarily delay the finalisation of the evaluation. The dates for the evaluation meetings should not be indicated in the 'Time Schedule', but the preliminary date for the Award should be indicated.

For the Award, the Awarding Authority should be advised on the preliminary date, as well as any updates during the process. The preliminary date and time for the Award should consider the time required for the Awarding Authority to take part of the Evaluation Report and possible discussions with the Evaluation Committee, for clarifications.

7.4.14.5. Standstill period

Following the communication of the Award, a standstill period is stipulated in 7.11.2, for possible complaints from Tenderers dissatisfied with the Award decision.

7.4.14.6. Contract or Framework Agreement finalisation

When the stand-still period has expired, including settlements of potential complaints and appeals, the Contract or Framework Agreement shall be finalised with the successful Tenderer. Firstly, the draft Contract or Framework Agreement needs to be finalised by the Procuring Entity, including the Specification or TOR, delivery and payment schedules, etc., and details of the Economic Operator. This may take a few days, followed by an internal review and, thereafter, a review of the Economic Operator.

7.4.14.7. Contract or Framework Agreement signing

When the parties have agreed on the Contract or Framework Agreement, it should be signed first by the Economic Operator, before the Procuring Entity signs. This may also take some time that needs to be considered.

7.4.14.8. Start-up time

For some Contracts or Framework Agreements, there is a lead-time before the execution of the Contract or Framework Agreement, e.g., delivery time and/or production time for Goods, engagement time for Service Providers or Consultants or establishment time for Works.

7.4.15. Appointment of Evaluation Committee

Tenders shall be evaluated by an Evaluation Committee which shall be responsible for the assessment of the evaluation criteria and shall be appointed prior to the publication or submission of an Invitation to Tender. All members of the Evaluation Committee shall comply with the Principles of Public Procurement as established in the Act and that in case of a conflict of interest they are removed from the committee and excluded from the Public Procurement exercise in question.

The Evaluation Committee shall, as a whole, have sufficient knowledge on the subject of Public Procurement to enable a proper judgment on the appropriateness and suitability of the solutions proposed by the Tenders. They may be technical experts, who have developed the Specification or TOR, the Project Manager or the Contract Manager, but also end-users may sometimes be included, depending on the subject of Public Procurement. The members of the Evaluation Committee, that are to evaluate the technical criteria should be selected already at this stage. The committee may need to meet more than once, e.g., for separate submissions of technical and financial (2-envelopes) or when there is a need of obtaining clarifications from Tenderers.

If necessary, the Evaluation Committee may invite external technical experts to provide relevant in-depth technical knowledge, without scoring.

The Committee must also include sufficient knowledge on Public Procurement, to understand the application of the rules and regulations. To secure this, either the Procuring Entity Procuring Officer or a Procurement Officer from the CPU should be included.

Fig. 13 summarises the process of establishing an Evaluation Committee.



Fig. 13

The head of the Procuring Entities shall select and appoint the members of the Evaluation Committee which shall have appropriate technical, financial, Public Procurement expert knowledge and experience, and shall comprise the membership defined for MVP and HVP, respectively, in the following.

7.4.15.1. Medium Value Procurement

The MVP Evaluation Committee shall comprise a scoring chairperson, at least two scoring evaluators, a non-scoring secretary and, if necessary, substitutes. The evaluators must possess the technical, financial and/or administrative capacity necessary to give an informed opinion on the Tenders. Their scores shall have equal value and the final score shall be a decision by consensus.

7.4.15.2. High Value Procurement

The HVP Evaluation Committee shall comprise a scoring chairperson, at least three scoring evaluators for, a non-scoring secretary and, if necessary, substitutes. The evaluators must possess the technical, financial and/or administrative capacity necessary to give an informed opinion on the Tenders. Their scores shall have equal value and the final score shall be a decision by consensus.

7.4.15.3. Evaluation Committee roles

The evaluation is when the Tender that best meets the needs of the users is to be selected. Thus, it is important that the members of the Evaluation Committee have the technical knowledge and a natural interest in a result that provides a good solution to the needs and best Value for Money. To ascertain good knowledge on the subject of Public Procurement, the Evaluation Committee, at least for the Technical Evaluation, should comprise representatives from the Procuring Entity that are involved in the drafting of the Specifications or TOR.

The Evaluation Committee may invite non-scoring technical and/or financial advisors to provide a reasoned opinion to support technical and, if necessary, financial Evaluation.

The members of the Evaluation Committee have collective responsibility for decisions taken by the committee. The chairperson is responsible for coordinating the evaluation procedure and for ensuring its impartiality, correctness and transparency. The secretary to the Evaluation Committee is responsible for carrying out all administrative tasks connected with the evaluation procedure.

The nominated Evaluation Committee members, that have accepted the nomination, shall be approved by the CPO.

7.4.15.4. Declaration of impartiality and confidentiality

Prior to the commencement of the evaluation, all members of the Evaluation Committee accepting the appointment shall sign a declaration of impartiality and confidentiality and shall declare to act in accordance with the principles of the Act and the Regulations, see the template for Declaration of impartiality and confidentiality in 11.13.1, valid throughout the Public Procurement process, i.e., including participation in preparatory work, until a Contract or Framework Agreement has been signed.

It is of utmost importance that the members of the Evaluation Committee do not have any Conflict of Interest, i.e., is subject to any circumstances that may have, or may be suspected to have, an impact on the independent judgment of the member. Such conflicts could be e.g., a direct or indirect financial interest in any of the Tenderers, her-/himself or a member of the closest family – husband/wife, child, parent, in-law, sibling – or another personal situation that may impact the evaluation.

Such Conflict of Interest may not be known until the actual opening of the Tenders, whereas the member shall immediately inform the Chair of the Evaluation Committee of such circumstances and be replaced by a new member.

7.4.15.5. Evaluation Report

The Evaluation Committee shall be responsible for preparing an Evaluation Report with all aspects of the evaluation, including the preparation, timing and contents of the meetings, members presence, exclusions of Tenders for non-fulfilling the mandatory criteria, the Technical and the Financial Evaluation procedures, providing Value for Money, including the scores and reasons for the scorings, and any other relevant information. Upon finalisation of the procedure, the Evaluation Committee shall provide the updated Procurement Report, including the Evaluation Report and all relevant documentation and information, including the scores and a recommendation for Award, to the relevant Award body.

7.4.15.6. Organising the evaluation

At this stage, preliminary dates should be set for at least the first evaluation meeting, to ensure availability of the members.

7.5. Invitation to Tender Preparation

Before launching an Invitation to Tender, the ITT and evaluation structure need to be finalised, quality assured and approved by the CPO. The aim is to ascertain an objective and correct Public Procurement, that the right procedure is followed which allows for broad and fair competition and has a realistic timeline.

The components of the ITT finalisation process are illustrated in fig. 14.



Fig. 14

During this phase, close cooperation with the CPU is required. The ‘technical inputs’ are (i) the Specification or Terms of Reference (TOR), (ii) the evaluation criteria, (iii) the proposed time-schedule and (iv) the appointed members of the Evaluation Committee. Also, any documentation from a Market Assessment should be submitted, including details of as many potential Economic Operators as possible being consulted.

7.5.1. The rest of the ITT documents...

Apart from the description of the scope of Public Procurement and how it will be evaluated, developed by the Procuring Entity, the ITT needs to include administrative instructions, i.e., when and how to submit the Tender, and the legal terms and conditions of the future Contract or Framework Agreement. For most common Public Procurement, Model Documents for ITT have been developed, are described in 7.7.5 and can be found in o. To increase the prerequisites for efficient and effective evaluations, Tender Forms, to be used by the Tenderers, could be included in the ITT package.

The ITT Model Documents are structured in either Request for Quotation (RFQ), Request for Proposal (RFP) or Request for Offer (RFO).

Following the Procurement Entity preparation of the inputs to the ITT, i.e., the Specification or TOR, the Evaluation Criteria and Method, the Time Schedule, the Invitation to Tender is to be completed, by adding the administrative and legal requirements and Tender forms. This will be done in close cooperation with the CPU, who will review the draft Specification or TOR, evaluation criteria and time schedule, as well as the selection of Evaluation Committee members. When finalised and approved, the CPU will publish and/or disseminate the ITT, as relevant. The main method is by publication on the Kiribati Public Procurement Web Portal. Following a publication, the Procuring Entity may extend the dissemination of information that an ITT has been published and where it can be found.

Fig. 15 illustrates the process of finalising the complete ITT and publication on the Kiribati Public Procurement Web Portal.

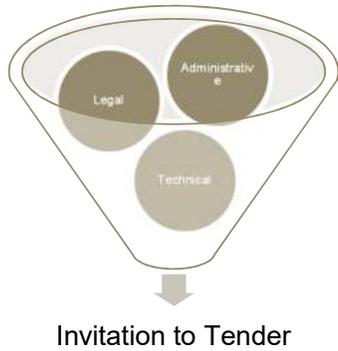


Fig. 15

The Invitation to Tender shall be subject to approval by the Chief Procurement Officer and should consist of and be based on at least the following information and documents, as applicable, and described under 7.7.5:

- Invitation letter
- Instructions on submission
- Time schedule
- Specifications or Terms of Reference
- Evaluation criteria and model
 - o Technical Evaluation form
 - o Financial Evaluation form
- Draft Contract
- Certificate of Compliance form

Please, refer to 7.4 for ITT preparation by the Procuring Entity and 7.6 for selection of procedure.

7.5.2. Main procedures

Before initiating a Public Procurement, Procuring Entities shall prepare an Invitation to Tender. The Invitation to Tender for MVP or HVP shall be made available to Economic Operators, in line with the Standard Procedures, see 7.6.3.1, and Publication and communication, see 7.5.6, to enhance market competition, and to the general public.

To ascertain VFM, you should always make efforts to take advantage of the competition in the market. For this, there are established competitive procedures, as described below. Only under certain, well defined and justified exceptional circumstances will Public Procurement procedures be approved that are not fully competitive, so called exceptional procedures.

7.5.2.1. Standard procedures

Public Procurement shall be implemented through a standard procedure:

- **Open Competitive Procedure;** see 7.6.3.1.1, where competition is open to all Economic Operators, normally by publication on the Kiribati Public Procurement Web Portal and other sources, with the purpose of inviting them to submit a Tender.

- A Procuring Entity may begin an **Open Competitive Procedure through a Pre-Qualification**; see 7.6.3.1.2, in order to identify qualified Economic Operators to whom an Invitation to Tender may be issued.

7.5.2.2. Exceptional procedures

In certain circumstances, a Procuring Entity may be permitted to undertake Public Procurement through an exceptional procedure:

- **Limited Competitive Procedure**; see 7.6.3.2.1, is a procedure where the competition and the invitation to submit a Tender is addressed only to pre-selected Economic Operators. Before launching Public Procurement through a Limited Competitive Procedure, Procuring Entities shall obtain a written approval from the Chief Procurement Officer.
- **Single-Source Procedure**; see 7.6.3.2.2, is a procedure addressed only to one Economic Operator. Before launching Public Procurement through a Single-Source Procedure, except for extremely critical situations, Procuring Entities shall obtain a written approval from the Chief Procurement Officer, following a decision by the Secretary of the Ministry responsible for Finance.

7.5.3. Types of Contracts or Framework Agreements

Every Public Procurement, unless cancelled, shall result in the finalisation of a Contract or a Framework Agreement, based on the Model Documents or, if no Model Document is available, upon a Contract or Framework Agreement approved by the Office of Attorney General.

Standard Contract and Framework Agreement templates are developed as Model Documents for the below types of Public Procurement. To reduce the risk exposure of the GoK, these Model Documents have been approved by the OAG and to be used without modifications. In exceptional cases, a clause may not be suitable, whereas a suggested replacement clause need to be separately approved by the OAG. A request shall then be submitted to the CPO, who will discuss this with the OAG.

The Standard Contracts for each type of Public Procurement, see further below in this chapter, consist of two Model Documents for MVP and HVP; Specific Contract Conditions (SCC) and General Contract Conditions (GCC) and special versions for Framework Agreements. Both shall be included in the Invitation to Tender, to inform the Tenderers on which terms and conditions of the Contract or Framework Agreement that they have to comply with. This is important, since it may have an impact on the Tenders, e.g., price or other commitments, but also to secure equal treatment in the evaluation, so that all Tenders are based on the same terms and conditions.

The SCC is a word template, which will be completed with information specific to the Awarded Economic Operator, with whom the Contract or Framework Agreement will be signed. Such as the details of the Economic Operator, Contract or Framework Agreement amount, agreed Specification or TOR, delivery or execution time, etc.

The GCC is a pdf document, comprising general terms and conditions, not specific to the subject of the Contract or Framework Agreement. It is in pdf format, not to be modified, neither in the Tender nor before finalising the Contract or Framework Agreement, without approval from the OAG. A GCC in word format is available at the CPU for possible modifications upon proper approval.

In some cases, a Standard Contracts may not be suitable and reflect the actual procurement, and established, commonly accepted standard contracts have been developed and agreed between buying and selling representatives. Then, they need to be approved by the OAG, before being included in a Contract or Framework Agreement.

To save time, this should, if possible, be done before the ITT is finalised. It could be part of a preceding Market Assessment.

The use of the Contracts or Framework Agreements, similarly with the Invitation to Tenders, needs to be selected and adjusted to what is being procured. Except for VLVP and LVP, which have simplified Model Documents which include terms and conditions relevant for the lower values, there are Specific Contract Conditions, that are to be completed after the Award, and General Contract Conditions, that represent the standard terms and conditions for Contracts or Framework Agreements with the Government of Kiribati.

7.5.3.1. Purchase Order

A Purchase Order is a simplified Contract, which should be used to confirm a Very Low-Value Procurement. It can be done, either through a simple PO, where only the Procuring Entity signs the PO and confirmation is by a separate order confirmation and/or delivery and invoice, or a simplified Contract, which is signed by the Procuring Entity and thereafter sent to the Economic Operator for signature. The latter is preferred, to avoid disagreements, but for very short delivery times this may not be feasible and necessary.

7.5.3.2. Terms and Conditions for LVP

For Low-Value Procurement (LVP) standardised Contract Terms and Conditions are integrated in the RFO and duplicated in separated documents, to be used as Contracts:

- Contract for Goods
- Contract for Services

7.5.3.3. Specific Contract or Framework Agreement Conditions

There are five Model Documents for Specific Contract or Framework Agreement Conditions, found under 11.9, one version each for:

- Goods
- Services
- Works
- Framework Agreements for Goods
- Framework Agreements for Services

7.5.3.4. General Contract or Framework Agreement Conditions

General Contract or Framework Agreement Conditions are found for the following types of Contracts or Framework Agreements, found under 11.10:

- Standard Goods
- Specified Goods
- Standard Services
- Consulting Services by Consulting Firms – time-based
- Consulting Services by Consulting Firms – lump sum based
- Consulting Services by Individual Consultants
- Works
- Framework Agreements for Standard Goods

- Framework Agreements for Standard Services

7.5.4. Special Terms & Conditions

7.5.4.1. Social Considerations

Social Considerations should be included as requirements in the Invitation to Tender, as specified in the Certificate of Compliance form:

Socially responsible and environmentally safe practice

The Tenderer shall use its best efforts to refrain from any act or omission that would be environmentally harmful, and at all the times be in compliance with all environmental, health and safety laws of relevant jurisdictions.

The Tenderer will undertake to commit to the principles of the UN Supplier Code of Conduct, which is attached to the Certificate of Compliance form. Links to the Code: (https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscc/conduct_english.pdf), including the (<https://www.unglobalcompact.org/what-is-gc/mission/principles>). The UN Supplier Code of Conduct can also be found at <http://procurement.gov.ki/>.

By signing and submitting the Certificate of Compliance form with the Tender, the Tenderer commits to upholding the international standards for social and environmental considerations. The UN Supplier Code of Conduct, which is also included in the Model Documents, includes the ILO convention, as relevant. Further instructions on ILO Convention criteria are found in chapter 7.4.11.2, which stipulates a possibility to exclude Tenders that do not fulfil the ILO Convention criteria listed. Links to relevant ILO conventions are found in chapter 10.

Chapter 7.4.13.8 describes Social Considerations in detail.

7.5.4.2. Currency and payment

The official currency for all Public Procurement shall be the Australian Dollar (AUD). This, because the Government of Kiribati does not have the prerequisites for currency risk management and the poor competition on financial services, due to the small market of Kiribati, makes currency risk management, e.g., buying currency on term, expensive. Currency risk management also increases the workload and administrative cost. Further, under competition, the Tenderers, normally better fit for currency risk management, will most likely include a more cost-effective solution.

In exceptional circumstances, upon prior approval of the Chief Procurement Officer, Procuring Entities may adopt a different currency or more than one currency for Public Procurements. Procuring Entities shall clearly justify the reason for adopting a currency different from, or in addition to, AUD. Such circumstances may be e.g., when a Market Assessment indicates that Tenderers may not be willing to submit Tenders in other currencies than their normal Tenders, e.g., small Tenderers or in markets with a long-standing tradition of a certain currency, normally one of the main currencies, e.g., USD or EUR.

In order to secure equal treatment and clarity on how Tenders will be evaluated, Procuring Entities shall always specify the currency adopted for Public Procurement in the Invitation to Tender. Should other currencies be permitted, a date for when the currency conversion will be calculated must be defined. This could preferably be the date of opening of the Tenders or, alternatively, the date of the evaluation meeting for the Financial Component. Since the latter may not be possible to define with certainty, the opening date is preferred.

The source for currency conversion should be a publicly accepted and available converter, e.g., OANDA (<https://www1.oanda.com/>) or equivalent.

7.5.4.3. Payment in advance

Paying in advance of performance or delivery shall be avoided, constituting a major risk exposure to the Government of Kiribati. If to be accepted, it has to be clearly motivated, e.g., small firms, with limited financial capital, that will have substantial establishment costs before they can deliver, for instance buying material for production. For Services or Works, other establishment could be site surveys, inception reporting, travel costs. Larger firms would usually have sufficient resources to cover normal establishment costs and covered within their Tender cost. Another example is when something is produced specifically for the Government of Kiribati, with no or a very limited alternative market, where the Tenderer would need some guarantee that they do not produce in vain.

Advance payments should not be approved unless clearly justified, e.g., not just because a Tenderer has requested it. For example, Consulting Firms asking for advance payment to pay consultants which are sub-consultants, is not a justification, per se. Normally, these consultants are not paid in advance, themselves, and for their own employees, their costs are covered by their normal salary schemes. Another example is if it is an already produced, ready for delivery, or a used machine, where there is no reason for advance payment.

The amount of advance payment, or payments, shall be limited to only cover the actual and clearly justified needs, based on a written needs analysis, as described above, but never exceed 25%. This figure, 25%, should not be regarded as an approved or normal level, but a maximum, still clearly justified.

Advance payments is subject to approval in accordance with the Delegation of Authority. If advance payments are required, a bank guarantee or equivalent, in form and substance acceptable to the Procuring Entity, shall be obtained. A guarantee for advance payment may only be waived by Accountant General of the Treasury within the Ministry responsible for Finance. A request for such waiver shall be requested from the Chief Procurement Officer, who will coordinate the request for approval.

7.5.4.4. Securities and guarantees

To reduce risk exposure in the Tendering process and during Contract execution, the Procuring Entities shall consider suitable use of securities and guarantees. There are different stages during the Public Procurement which may motivate the use of a security or guarantee:

- The Tender phase
- For advance payments
- Contract performance
- Post-Contract

These are different forms of guarantees that may be used to secure commitments by Tenderers and Economic Operators under Contracts.

Please, be aware of the difference between a Letter of Credit (LoC) and a Bank Guarantee. An LoC is normally used to secure the financial stability of a party, predominantly having been used towards the GoK, i.e., that suppliers request an LoC from the Procuring Entity (GoK) to deliver. A Bank Guarantee is a security that, should the Economic Operator not deliver as agreed in the Contract, the money is not paid. A

successful Tenderer may be required to provide a bank guarantee for a sum commensurate with the value of his obligations to perform under the Contract. In the event of default, the Procuring Entity can invoke the guarantee against the bank.

7.5.4.4.1. Tender security

The purpose of a Tender security is to ascertain that a Tenderer being Awarded a Contract does not withdraw their Tender. If it is decided to be applied, it must be requested in the ITT, be submitted with the Tender and will expire upon the signing of a Contract by both parties. Since there is a cost for the Tenderers to issue a Tender security, they will include this cost in their calculation for the Tender.

The use of Tender securities should be restricted to, subject to an analysis, it is deemed that (i) there is a significant risk, based on previous experience or frequent behaviour in the relevant market segment and/or (ii) the consequences would be severe to the Procuring Entity, in particular if the Public Procurement procedure would have to be reopened, not having a qualified or valid, due to the Tender validity time having expired, second-best Tender.

7.5.4.4.2. Advance payment guarantee

For Contracts where payment in advance, see 7.5.4.3, is a condition, a bank guarantee must be requested from the Economic Operator with whom the Contract is to be signed, before any payment is executed, unless waived.

The condition of a bank guarantee in case of advance payment shall be included in the Invitation to Tender, including a clarification that it will only be exceptionally accepted and, if requested, shall be clearly justified by the Tenderer.

Such bank guarantee shall be valid until the delivery or performance corresponding to the value of the advance payment has been fully executed, whereas the bank guarantee shall be released.

7.5.4.4.3. Contract performance security

In particular for Works, but in rare cases also for Services or e.g., customer-manufactured Goods, Contract performance securities may be included in the Contract. The main purpose of a Contract performance security guarantee is to ascertain that the Contract is completed, including automatically imposing a pressure on timely delivery or performance.

This is particularly important if only a partial conclusion is done and the Economic Operator does not fulfil the Contract, and the use of the partial conclusion has limited value to the Procuring Entity, should it not be completely finalised by the original Economic Operator. A reopening of the Public Procurement would result in a significant loss of time, but a new Economic Operator may not be able to, at least fully, make use of the already concluded delivery or performance.

However, as for e.g., Tender securities, it has a cost to it, which will be transferred to the Procuring Entity, so should be used with restriction. If, pending a risk analysis, it is deemed that there is a significant risk, e.g., based on previous experience or frequent behaviour in the relevant market segment, and/or (ii) the consequences would be severe to the Procuring Entity, a Contract performance security may be considered.

7.5.4.4.4. Warranty security

For very particular projects, e.g., sensitive to down-time, which would be damaging to the society, arrangements can be made to secure availability to instant service and/or spare parts and maintenance, initially during the warranty period regulated

in the Contract, but occasionally also spare parts after the warranty period has expired.

This is very exceptional and should only be used if the consequences would be very severe.

7.5.4.4.5. *Letter of Credit*

In the contrary to the Procuring Entity requesting various securities, as above, a Letter of Credit is sometimes requested by a Tenderer, in particular for larger Contracts, to secure payment. The Republic of Kiribati, being a small economy and categorised as a developing country, runs a higher probability to be asked for a Letter of Credit. There is a non-negligible cost to issue a Letter of Credit, whereas this should be avoided as much as possible.

A Letter of Credit (LoC), also known as a ‘documentary credit’ or ‘bankers commercial credit’, or ‘letter of undertaking’ (LoU), is a payment mechanism used in international trade to provide an economic guarantee from a creditworthy bank to an exporter of Goods. Letters of credit are used extensively in the financing of international trade, where the reliability of contracting parties cannot be readily and easily determined. Its economic effect is to introduce a bank as an underwriter, where it assumes the credit risk of the Procuring Entity paying the Economic Operator for Goods.

7.5.4.5. *Subcontracting*

In any Contract or Framework Agreement it is imperative to secure that the Economic Operator under the Contract or Framework Agreement has the full responsibility for the execution, including the responsibility and liability for all potential subcontractors.

The Contract or Framework Agreement is based on the resources committed in the Tender and being evaluated. Should the Economic Operator request an exchange, replacing any subcontractor, this has to be (i) regulated in the Contract or Framework Agreement, as regards the replacement not being of lower quality or competence than the replaced resource, and (ii) subject to approval by the Procuring Entity, before taking effect.

It is crucial to make sure that the prerequisites and content of the evaluated Tender is not uncontrolledly changed, which could lead to a situation that the revised Contract or Framework Agreement would no longer had been the best in the evaluation. The risk, if not regulated, monitored and controlled would be that a Tenderer submits a high-quality and/or low-price Tender, without actually having any ambition to live up to this, but to reduce the quality and/or cost by exchanging resources. By including the Model Documents, the General Contract Conditions, in the ITT, this should be clear to all Tenderers, but may need to be further emphasized.



7.5.4.6. Provision of materials, etc.

Occasionally, a Procuring Entity may provide materials, facilities, buildings, property and/or experts for the Economic Operator to use during the execution or performance of the Contract or Framework Agreement. This needs to be regulated in the Contract or Framework Agreement, including the responsibility for the quality of the materials or the competence of the experts. The ownership during different phases and in the final delivery should also be regulated, e.g., that the ownership of the result is fully with the Procuring Entity.

7.5.4.7. Only one Tender per Tenderer

The purpose of allowing only one Tender per Tenderer is to minimise the risk of manipulation, e.g., providing also a Tender that may have an impact on the evaluation, benefitting the Tenderer. For example, a Tenderer may submit one very low-price Tender, which would change the Financial Evaluation, to the benefit of their other Tender.

However, in some cases, it is even desired to open up for alternative solutions, whereas this requirement should be waived and 'alternative Tenders' allowed by the Chief Procurement Officer, subject to a proper justification provided by the Procuring Entity. Such cases are e.g., if the Specification or TOR is open for and promotes innovations or if the Procuring Entity desires to evaluate alternative solutions, as regards Value for Money, i.e., which 'technical solution' provides the most efficient and effective solution, including all costs over a long-time perspective. For this, the Model Documents for Request for Proposal (RFP) should be used, preferably after conducting a thorough Market Assessment, which may include a Request for Information (RFI).

7.5.5. Delivery terms

The Incoterms rules are standard sets of trading terms and conditions designed to assist traders when Goods are sold and transported.

Each Incoterms rule specifies:

- *the obligations of each party (e.g., who is responsible for services such as transport; import and export clearance etc)*
- *the point in the journey where risk transfers from the Economic Operator to the Procuring Entity*

So, by agreeing on an Incoterms rule and incorporating it into the Contract or Framework Agreement, the Procuring Entity and the Economic Operator can achieve a precise understanding of what each party is obliged to do, and where responsibility lies in event of loss, damage or other mishap.

The Incoterms rules are created and published by the International Chamber of Commerce (ICC) and are revised from time to time. The most recent revision is Incoterms 2020 which comes into force on 1st January 2020.

The definitive publication on the Incoterms 2020 rules is the ICC publication number 723, which is available from various national bookshops.

7.5.5.1. *The logic of the Incoterms rules*

The eleven rules of the Incoterms are divided into two main groups

Rules for any transport mode <ul style="list-style-type: none">• Ex Works EXW• Free Carrier FCA• Carriage Paid To CPT• Carriage & Insurance Paid to CIP• Delivered at Place Unloaded DAT (***)• Delivered At Place DAP• Delivered Duty Paid DDP	Rules for sea & inland waterway only <ul style="list-style-type: none">• Free Alongside Ship FAS• Free On Board FOB• Cost and Freight CFR• Cost Insurance and Freight CIF
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In general, the “transport by sea or inland waterway only” rules should only be used for bulk cargoes (e.g., oil, coal etc) and non-containerised Goods, where the exporter can load the Goods directly onto the vessel. Where the Goods are containerised, the “any transport mode” rules are more appropriate.

A critical difference between the rules in these two groups is the point at which risk transfers from Economic Operator to Procuring Entity. For example, the “Free on Board” (FOB) rule specifies that risk transfers when the Goods have been loaded on board the vessel. However, the “Free Carrier” (FCA) rule specifies that risk transfers when the Goods have been taken in charge by the carrier.

Important:

(***) In Incoterms 2020, Delivered At Terminal, in Incoterms 2010, has been re-named Delivered at Place Unloaded

Another useful way of classifying the rules is by considering:

- *Who is responsible for the main carriage – the Procuring Entity or the Economic Operator?*
- *If the Economic Operator is responsible for the main carriage, where does the risk pass from the Economic Operator to the Procuring Entity – before the main carriage, or after it?*

This gives us these four groups:

- *Procuring Entity responsible for all carriage – EXW*
- *Procuring Entity arranges main carriage – FAS; FOB; FCA*
- *Economic Operator arranges main carriage, risk passes after main carriage – DAT; DAP; DDP*
- *Economic Operator arranges main carriage, but risk passes before main carriage – CFR; CIF; CPT; CIP*

This last group of rules often surprises newcomers, because although the Economic Operator *pays for* transport to the named place, the *risk transfers* at an earlier point in the journey – see delivery.

Consider, for example, Goods that are taken in charge at Gothenburg, Sweden, for transport to Betio, Kiribati, under the rule “CIP Betio, Kiribati, Incoterms 2020”. The Economic Operator will arrange and pay for freight to Betio, but risk will pass to the Procuring Entity upon delivery of the Goods to the carrier at Stockholm, before the main carriage.

This [interactive on-line tool](#) may be useful for seeing how a rule may be selected according to these principles.

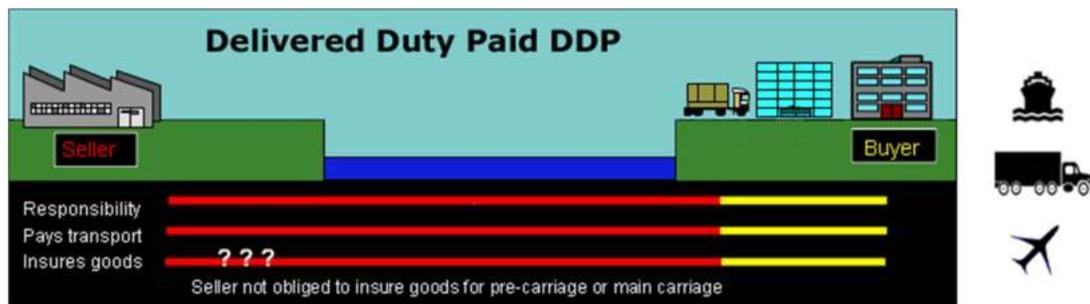
7.5.5.2. Recommendation

Depending on the circumstances and type of Goods, the Model Documents need to be updated and indicated in the ITT. The recommended mode is Incoterms DDP, except for bulk cargos (e.g., oil, coal etc) and non-containerised Goods, where the exporter can load the Goods directly onto the vessel, where CIF is recommended.

7.5.5.3. Delivered Duty Paid (DDP)

Can be used for any transport mode, or where there is more than one transport mode.

The Economic Operator is responsible for arranging carriage and delivering the Goods at the named place, cleared for import and all applicable taxes and duties paid (e.g., VAT, GST)



Risk transfers from Economic Operator to Procuring Entity when the Goods are made available to the Procuring Entity, ready for unloading from the arriving conveyance

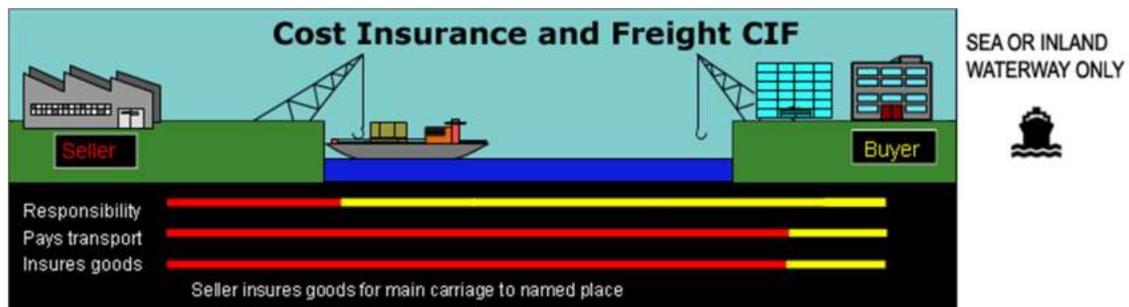
This rule places the maximum obligation on the Economic Operator and is the only rule that requires the Economic Operator to take responsibility for import clearance and payment of taxes and/or import duty.

These last requirements can be **highly problematical for the Economic Operator**. In some countries, import clearance procedures are complex and bureaucratic, and so best left to the Procuring Entity who has local knowledge.

7.5.5.4. Cost Insurance and Freight (CIF)

Use of this rule is restricted to Goods transported by sea or inland waterway. In practice it should be used for situations where the Economic Operator has direct access to the vessel for loading, e.g., bulk cargos or non-containerised Goods.

For containerised Goods, consider 'Carriage and Insurance Paid CIP' or 'Delivered Duty Paid' DDP instead.



The Economic Operator arranges and pays for transport to named port. The Economic Operator delivers Goods, cleared for export, loaded on board the vessel.

However, risk transfers from the Economic Operator to the Procuring Entity once the Goods have been loaded on board, i.e., before the main carriage takes place.

The Economic Operator also arranges and pays for insurance for the Goods for carriage to the named port.

However as with “Carriage and Insurance Paid To”, the rule only require a minimum level of cover, which may be commercially unrealistic. Therefore, the level of cover may need to be addressed elsewhere in the commercial agreement.

7.5.6. Publication and communication

The Chief Procurement Officer shall be responsible for Public Procurement information and documentation being made available to all Economic Operators and to the general public through the best and most efficient available means, including publication on the Kiribati Public Procurement Web Portal (the Portal). The Chief Procurement Officer shall also be responsible for updating and upgrading the Portal to ensure effectiveness of the communication and reliability and safety of the information.

When deemed effective, publication in local and international media, through national radio broadcasting and any other appropriate means can be coordinated by the Chief Procurement Officer but executed by the relevant Procuring Entity.

7.5.6.1. General Public Procurement information

The Portal shall contain all relevant information on Public Procurement in Kiribati, of interest to the public, including the latest updated legal framework, i.e., the Public Procurement Act, the Public Procurement Regulations and the Public Procurement Manual, how Public Procurement is organised, the Annual Procurement Plans, but also information on Awarded and signed Contracts or Framework Agreements or cancellations of MVP and HVP procedures.

Should the Portal not be available, functional or effective, the Chief Procurement Officer shall disseminate all Public Procurement information and documentation by publication in local and international media, when relevant, through national radio broadcasting and any other appropriate means.

7.5.6.2. Information to Economic Operators and Tenderers

Every Invitation to Tender under a Standard Procedure, i.e., an Open Competitive Procurement or a Prequalification Procedure, shall be published on the Portal, including updates as a result of a Questions and Answers procedure or a cancellation of the procedure. It shall be possible to download the Invitation to Tender documents, to enable preparation of Tenders or Applications for Prequalification.

Information on Contracts or Framework Agreements signed as a result of all MVP and HVP procedures, which also includes Contracts or Framework Agreements following Exceptional Procedures, i.e., a Limited Competitive Procedure or a Single-Source Procedure, shall be published on the Portal.

To increase competition and improve the quality of Tenders, the Chief Procurement Officer shall provide guidance on the Portal to enhance the knowledge and understanding of Public Procurement with potential Tenderers, including information on the Tenderers’ rights to complain.

For the purposes of an Exceptional Procedure, i.e., a Limited Competitive Procedure or a Single-Source Procedure, the Chief Procurement Officer shall, instead of publishing on the Portal, submit the Request for Pre-Qualification and the Invitation to Tender by electronic communications or, if these are not available, functional or effective, by letter.

7.6. Selection of ITT procedure

In the following, the selection of procedures applies to Medium- and High-Value Procurement, except for Very Low-Value Procurement, which is specifically described under 7.6.1, and Low-Value Procurement which is specifically described under 7.6.2.

7.6.1. Very Low-Value Procurement (VLVP) procedures

For Very Low Value Procurement, as defined in the DOA, a simplified Public Procurement procedure may be used. Invitations to Tenders can be requested by email or, in exceptional cases, by phone or in person, which must be documented, preferably with a Purchase Order, see 7.5.3.1, to enable payment, audit, etc.

7.6.2. Low-Value Procurement procedures

In order to guarantee a smooth and efficient Public Procurement, for Low-Value Procurement (LVP) less formal and simpler rules than for MVP and HVP can be applied and the procedure is more decentralised, whereas Procuring Entities are responsible for executing the whole Public Procurement.

At least three (3) relevant Tenderers shall be invited in writing, e.g., by means of the Model Document 'Request for Offer' (RFO), to submit Offers.

Unless otherwise specified, all Public Procurement principles, procedures and rules for Medium and High Value Procurement under Part II of the Public Procurement Regulations 2020, sections 13-26, are applicable also for Low Value Procurement, with the following exceptions, that shall not be applicable to Low Value Procurement:

- a) Sections 14.3, 14.6, 15, 20.1, 20.2, 24 and 26.4:
No approval is required from the Chief Procurement Officer, the Permanent Secretary of the Ministry responsible for Finance or an awarding authority for:
 - i. evaluation criteria,
 - ii. selection of procedure,
 - iii. valid Single-Source Procedure,
 - iv. reduction of Tender time, and
 - v. no Evaluation Committee needs to be established.
- b) Sections 16, 17, 18, 19.2, 19.3, 19.4, 21 and 25:
The detailed rules do not need to be applied for:
 - i. Open competitive Procedure,
 - ii. Pre-Qualification,
 - iii. Limited competitive Procedure, and
 - iv. no securities or guarantees are required,
 - v. publication is not required, and
 - vi. no formal questions and answers procedure is necessary.

The Procuring Entity Procuring Officer shall have the following main responsibilities:

- Preparation of Invitation to Tender;
- Submission of Invitation to Tender with the Request for Offer (RFO), see 7.7.5.1;
- Receipt and validation of Tenders eligibility;
- Evaluation of Tenders, in cooperation with relevant stakeholders, and preparation of the Procurement Report;
- Award decision and Contract signature, in accordance with the Delegation of Authority; and
- Submission of copies of Tender and Contract documents to the Central Procurement Unit.

7.6.3. Medium- and High-Value Procurement procedures

Contracts or Framework Agreements shall not be split into smaller-sized Public Procurements for the sole purpose of reducing their value and qualify them as Low-Value Procurement to avoid the applicability of principles, rules and obligations of MVP and HVP.

7.6.3.1. Standard procedures

Procuring Entities shall initiate Public Procurement with the use of an Open Competitive method. In exceptional cases and subject to pre-approval, Procuring Entities may apply an Exceptional procedure.

An Invitation to Tender (ITT) should always be open but can be preceded by a Request for Prequalification (RFPQ), in case very many Tenders are expected, and time allows (however, it should be considered that evaluation of many Tenders may need less time than the RFPQ process) or, under special conditions, by an exceptional procedure.

A significant benefit with an RFPQ is also that only a limited number of Tenderers will need to prepare a full Tender, which is very time-consuming and costly, in which case some Tenderers would perhaps refrain from participating, thereby reducing competition.

7.6.3.1.1. Open Competitive Procedure

In an Open Competitive Procedure, following the publication of an Invitation to Tender, any interested and eligible domestic and international Economic Operator may submit a Tender to take part in Public Procurement.

It requires that the Invitation to Tender shall be made available as broadly as possible, by open publication. The main publication channel is the Kiribati Public Procurement Web Portal found at (<http://procurement.gov.ki/>). However, it is recommended to use other channels in parallel, in particular to reach international Tenderers, but also to reach domestic Tenderers with poor access to internet or not yet fully aware of or accustomed to the Kiribati Public Procurement Web Portal. The CPU may assist and advise on suitable methods for wider publication. In an Open Competitive Procedure, you can still advise potential tenderers on the ITT.

In an Open Competitive Procedure, an RFQ or an RFP can be used, depending on the complexity of the Public Procurement, see 7.7.1. For Low Value Procurement (LVP) an RFO can be used, which is a simplified RFQ.

7.6.3.1.2. Prequalification Procedure

In certain circumstances, to limit the number of Tenderers submitting a full Tender, a Procuring Entity may initiate an Open Competitive Procedure through a Pre-Qualification Procedure, in order to identify qualified Economic Operators, with sufficient capability for the Goods, Services or Works to be Tendered, to whom an Invitation to Tender may be issued. A Request for Pre-Qualification shall be subject to approval by the Chief Procurement Officer before issuance.

If there is a wide market available for the subject of Public Procurement, it may be advised to reduce the Tenders to be submitted and evaluated. To do so, a separate procedure can be used, to prequalify a limited number of Tenderers, capable of fulfilling prerequisites necessary for delivering or producing the Goods, Services or Works to be procured. Then a Request for Pre-Qualification (RFPQ), see 7.7.5.3, should be used to select Tenderers having sufficient financial and technical capacity. An RFPQ procedure is most often used for RFP's, rarely necessary for standard Goods or Services, i.e., for RFQ's.

A request for Pre-Qualification shall consist of at least the following information and documents and be published on the Kiribati Public Procurement Web Portal:

- Invitation; the document with the purpose of informing about the Goods, Services or Works which will be subject to an Invitation to Tender;
- Instructions for the Pre-Qualification application; the document providing the required information to be submitted by Economic Operators, which includes the respective deadlines and methodology for submission and provides the list of the exclusion and qualification criteria for the eligibility to receive the Invitation to Tender; and
- The intended timeline for an Invitation to Tender.

The intention of an RFPQ is to select Tenderers that have the necessary financial and technical capacity to deliver the relevant Contract or Framework Agreement. Not to limit competition, these requirements must be proportional and not include requirements that are not necessarily required. A Pre-Qualification Procedure can also be used where the Tenderers first need to sign a declaration of confidentiality, see 11.11, before receiving an ITT.

For the minimum financial capacity, the Procuring Entity shall verify that they have the financial stability and a turn-over, liquidity, solvency, etc., to sufficiently ascertain a stable conclusion of the Contract or Framework Agreement.

The Procuring Entity shall then define the relevant minimum technical capacity required to deliver the Goods, Services or Works required to conclude the Contract or Framework Agreement in a satisfactory way. Such requirements may be on equipment, machinery, qualified personnel and/or subcontractors, related sector or regional experience, quality management systems, relevant ISO-certificates, etc.

Adding to the minimum technical requirements, the applying Tenderer should account for relevant experience and performance of similar delivery of Goods, Services or Works within the latest years, including references.

7.6.3.2. Exceptional procedures

An exceptional procedure is when the Invitation to Tender is restricted to a limited number of Tenderers and shall only be applied under certain preconditions and be subject to pre-approval, unless otherwise regulated. There are two types of Exceptional procedures; Limited Competitive Procedure or Single-Source Procedure, as described in 7.6.3.2.1 and 7.6.3.2.2.

7.6.3.2.1. Limited Competitive Procedure

Differently from an Open Competitive Procedure, where you can still advise potential tenderers on the ITT, a Limited Competitive Procedure is an exceptional procedure, where Economic Operators are directly invited, without publication, to submit Tenders. Only Tenders received from Economic Operators invited by the Procuring Entity are eligible to be evaluated.

A Limited Competitive Procedure shall only be used in case it is verified that there is no benefit with an Open Competitive Procedure, which is uncommon, or which may exceptionally be the case, when it would be unsuitable with an Open Competitive Procedure, e.g., due to a strong need of confidentiality. Competition is still required, whereas a sufficient number of Tenderers must be invited. Procuring Entities may apply a Limited Competitive Procedure only after having received written approval from the Chief Procurement Officer.

A Limited Competitive Procedure means that the Invitation to Tender is sent only to a limited number of potential Tenderers. The reason for such a restriction may be that the risk exposure is high, whereas Economic Operators with a good past performance would reduce the risk. It may also be justified by the fact that there are only a limited number of well-known Economic operators capable of delivering the Goods, Service or Works. Further, in situations where confidentiality is important, a Limited Competitive Procedure can be used, where the tenderers first need to sign a declaration of confidentiality, see 11.11, before receiving an ITT.

For example, for national strategic interests, a specific Public Procurement is not to be disclosed, to secure no undesired information being leaked to e.g., other countries or actors in other countries, which may have an interest in such Public Procurement not to be successful, or for protection of national security. Then, selected Tenderers may be invited, subject to a confidentiality commitment. Such Public Procurement would still make use of competition, which would not be the case with the use of a Single-Source Procedure.

A Public Procurement Database will be developed and continuously updated by the CPU with Economic Operators, including a performance rating from previous Contract or Framework Agreement executions. The Contract Managers shall provide the CPU with information on Economic Operators' performance under the Contracts or Framework Agreements, which shall be compiled by the Central Procurement Unit and saved in the Public Procurement Database.

Before a Limited Competitive Procedure is initiated, the Procuring Entity shall be responsible for preparing a list of preselected Economic Operators in accordance with their respective fields of operation and sectors of competence and graded for their performance and obtain a written approval from the Chief Procurement Officer.

Tenderers that have a high-performance rating in the Procurement Database should first be selected. For MVP, at least 4 with a rating of 4-5 should be selected, if available, and at least 1 not yet rated. For HVP, at least 7 with a rating of 4-5 should be selected, if available, and at least 2 not yet rated. If only a limited number, or none, have been rated, for MVP at least 5, and for HVP at least 8 must be invited, if available. For any less number to be invited, a separate approval is required from the Chief Procurement Officer.

7.6.3.2.2. Single-Source Procedure

In exceptional cases, a Procuring Entity may make use of a Single Source Procedure to Award an MVP or HVP Contract or Framework Agreement to an Economic Operator without competition.

Before launching Public Procurement through a Single-Source Procedure, except for extremely critical situations, Procuring Entities shall obtain a written approval from the Chief Procurement Officer, following a decision by the Secretary of the Ministry responsible for Finance.

Before Awarding a Single-Source Procurement Contract or Framework Agreement, an approval must be obtained from the Central Contract Award Board or Contract Award Committee, whichever is relevant.

In case a Procuring Entity considers addressing a request for Goods, Services or Works without competition to one Economic Operator, it shall be clearly justified, by providing evidence of the existence of conditions for the use of a Single Source Procedure to the Chief Procurement Officer. Before initiating a Single-Source Procedure it shall be approved by the Secretary of MFED upon a recommendation by the CPO, with the exception of 'Extremely critical situations', as defined in 7.6.3.2.2.3, where a post-approval has to be requested without delay.

A Single-Source Procedure, as stated in the Act, shall only be used in very exceptional cases, as defined in the Regulations. The reason for this is that not making use of competition does not guarantee Value for Money. However, there may be other benefits or reasons, like less transactional costs (e.g., in monopoly situations or technical compatibility reasons), emergency situations or for protection of national security. Poor planning is not an exceptional circumstance that can be invoked for Single-Source Procurement.

A Single Source Procedure for Public Procurement may be used only in the following exceptional circumstances:

- a) Monopoly situations;
- b) Extremely urgent situations;
- c) Extremely critical situations;
- d) Protection of national safety and security;
- e) Additional deliveries; and
- f) Exceptionally advantageous temporary conditions.

The different circumstances are further explained in the following. Examples will be added as new cases occur.

7.6.3.2.2.1. Monopoly

A monopoly position of one Economic Operator in the relevant market may be based on a patent or a de facto monopoly, where the desired solution can only be provided from one Economic Operator.

This is not very common and has to be verified by the Procuring Entity, which will require a thorough market investigation. It is also necessary that the Procuring Entity justifies the Specification or TOR that describes the solution that may create a monopoly situation and investigate alternative solutions to allow for competition. A justification has to be presented in a written report, submitted with a request for approval to use a Single-Source Procedure, to the Chief Procurement Officer.

Another situation related to monopoly is when Public Procurement is at risk of creating a de facto monopoly. This could be an effect of e.g., consecutive competitive Public Procurement, using the Standard Procedures, and one Tenderer is awarded each and every contract. On a longer term, this could create a situation where the Eco-

conomic Operator being awarded these Contracts will make use of the monopoly situation and e.g., increase prices or impose other terms and conditions that are disadvantageous to the Procuring Entity. Due to the monopoly, unintentionally created by the Procuring Entity following proper standard procedures, a lock-in effect is created, making it difficult to mitigate against disadvantageous Contract adjustments.

It may also create a situation in which the other potential actors may have less and less opportunities to compete, due to better 'economies of scale' for the incumbent Economic Operator, which may therefore submit Tenders with disadvantageous Tenders for consecutive Invitations to Tender.

For exceptional situations that are clearly subject to the above circumstances, which has to be analysed and justified by the Procuring Entity and approved, a Single-Source Procedure may be used.

Examples of arguments where SSP is not justified:

- *“We don’t think anyone else has this solution”*
- *“We don’t have the time to investigate other alternatives”*
- *“We have been buying from this firm for a long time and are satisfied with the quality”*
- *There was no proper Market Assessment*

Examples where SSP may be justified:

- *A new medicine is patented and can only be supplied by one supplier and there are no generic drugs available yet*
- *Proprietary software where the features have no alternative suppliers*
- *To prevent monopolising the market, based on a proper analysis of the specific circumstances, and that it cannot be prevented by means of strategic Public Procurement (such as market sharing, allocating shares to several – two or more – Economic Operators, possibly by having options or a Framework Agreement)*

7.6.3.2.2. Extremely urgent situations

Extremely urgent situations are situations that relate to a serious risk of an event that may endanger human safety and/or natural integrity of people and preservation of environment and properties and that requires a rapid response from the public authorities to mitigate such risk. For the purposes of this disposition, Procuring Entities shall not invoke the adoption of a Single Source Procedure if the urgency of Public Procurement is attributable to poor planning.

As is emphasized here, as well as being a cross-cutting priority for Public Procurement in general, poor planning or lack of normal, common sense predictability, is not a justification for SSP. It has to be an unforeseeable event or unpredictable need that does not allow for the time requirements of the Standard Public Procurement Procedures to be applied.

Examples of arguments where SSP is not justified:

- *“The budget needs to be spent before the end of the fiscal year”*
- *“We received new funding or budget”*
- *It was not included in the Annual Procurement Plan, which due to this created an urgency*

- *Poor planning creating an urgency*

Examples where SSP may be justified:

- *There was a flooding that damaged the causeway, and it needs to be remedied before a new flooding may come in, not to increase the damage*
- *We have an outbreak of a disease which needs new types of medicine, or the existing medicines will not be sufficient*
- *The power plant broke down and we don't have the type of spare parts and/or the qualifications to repair it*

7.6.3.2.2.3. Extremely critical situations

Extremely critical situations refers to situations that relate to a sudden natural or human disaster that may impact the normal functioning of the community, in accordance with the principles of the Disaster Risk Management and Climate Change Act 2019, that requires immediate action. The situation is so critical that remedies cannot await an approval to use a Single-Source Procedure for Extremely urgent situations, see 7.6.3.2.2.2, but need immediate action.

This exception can be applied when it is absolutely necessary to act immediately not to endanger human lives or major disasters. Such action is referred to in the Disaster Risk Management and Climate Change Act as 'sudden onset', which is 'disasters for which there is little or no warning, including storms, fires, air and sea craft incidents'. An action in a sudden onset, in contrast to 'slow onset, cannot wait for a formal approval of the CPO for SSP but action has to be taken immediately, e.g., in the middle of the night. Then, the Disaster Controller may initiate any action necessary to prevent the danger or limit the effects.

A 'slow onset' refers to disasters and climate change situations that take a long time to develop, such as a drought which takes time to reach sufficient severity to be considered a disaster.

For the purposes of this disposition, the Disaster Controller, as defined in the Disaster Risk Management and Climate Change Act 2019, is authorised to approve the purchase. However, an ex-post authorisation in accordance with subsection 7.6.3.2.2, with retroactive effect, is required. The Disaster Controller may initiate Public Procurement of Goods, Services or Works, some of which may need to be delivered extremely urgently, whereas SSP may be motivated. No other person is authorised to do Public Procurement through a Single-Source Procedure for Extremely critical situations.

The Disaster Controller is, as defined in the Disaster Risk Management and Climate Change Act, "a person who makes quick decisions in disaster response as provided for in section 21, to mobilise human, physical and financial resources for action, and who has the final authority in case of situations of disagreement between sectors or other responders. Section 21 (4) further clarifies that 'where a Disaster Declaration or Declaration of State of Public Emergency is issued, the Beretitenti is deemed, by virtue of this section, to have appointed the Director of the Strategic National Policy Division as the Disaster Controller, to take actions and exercise powers as reasonably justified in the circumstances'.

Examples of where SSP is not justified:

- *Where Extremely urgent situations ("slow onset") applies*

Examples where SSP may be justified:

- *A ship is at distress at sea*
- *An aeroplane has made an emergency landing or crashed*
- *A typhoon, earthquake, tsunami or similar and sudden natural disaster is on its way or has already hit the islands*

7.6.3.2.2.4. Protection of national safety and security

Protection of national security is a circumstance that relates to Public Procurement requiring confidentiality to protect national safety or security interests.

It should be noted that this does not apply to every Public Procurement a Procuring Entity does, which sometimes or often is subject to national safety or security considerations. It is restricted to actual Public Procurement cases where there is need for confidentiality, not to disclose sensitive information that could, if falling into the wrong hands, jeopardise national safety or security. The exception does not cover normal Goods, Services or Works that does not fulfil this requirement. A request must include a justification with reference to the consequences if a Standard procedure would be used.

Please bear in mind that it may not be necessary and justified to use Single-Sourcing, but a 'prequalification' through a Limited Competitive Procedure, see 7.6.3.2.1, or Pre-Qualification Procedure, see 7.6.3.1.2, may be used, where interested Tenderers must sign a commitment to confidentiality, thus, utilising competition and obtain Value for Money.

Examples of where SSP is not justified:

- *Standard Goods, Services or Works that any Procuring Entity may buy*
- *Uniforms, gas masks, police cars, patrol boats, fire extinguishers, etc.*

Examples where SSP may be justified:

- *Security services for sensitive buildings, systems or transports*
- *Defence material – weapons, air defence systems*

7.6.3.2.2.5. Additional deliveries

Additional deliveries refer to supplementary deliveries by the original Supplier, Service Provider, Consultant or Contractor, which are intended either as a partial replacement, spare parts or as an extension of an existing Contract or Framework Agreement for Supplies, Services or Works where a change of Supplier, Service Provider, Consultant or Contractor would oblige the Procuring Entity to acquire additional Supplies, Services or Works having different technical characteristics, which would result in incompatibility or disproportionate technical difficulties in operation and maintenance or unreasonable additional costs.

This applies in cases where an unforeseen addition or replacement of a deliverable under an already concluded Contract or Framework Agreement, or an ongoing Contract or Framework Agreement, would either render incompatibility with the solution already delivered or under delivery or cause additional costs for e.g., alignment of different technical solutions, substantially increased service and maintenance costs, warranty extinction, etc., should another Economic Operator be used. It should be noted that if it would reasonably have been foreseeable at the preparation of the original Public Procurement, it is not considered unforeseeable, and not justified.

The exception may also apply to an extension of an existing, ongoing Contract or Framework Agreement, for the reasons above.

For any of the above situations, the value of the addition to or extension of the original Contract or Framework Agreement shall not exceed 30% for Goods or Standard Services and be concluded before the expiration of the original Contract or Framework Agreement. For Consulting Services or Works, the addition or extension shall not exceed 50% of the original Contract or Framework Agreement and should be concluded before the expiration of the original Contract or Framework Agreement but may under exceptional and justified circumstances be executed within reasonable time after the conclusion of the original Contract or Framework Agreement.

Examples of where SSP is not justified:

- *Additional Public Procurement of Standard Goods or Services*
- *Buying additional cars*
- *If it would reasonably have been foreseeable at the preparation of the original Public Procurement*
- *We have been buying from this firm for a long time and are satisfied with the quality*

Examples where SSP may be justified:

- *For technical Consulting Services, where there is a clear advantage of combining the new tasks with the original Contract or Framework Agreement, e.g., if the project would share the same infrastructure, investigations, consultations, or similar mutual engagements*
- *For a plant, e.g., a sewage treatment works, water purification plant, or similar, constructed and built by a Constructor in need of improvement, enhancement, expansion, etc., and the plant was built with a technology specific to the original Constructor*
- *Proprietary spare parts from the original supplier which cannot reasonably be produced or delivered by a third party, to guarantee compatibility or not for warranties to become extinct*
- *Additional proprietary modules to ICT systems*

7.6.3.2.3. Exceptionally advantageous conditions

This refers to situations, where Public Procurement can be made under exceptionally advantageous conditions, that arise only in a very short term, such as from unusual disposals, liquidation, bankruptcy, or receivership, and which are not routine Public Procurement from regular Suppliers.

It sometimes happens that a firm needs to quickly dispose of Goods to obtain liquid capital. In such cases, if there is a real need of the Goods offered in the near future, and if it is a temporary offer of short validity, an exception should enable taking advantage of such an offer. In cases like this, there is no time available to conduct a competitive Public Procurement procedure, so Single-Source should be possible.

However, the offer should constitute a significantly advantageous price difference from the normal market price, for the same quality. Indicatively, the price reduction should be at least 35% and a market assessment must be made to verify this.

It is important to be aware of the fact that it may be a sale to dispose of obsolete Goods, which may not be supported in the near future.

Examples of where SSP is not justified:

- *An unsolicited offer which is not clearly below the market price*

- *An unsolicited offer which is below market price but will render a lock-in effect for the Procuring Entity*

Examples where SSP may be justified:

- *An Economic Operator has been doing Works on one island and is offering to sell the used machines or equipment at a fair price, to avoid the cost of shipment back to the original destination*
- *A Supplier of Goods goes bankrupt or enters into liquidation and sells out its stock at a reduced price*

7.6.4. Optional Procedures for RFQ and RFP

7.6.4.1. 2-envelope procedure

The standard procedure for RFQ and RFP is a “2-envelope” procedure, which means that the Tenders shall be submitted as two separate components, one ‘technical’ and one ‘financial’. In some cases, an RFPQ can precede the ITT, see 7.6.3.1.2, which can still be followed by a 2-envelope procedure.

7.6.4.2. 1-envelope procedure

For a Request for Offer (RFO), the standard procedure is a “1-envelope” procedure, unless a 2-envelope procedure is specifically found more suitable.

Exceptionally, for some RFQ’s, a 1-envelope procedure may be suitable, e.g., in cases where the technical requirements are set as minimum criteria and no value is given for exceeding these criteria, i.e., a ‘lowest price or cost’ procedure.

7.6.4.3. Two-Stage Procurement (TSP)

A Two-Stage Procurement procedure can be used for complex solutions, with criteria described on a high level, either functional, performance or output criteria. Then an invitation is first to submit technical proposals to a defined situation or problem to be solved. Once the most feasible solutions have been selected, a modification of the criteria, to best align to describe desired suitable solutions, may be necessary, where after an Invitation to Tender (ITT) is sent out only to those that are judged capable of submitting a Proposal which will fulfil the criteria.

Understandably, this procedure is only feasible for Public Procurement which is not standard Goods, Services or Works, i.e., an RFP procedure should be used.

The Two-Stage Procurement procedure should not be confused with the Prequalification (RFPQ) procedure, which, however, in rare cases may be used prior to the Two-Stage Procurement.

7.7. Model Documents

7.7.1. Selection of Invitation to Tender documents

The value of the Public Procurement is not the determining factor for selection of procedure and Model Documents for the Invitation to Tender (ITT), except for Low-Value Procurement, where simpler procedures and Model Documents are available.

Instead, the different procedures and Model Documents for MVP and HVP are developed to meet the need for Public Procurement with different levels of complexity, making it less bureaucratic for Public Procurement that are less complex, focusing resources on more complex and strategically important Public Procurement and/or innovations.

7.7.2. I want to do this Public Procurement

The intention of this chapter is to directly provide guidance and collecting the relevant procedure and Model Documents of different scenarios in one place, including by means of links to the relevant sources in chapter 11. This chapter first covers Low-Value Procurement (LVP) separately, thereafter the different scenarios for Medium-Value Procurement (MVP) and High-Value Procurement (HVP) in common. This, because the Model Documents and procedures are common for the values of MVP and HVP, instead depending on the type of Public Procurement

7.7.2.1. Very Low-Value Procurement (VLVP)

For VLVP, Purchase Orders are available for Goods and Services, in two variants, either to be signed and submitted only by the Procuring Entity or where both parties sign, see 7.5.3.1:

- PO for Goods – 1 sign
- PO for Goods – 2 signs
- PO for Services – 1 sign
- PO for Services – 2 signs

These Purchase Orders are found here: <http://procurement.gov.ki/>

7.7.2.2. Low-Value Procurement (LVP)

7.7.2.2.1. Invitation to Offer (ITO)

For LVP, simplified ITT's (ITO) are available for all Procurement of Goods and Services, respectively, called Request for Offer (RFO). They comprise the documents described in 7.7.5.1 and listed in 11:

- RFO for Goods
- RFO for Services
- RFO for These complete ITO's are found here: <http://procurement.gov.ki/>

7.7.2.2.2. Contract for LVP

For conclusion of Contracts, after the RFO procedure, Contract Model Documents are available. They are based on the terms and conditions in the RFO. They comprise the documents described in 7.5.3.2 and listed in 11:

- Contract for ~~Standard Goods~~ **Standard Goods**
- Contract for ~~Standard Services~~ **Standard Services**
- Contract for Works

These Contracts are found here: <http://procurement.gov.ki/>

7.7.2.3. Procurement of Standard Goods

For Public Procurement of Standard Goods, the RFQ Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

- Invitation letter for Standard Goods
- Instructions on how to submit a Tender for Standard Goods
- Specification for Standard Goods
- Evaluation Criteria and Method for Standard Goods

- Specific Contract Conditions for ~~Specified Goods~~~~Specified Goods~~
- General Contract Conditions for ~~Standard Goods~~~~Standard Goods~~
- Certificate of Compliance form for Standard Goods

The complete RFQ for Standard Goods is found here: <http://procurement.gov.ki/>

7.7.2.4. Procurement of Specified Goods

For Public Procurement of Specified Goods, the RFP Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

- Invitation letter for ~~Specified Goods~~~~Specified Goods~~
- Instructions on how to submit a Tender for ~~Specified Goods~~~~Specified Goods~~
- ~~Specified Goods – Specification~~~~Specified Goods—Specification~~
- Evaluation Criteria and Method for ~~Specified Goods~~~~Specified Goods~~
- Specific Contract Conditions for ~~Specified Goods~~~~Specified Goods~~
- General Contract Conditions for ~~Standard Goods~~~~Standard Goods~~
- Certificate of Compliance form for ~~Specified Goods~~~~Specified Goods~~

The complete RFP for Specified Goods is found here: <http://procurement.gov.ki/>

7.7.2.5. Procurement of Standard Services

For Public Procurement of Standard Services, the RFQ Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

- Invitation letter for Standard Services
- Instructions on how to submit a Tender for Standard Services
- TOR for Standard Services
- Evaluation Criteria and Method for Standard Services
- Specific Contract Conditions for ~~Consulting Services~~~~Consulting Services~~
- General Contract Conditions for ~~Standard Services~~~~Standard Services~~
- Certificate of Compliance form for 11.11.1.2

The complete RFQ for Standard Services is found here: <http://procurement.gov.ki/>

7.7.2.6. Procurement of Consulting Services

For Public Procurement of Consulting Services, the RFP Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

7.7.2.6.1. Alternative types of Contracts

There are two methods of constructing Contracts for Consulting Services – Time-Based or Lump Sum Contracts – and consequently some differences in the Public Procurement procedures and Contracts. Lump Sum Contracts are normally not suitable for Individual Consultants, however, often preferred for Firms. Notwithstanding that, selection of the suitable type of Contract should be made based on the prerequisites of each situation. One has to remember that Lump Sum Contracts does transfer a risk to the Consultant, who will most probably include this in the Tender. At the

same time, Time-Based Contracts may require more administration and approval procedures.

7.7.2.6.1.1. Time-Based Contracts

A Time-Based Contract is suitable when it is difficult to define or fix the scope of the TOR and the duration of the Contract. This could be either because they include activities by many parties and/or consultants for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess beforehand. It may also be due to an initial period of analysis, during which the final scope may be agreed.

In Time-Based Contracts the Consultant provides Services on a timed basis according to quality requirements, defined in the TOR, and the remuneration is determined on the basis of the time actually spent and approved, based on agreed daily or timely rates for each expert and other approved expenses, i.e., travel, per diem, etc., as separately agreed. This type of Contracts require close supervision by the Procuring Entity, by daily involvement and timesheets.

7.7.2.6.1.2. Lump Sum Contracts

A Lump Sum Contract is mainly used for assignments in which the scope and output and the duration of the Services are able to clearly define. Payments are made in instalments, linked to outputs (deliverables), such as reports or partial deliveries, as defined in the Contract. Lump Sum Contracts are easier to administer, since they operate on the principle of a fixed price for a fixed deliverable, with payments done upon clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's execution and outputs are paramount.

7.7.2.6.2. From a consulting firm

- Invitation letter for Consulting Services
- Instructions on how to submit a Tender for Consulting Services
- Consulting Services – TOR
- Evaluation Criteria and Method for Consulting Services
- Technical Evaluation form for Consulting Services – narrative
- Technical Evaluation form for Consulting Services – allocation
- Financial Evaluation form for Consulting Services
- Specific Contract Conditions for Consulting Services~~Consulting Services~~
- General Contract Conditions Time-based
- General Contract Conditions Lump-sum
- Certificate of Compliance form for Consulting Services

The complete RFP for Consulting Services with firms is found here: <http://procurement.gov.ki/>

7.7.2.6.2.1. By means of an RFPQ:

- Letter of Invitation for Prequalification

The RFPQ for Consulting Services with firms is found here: <http://procurement.gov.ki/>

7.7.2.6.3. From an individual consultant

- Invitation letter for Consulting Services

- Instructions on how to submit a Tender for Consulting Services
- Consulting Services – TOR
- Evaluation Criteria and Method for Consulting Services
- Specific Contract Conditions for ~~Consulting Services~~Consulting Services
- General Contract Conditions for Individuals
- Certificate of Compliance form for Consulting Services

The complete RFP for Consulting Services with individuals is found here: <http://procurement.gov.ki/>

7.7.2.7. Procurement of Works

For Public Procurement of Works, the RFP Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

- Invitation letter for Works
- Instructions on how to submit a Tender for Works
- Works – Specification
- Evaluation Criteria and Method for Works
- Specific Contract Conditions for Works
- General Contract Conditions for Works
- Certificate of Compliance form for Works

The complete RFP for Works is found here: <http://procurement.gov.ki/>

7.7.2.7.1.1. By means of an RFPQ

- Letter of Invitation for Prequalification

The complete RFP for Works is found here: <http://procurement.gov.ki/>

7.7.2.8. Procurement of Framework Agreements (FWA)

For commonly procured Goods, Services or Works, the Chief Procurement Officer may decide to launch Public Procurement for the conclusion of a Framework Agreement. A Framework Agreement can be for the whole government, some Procuring Entities' with similar needs, or only for one Procuring Entity, with unique but frequent needs.

The Chief Procurement Officer may delegate the Public Procurement of an FWA to a Procuring Entity with unique needs or being the main user, with sufficient knowledge of Public Procurement of FWA's, with support from the CPU.

A Framework Agreement is an agreement with one or many Economic Operators, where the terms and conditions for subsequent deliveries are defined. If the FWA is with more than one Economic Operator, Sub-Orders shall undergo a new competition in line with the terms and conditions specified in the FWA, unless there is a specific arrangement in the FWA that defines rules for allocation of Sub-Orders. The latter could be a predefined allocation of volumes between the Economic Operators or, where e.g., the price or delivery time specified in the FWA differs between the Economic Operators, a selection based on this. However, the latter is better managed with a new competition. See further under 7.7.2.8.4 below.

It must be clear from the Invitation to Tender whether a single- or multi-supplier FWA is going to be the result. However, if a multi-supplier FWA is indicated, a reservation for signing a single-supplier FWA should be done. This, in case the Tenders differ, and there is no reason to include further Tenders, the best Tender being clearly much more advantageous than the other Tenders, if there is only one Tender, or if one FWA can satisfy the needs, e.g., committing to full availability at all times.

The Model Documents for Procurement of Framework Agreements are found under 7.7.2.8.5, for Goods, and 7.7.2.8.6, for Services. For Works, which is very exceptional, the Model Documents for Services can be used, with relevant modifications.

7.7.2.8.1. *Duration of the Framework Agreement*

Framework Agreements shall not have a duration of more than two years. However, a possible optional extension of a maximum of one additional year on the same terms and conditions may be possible. An option for extension shall be agreed and regulated in the Framework Agreement, including the deadline for activating the optional extension.

The decision to activate an optional extension shall be based on an analysis of the market conditions and whether the terms and conditions of the current FWA are beneficial. This analysis must be done well in advance of the expiry date of the FWA, as defined in the FWA. Should the analysis conclude that it is beneficial to activate the optional extension, this shall be done in writing no later than at the agreed date in the FWA.

7.7.2.8.2. *Validity of Framework Agreements*

For reasons of equal treatment and validity of the evaluation, a Framework Agreement shall have a limit to the scope and quantity of Goods, Services or Works or a limit to the consolidated value of Goods, Services or Works that can be procured under the Framework Agreement. Goods, Services or Works that are not included in the FWA must be subject to a separate Public Procurement.

Once the quantity, value or time limit has been reached, the Framework Agreement shall be considered expired, and a separate tendering procedure is required to Award a new Framework Agreement. Such a Public Procurement of a new FWA should be initiated well before the expected time of the expiration, to avoid a gap. This means that the FWA must be monitored to be able to predict and plan for when a new Public Procurement should be initiated.

The Central Procurement Unit shall, together with the relevant Procuring Entities, well in advance of the Framework Agreement expiration, assess the competitiveness and suitability to the Procuring Entities' needs and decide whether a possible option of extension shall be used, or Public Procurement of a new Framework Agreement shall be initiated.

7.7.2.8.3. *Single Framework Agreement*

If a Framework Agreement is concluded with one Economic Operator for a specified type of Goods, Services or Works, the Procuring Entity shall submit a Suborder for every new procurement to be delivered within the scope, terms and conditions specified in the Framework Agreement, without being required to conclude a separate tendering procedure.

7.7.2.8.4. *Multiple Framework Agreement*

When a Framework Agreement is concluded with more than one Economic Operator for a specified type of Goods, Services or Works, a new simplified competition be-

tween the parties of the Framework Agreement shall take place to identify the Economic Operator offering the best Value for Money, within the terms and conditions, including procedures and timelines for a simplified competition, defined in the Framework Agreement for each Suborder.

The procedure and Model Documents for this are found under 7.7.2.8.5.1, for Goods, and 7.7.2.8.6.1, for Services.

7.7.2.8.5. ITT for Goods

For Public Procurement of Standard Goods, for a Framework Agreement, the RFQ Model Documents for ITT should be used. They comprise the documents individually described in 7.7.5.2 and listed in 11:

- Invitation letter for Framework Agreement
- Instructions on how to submit a Tender for Framework Agreement
- Specification of Goods for Framework Agreement
- Evaluation Criteria and Method for Framework Agreement
- Specific Contract Conditions for Framework Agreement
- General Contract Conditions for Framework Agreement
- Certificate of Compliance form for Framework Agreement

The complete RFQ for Framework Agreements on Goods is found here: <http://procurement.gov.ki/>

7.7.2.8.5.1. Request for Sub-Tender (RFST)

- Request for Sub-Tender

The complete RFST for Goods is found here: <http://procurement.gov.ki/>

7.7.2.8.5.2. Sub-Order

- Sub-Order

The Sub-Order for Goods is found here: <http://procurement.gov.ki/>

7.7.2.8.6. ITT for Services

- Invitation letter for Framework Agreement
- Instructions on how to submit a Tender for Framework Agreement
- Specification of Framework Agreement
- Evaluation Criteria and Method for Framework Agreement
- Specific Contract Conditions for Framework Agreement
- General Contract Conditions for Framework Agreement
- Certificate of Compliance form for Framework Agreement

The complete RFQ for Framework Agreements on Services is found here: <http://procurement.gov.ki/>

7.7.2.8.6.1. Request for Sub-Tender (RFST)

- Request for Sub-Tender

The complete RFST for Services is found here: <http://procurement.gov.ki/>

7.7.2.8.6.2. Sub-Order

- Sub-Order

The Sub-Order for Services is found here: <http://procurement.gov.ki/>

7.7.3. Model Documents (templates) for ITT

Each Model Document includes instructions on how to use it, what information needs to be included, etc.

7.7.4. Model Documents for MVP and HVP

For an Invitation to Tender either an RFQ or an RFP can be used, depending on the subject and complexity of the Public Procurement, irrespectively of the value.

7.7.4.1. Request for Quotations (RFQ)

An RFQ is to be used for an Invitation to Tender for Standard Goods, Services or Works, see 7.7.5.2 under Model Documents.

7.7.4.2. Request for Proposals (RFP)

An RFP is to be used for an Invitation to Tender for proposals for a solution to fulfil requirements defined by the Procuring Entity in the Specification for Goods or Works, or TOR for Services, see 7.7.5.3 under Model Documents.

7.7.4.3. Pre-Qualification

An RFP must always be open but can be preceded by a Request for Prequalification (RFPQ), see 7.7.5.4, in case very many Tenders are expected and to secure receipt of Tenders from Tenderers with sufficient prerequisites – financial and technical capacity – to fulfil the Contract or Framework Agreement which will be the result of the Public Procurement.

7.7.5. Invitation to Tender Documents

In the following, the purpose of all individual Model Documents are explained.

7.7.5.1. RFO

The Request for Offer (RFO) is a simplified and condensed version of the Request for Quotation (RFQ), to be used for Low-Value Procurement. It is available in two versions, for Goods or Services, as Model Documents. the 'Invitation' includes the relevant parts of the RFQ and RFP Model Documents, integrated into the RFO as one document.

The draft Contract is also included but separate identical templates for the Contract are available as Model Documents, to be concluded when the Tender has been selected.

7.7.5.2. RFQ

A Request for Quotation (RFQ) is an Invitation to Tender suitable for Standard Goods or Services. An RFQ comprises a set of Model Documents that, together, constitutes a complete RFQ and are described in the following.

7.7.5.2.1. Invitation

An Invitation letter has the purpose to inform about a need for purchase of Goods, Services or Works. It includes the name of the Procuring Entity, the deadline for submission of Tenders, a brief denomination of the subject, a list of included documents and the official address to where the Tender is to be submitted.

7.7.5.2.2. Instructions on submission

The Instructions on submission contains information for Economic Operators concerning the minimum required contents of Tenders such as the importance of meeting the deadline and the rules therefore, method, format and documents for submission, mandatory requirements with reference to a Certificate of Compliance form, Questions & Answers and clarifications, the minimum validity time of Tenders and the Award procedure.

7.7.5.2.3. Time schedule

The Time schedule provides the timeline of the whole Public Procurement procedure and includes the deadline for Tender submission, the deadline for the Procuring Entities to receive possible questions, an indication of the date, timing and place for Tender opening sessions, evaluation, Award, signing and Contract or Framework Agreement start date.

7.7.5.2.4. Specification/TOR

The Specifications for Goods or Works, or Terms of Reference, for Services, provide the description of the necessary technical requirements of the object of the Public Procurement, including e.g., delivery time and other related goods or services to be provided.

This document may be replaced with a proprietary document provided by the Tenderer when included in the Contract or Framework Agreement.

7.7.5.2.5. Evaluation criteria and method

The evaluation criteria and method is the Model Document that describes the criteria and weighting of the Goods, Services or Works that will be evaluated. It also defines the evaluation model and the weight between the technical and financial components. It may also disclose the maximum budget available, pending an analysis of the benefits of doing so.

A reason for disclosing the maximum budget could be to avoid receiving Tenders that exceed the budget, whereas the Public Procurement may have to be cancelled and reopened with new prerequisites, i.e., a revised budget or a reduced scope.

A possible disadvantage may be that the Tenderers consider the maximum budget as a target, whereas most of the Tenders will be at or close to the maximum. To minimise the risk of this, the weight of the financial component versus the technical should be emphasized, to clarify that also the financial component will have a value in the evaluation. Such a draft text is included in the Model Document, for use in case the budget is disclosed.

7.7.5.2.6. Specific Contract Conditions (SCC)

The draft Specific Contract Conditions is the Model Document that will be finalised when the Award is concluded, between the successful Tenderer and the Procuring Entity. It requires information to be included in the Contract, such as information on the parties to the Contract, including addresses and contact details, Contract value and payment terms, effectiveness and duration of the Contract.

The SCC contains three Annexes, which forms the complete Contract between the successful Tenderer and the Procuring Entity, (a) Conditions for the delivery of Goods or Works, or provision of Services, (b) Specification or Terms of Reference and (c) the General Contract Conditions, which is in pdf format.

7.7.5.2.7. General Contract Conditions (GCC)

The General Contract Conditions, included as annex C in the SCC, are the terms and conditions standardised for Contracts with the Government of Kiribati, and the document is in pdf and shall not be modified.

In case of any condition needs to be modified in the GCC, such modification has to be approved by the OAG. If approved, it should be regulated in the SCC, where there is a paragraph allocated for this. if no modification, this paragraph shall be deleted in the SCC.

7.7.5.2.8. Certificate of compliance with ITT

The Certificate of Compliance form is a declaration of compliance with the RFQ, including the mandatory requirements and the General Contract Conditions.

The Tenderer shall sign the Certificate and submit together with the Tender, to verify that the Tenderer has no Conflict of Interest, fulfils the financial viability requirements, is not subject to corruption or criminal activities, is socially and environmentally responsible, undertaking to follow the UN Supplier Code of Conduct, accepts the terms and conditions of the Contract or Framework Agreement, no cost for the Tender preparation is charged, accepts that a summary of the evaluation result is publicly released and verify that all information submitted is correct.

7.7.5.3. RFP

A Request for Proposal (RFP) is an Invitation to Tender suitable for Goods, Services or Works designed and produced or executed for the Procuring Entity. An RFP comprises a set of Model Documents that, together, constitutes a complete RFP and are described in the following.

7.7.5.3.1. Invitation

An Invitation letter has the purpose to inform about a need for purchase of Goods, Services or Works. It includes the name of the Procuring Entity, the deadline for submission of Tenders, a brief denomination of the subject, a list of included documents and the official address to where the Tender is to be submitted.

7.7.5.3.2. Instructions on submission

The Instructions on submission contains information for Economic Operators concerning the minimum required contents of Tenders such as the importance of meeting the deadline and the rules therefore, method, format and documents for submission, mandatory requirements with reference to a Certificate of Compliance form, Questions & Answers and clarifications, the minimum validity time of Tenders and the Award procedure.

7.7.5.3.3. Time schedule

The Time schedule provides the timeline of the whole Public Procurement procedure and includes the deadline for Tender submission, the deadline for the Procuring Entities to receive possible questions, an indication of the date, timing and place for Tender opening sessions, evaluation, Award, signing and Contract or Framework Agreement start date.

7.7.5.3.4. Specification/TOR

The Specifications for Goods or Works, or Terms of Reference, for Services, provide the description of the necessary technical requirements of the object of the Public Procurement, including e.g., delivery time and other related goods or services to be provided.

This document may be replaced with a proprietary document provided by the Tenderer and verified with the original Specification or Terms of Reference when included in the Contract or Framework Agreement. The final Specification or TOR, to be included in the Contract or Framework Agreement, is often merged between the original document from the RFP and the Tender Specification or TOR, i.e., a new document. This is recommended, to ensure no gaps or anything being lost from the original description of the needs.

7.7.5.3.5. Evaluation criteria and method

The evaluation criteria and method is the Model Document that describes the criteria and weighting of the Goods, Services or Works that will be evaluated. It also defines the evaluation model and the weight between the technical and financial components. It may also disclose the maximum budget available, pending an analysis of the benefits of doing so.

A reason for disclosing the maximum budget could be to avoid receiving Tenders that exceed the budget, whereas the Public Procurement may have to be cancelled and reopened with new prerequisites, i.e., a revised budget or a reduced scope.

A possible disadvantage may be that the Tenderers consider the maximum budget as a target, whereas most of the Tenders will be at or close to the maximum. To minimise the risk of this, the weight of the financial component versus the technical should be emphasized, to clarify that also the financial component will have a value in the evaluation. Such a draft text is included in the Model Document, for use in case the budget is disclosed.

7.7.5.3.6. Technical Evaluation form

The Technical Evaluation form is a Model Document that Tenderers shall use, if applicable, to specify their technical proposal for the Goods, Services or Works. The form should be used when it is expected that the Tenders may look very different in structure, to ascertain that all requirements are included and to make it easier and more efficient to evaluate.

For Consultancy Services, it comprises two documents, which may be used if feasible, one for a narrative description of how the Tender complies and fulfils the TOR, one which requires an allocation of resources for the provision of the services.

7.7.5.3.7. Financial Evaluation form

The Financial Evaluation form is a Model Document that Tenderers shall use, if applicable, to specify their financial (price & cost) proposal for the Goods, Services or Works. The form should be used when it is expected that the Tenders may look very different in structure, to ascertain that all financial components are included and clear, and to make it easier and more efficient to evaluate.

7.7.5.3.8. Specific Contract Conditions (SCC)

The draft Specific Contract Conditions is the Model Document that will be finalised when the Award is concluded, between the successful Tenderer and the Procuring Entity. It requires information to be included in the Contract, such as information on the parties to the Contract, including addresses and contact details, Contract value and payment terms, effectiveness and duration of the Contract.

The GCC contains three Annexes, which forms the complete Contract between the successful Tenderer and the Procuring Entity, (a) Conditions for the delivery of Goods or Works, or provision of Services, (b) Specification or Terms of Reference and (c) the General Contract Conditions, which is in pdf format.

7.7.5.3.9. General Contract Conditions (GCC)

The General Contract Conditions, included as annex C in the SCC, are the terms and conditions standardised for Contracts with the Government of Kiribati, and the document is in pdf and shall not be modified.



In case of any condition needs to be modified in the GCC, such modification has to be approved by the OAG. If approved, it should be regulated in the SCC, where there is a paragraph allocated for this. If no modification, this paragraph shall be deleted in the SCC.

7.7.5.3.10. Certificate of compliance with ITT

The Certificate of Compliance form is a declaration of compliance with the RFP, including the mandatory requirements and the General Contract Conditions.

The Tenderer shall sign the Certificate and submit together with the Tender, to verify that the Tenderer has no Conflict of Interest, fulfils the financial viability requirements, is not subject to corruption or criminal activities, is socially and environmentally responsible, undertaking to follow the UN Supplier Code of Conduct, accepts the terms and conditions of the Contract or Framework Agreement, no cost for the Tender preparation is charged, accepts that a summary of the evaluation result is publicly released and verify that all information submitted is correct.

7.7.5.4. RFPQ

For a Request for Prequalification (RFPQ) a specific Model Document is available. Besides information on which is the Procuring Entity, it comprises information on when, how and where to the Application for Prequalification (AFPQ) should be sent. It also includes guidance on which criteria must be met to qualify and receive an Invitation to Tender. Such criteria that should be specified are minimum (i) technical capacity, (ii) financial capacity and (iii) a request for references for equivalent Contracts or Framework Agreements performed.

The RFPQ also includes a clearance of criminal convictions, fulfilment of payment of social contributions, tax/VAT etc., and that the firm is duly registered. The separate Model Document Certificate of Compliance form could be included at this stage, as an annex. The RFPQ may also require a commitment on confidentiality, see e.g., 7.6.3.2.1.

7.8. Tender Period

It is paramount that the Procuring Entities provide sufficient time for Economic Operators to prepare and submit their Tenders, i.e., the deadline for submission of Tenders or Applications shall be defined to allow for a long enough time for high-quality submissions. If enough time is not allowed, for many reasons, Value for Money is jeopardised.

A deadline defined in an Invitation to Tender or in a Request for Pre-Qualification should not be extended after the Invitation to Tender has been published, unless absolutely necessary and clearly justified. If required, it shall be well before the original deadline for submission and promptly communicated. In any case, all Tenderers should be subject to the same date and time for submission.

If a Tenderer requests an extension, the reasons for their request should be carefully checked. Normally, no extension should be allowed based on a request from one Tenderer only. However, it may be an indication that the Tender time was generally too

short. Should there be strong reasons, perhaps also generally applicable to other Tenderers, an extension could exceptionally be allowed. It is a balance between a delay of the implementation and having sufficient competition, not eliminating an interesting Tenderer.

7.8.1. Minimum Tender times

- RFPQ minimum 20 calendar days
- RFP minimum 45 calendar days
- RFQ minimum 25 calendar days
- RFO minimum 15 calendar days

If an RFPQ has preceded an RFP or RFQ, the minimum Tender times may be shortened, providing it is not deemed that more time would reasonably be required, as follows:

- RFP minimum 30 calendar days
- RFQ minimum 15 calendar days

In exceptional circumstances, the Chief Procurement Officer may decide to reduce the deadlines for submission of Tenders, in which case the justification for the reduction shall be in writing and placed on the file record of the Public Procurement in question.

7.8.1.1. Time for Tender preparation

The Tender period must be long enough to enable Tenderers to prepare Tenders. The consequences of too short a time for Tender preparation and submission may have severe consequences, e.g., not receiving any Tenders, limited competition with very few Tenders, or poor-quality Tenders, which will have to be rejected or may need much time to clarify, delaying the process.

There is a need to consider the complexity of the Public Procurement, and how much time is reasonably required to prepare a Tender. For complex Specifications or TOR's, it may take a considerable time for the Tenderers to read through and understand the requirements and whether Tenderers may need to cooperate with others, in consortia, joint ventures or involve sub-contractors, which requires much time. In particular, if the ambition is to promote the use of domestic resources, there may not be enough time to do so.

The consequences, in brief, of too short Tender times:

- Tenderers may decide not to submit any Tender, reducing competition or having to reopen the Public Procurement.
- Tenders may be of poor quality, making evaluation difficult, requiring extensive requests for clarifications from Tenderers. This also puts the principle of equal treatment at risk and may possibly lead to a cancellation and reopening. The time saving supposed at the beginning will presumably lead to losing a lot of time at the end of the process.
- Too short time to prepare the Tenders limits the possibilities of forming cooperation's with supplementary Economic Operators.
- There may be a suspicion with the Tenderers that the Contract or Framework Agreement Award has already been decided to a preferred supplier, whereas the competition is only a 'display for the public', i.e., to formally claim that the rules have been followed.

When defining the minimum Tender times, public holidays in Kiribati as well as internationally established public holidays need to be considered.

7.8.1.2. Time for Questions & answers

Sufficient time must be allocated for receiving questions and provide clarifications, possibly leading to modifications of the Specification or TOR, where after time may be needed for Tenderers to consider possible modifications before the Tender submission deadline. It is also important that the contact person of the Procuring Entity is available during the Tender Period, to be able to coordinate and/or answer questions.

Questions and answers will be coordinated by the CPU, to secure equal treatment and confidentiality, i.e., that the submitter of a question is not disclosed.

7.8.2. Cancellation of Public Procurement

If a Procuring Entity, at any stage prior to Contract or Framework Agreement Award, decides to cancel an initiated MVP or HVP Public Procurement, the decision shall be justified and subject to approval in accordance with the Delegation of Authority and the Chief Procurement Officer shall publish a notice thereof.

Cancellation of an Invitation to Tender shall be avoided but, if necessary, shall be allowed in the following or similar circumstances:

- Public Procurement needs have ceased to exist or have substantially changed
- Budget has been cancelled
- There is a reasonable suspicion of collusion, corruption, or other foul play in the Public Procurement

7.8.3. Questions & Answers

Procuring Entities shall establish a deadline, by a specified date in the ITT, for Economic Operators to submit written questions and/or requests for clarifications on the subject of Public Procurement and the received documentation. The deadline for submission of questions and clarifications and the timeframe for expected answers shall allow sufficient time for Tenderers to revise and submit Tenders according to the timeframe set in the Invitation to Tender.

Procuring Entities shall be responsible for providing clarifications to the Central Procurement Unit, who shall issue answers to the questions on the Public Procurement Web Portal, in line with 7.5.6.2, or, in cases of Limited Competitive Procedures, directly to the invited Economic Operators, containing all non-confidential answers and clarifications, without disclosing the source of any request.

Procuring Entities shall respect the principles of equal treatment, transparency and equal opportunity and shall not provide a prior opinion on the eligibility of a Tenderer or on any proposal of specific activities that may be Tendered.

Procuring Entities shall, if relevant, update the contents of the Specifications or Terms of Reference in line with the conclusion of the question and answer session.

Deadlines for Questions and for Answers, including clarifications, whether or not as a result of the Q&A's:

- RFP
 - Questions to be submitted at least 12 calendar days prior to the deadline for submissions

- Answers to be published or distributed at least 6 calendar days prior to the deadline for submissions
- RFQ
 - Questions to be submitted at least 7 calendar days prior to the deadline for submissions
 - Answers to be published or distributed at least 4 calendar days prior to the deadline for submissions

In exceptional cases, when answers to questions or clarifications reasonably will require more time than specified above, the deadline for submissions may be extended, upon approval by the Chief Procurement Officer. Such an extension shall be published or communicated to all Tenderers in case of a Limited Competitive Procedure. Should a modification be substantial and reasonably require more time for the Tenderers to adjust their Tenders, this should be considered when deciding on a new date and time for submission of Tenders.

7.8.4. Receipt, Registration and Opening

7.8.4.1. Receipt

To secure confidentiality, MVP and HVP Tenders shall be submitted to the official address of the GoK, which is within the Central Procurement Unit. The official address will be an email address, procurement@mfep.gov.ki, clearly included in the Invitation to Tender. The official email address shall have an automatic reply to verify receipt of each Tender.



If physical submissions, exceptionally, are allowed, the address whereto they shall be delivered shall be clearly specified. The place of receipt shall have a public officer available and the time should, thus, be defined to fall under office hours. At receipt, the public officer shall mark all envelopes or boxes with the date and time of receipt, the name and signature of the public officer, and, if requested, issue a receipt of delivery.

The public officer shall immediately deliver the received Tenders to the CPU. The CPU shall store the Tenders in a locked cabinet until the opening session.

Tenders shall, irrespectively of means of submission, remain unopened until the formal opening of the Tenders.

7.8.4.2. Opening

The Central Procurement Unit shall be responsible for the opening of Tenders in line with the instructions specified in the Invitation to Tender and as soon as possible after the final deadline for submission. During the opening session, at least two public officers shall participate, with at least one from the CPU. All Tenders shall be opened during one and only one session.

In case Public Procurement foresees separate submissions of technical and financial proposals, the financial proposals shall remain sealed or closed until the Technical Evaluation is completed.

The Central Procurement Unit shall determine whether Tenders are received in compliance with the instructions provided in the Invitation to Tender. Tenders received after the set deadline shall be automatically excluded from further consideration.

The main rule is that all Tenders and applications for Pre-qualification shall be opened in a session at which interested parties, i.e., all Tenderers or their representatives, may be in attendance. The Invitation to Tender shall specify date, timing and place where the opening session will take place. A Procurement Officer from the CPU, participating in the opening procedure, shall record the presence of Tenderers and register the procedure of Tenders opening in the Procurement Report, including the name of each Tenderer whose Tender is opened, see 7.8.4.3.

In specific circumstances, the Chief Procurement Officer shall be entitled to waive the rule of public opening of Tenders. A motivated written justification shall be provided and eventually be noted in the Procurement Report.

The Public Procurement procedures in Kiribati will be developed towards e-Tendering, starting with the implementation of the new legal framework. This means that Tenders will be received by the CPU in electronic format. The 'opening' will be done during the first day after the last date and time for submission, by two Procurement Officers, checked for fulfilment of the administrative eligibility criteria, see 7.9.1.1, where after the Tenders will be sent to the Evaluation Committee Chairperson. This makes the 'opening' less easily available and meaningful to the Tenderers and it may eventually become the standard for the opening not to be public.

Many of the MVP and most of the HVP Public Procurement processes will be in accordance with the 2-envelope procedure, see 7.6.4.1, whereas only the technical component of the Tender will be opened and submitted to the Evaluation Committee. This makes it less interesting for Tenderers to participate in a public opening procedure, which could motivate not having public opening sessions at all.

Further, the new legal framework introduces a high level of transparency and complaints possibilities, whereas monitoring the opening is less important, in particular since it is conducted by CPU staff, with no direct interest in the outcome, but that it fulfils the legal framework and provides Value for Money. This also contributes to a future decision not to have public openings regulated as the main procedure.

7.8.4.3. Registration

The Central Procurement Unit shall record the time and date for the Tenders received within the set deadline and shall provide a written confirmation to the Tenderers. For Tenders received after the deadline, the Tenderers shall be informed about this, when it was received and that their Tender will not be considered.

The registration shall be done as a first step during the opening of the Tenders and include the name of the Tenderer, which time and date it was received, and which documents are included. This forms an input to the Evaluation Report, see 7.9.3, which is part of the Public Procurement report that will be further developed during the process.

Following the opening and registration, the Central Procurement Unit shall transmit all valid and complete Tenders that arrived before the deadline to the Evaluation Committee together with the draft Procurement Report.

7.8.5. None or only non-valid Tenders

If no Tender was received on or before the latest time and date for submission, or if the received Tenders were incomplete, non-compliant or for other reasons not valid, the Procuring Entity shall investigate the reasons.

Such reasons could be e.g., a too narrow Specification or TOR, only enabling one Tenderer, one or more criteria that no Tenderers can fulfil, too short Tender time, Tenderers not being aware of the publication, lack of trust in the Procuring Entity,

e.g., due to previously delayed payment or other non-compliance with obligations, etc.

The result of the investigation, concerning MVP or HVP, shall be documented in a report, which shall either be integrated into the draft Procurement Report for a reopened Public Procurement on the same subject, but modified in accordance with the findings of the investigation, or submitted to the Chief Procurement Officer in case of cancellation of the procedure.

7.8.6. Only one Tender received

It is sometimes questioned if a Contract or Framework Agreement can be Awarded if only one Tender was received, referring to a lack of competition. It depends on how the Public Procurement was conducted, i.e., if the single Tenderer was under real impression that they were under competition and if there was a proper Market Assessment before the Invitation to Tender was launched. If so, they would most likely have prepared their Tender to make it competitive, i.e., having the best terms and conditions they are able to offer. Then, there should be no issue with concluding the Contract or Framework Agreement. The concern is, however, that there are no other Tenders to compare with, which makes it difficult to ascertain that Value for Money is being achieved.



As when receiving no Tenders, see 7.8.5, it should always be investigated, not least for future learning, why only one (or few) Tenders were received. It could be a sign of disproportional criteria in the ITT, e.g., a too narrow Specification or TOR, only enabling one Tenderer, too short Tender time, Tenderers not being aware of the publication, lack of trust in the Procuring Entity, e.g., due to previously delayed payment or other non-compliance with obligations, etc. The investigation shall be included in the Evaluation Report, either in the Report for the concluded procedure or in a potentially reopened competition.

There is always a risk of suspicion of the Specification or TOR having been drafted to suit only one preferred Tenderer. It could be because the Tenderer is well-known, having had previous Contracts or Framework Agreements, or because the Specification or TOR is based on the current Contract or Framework Agreement, perhaps – intentionally or unintentionally – including criteria that are obviously deriving from the current Supplier, Consultant or Service Provider and other Tenderers either cannot fulfil or perceive as being intentionally included to continue with the current Economic Operator. Regardless of the reasons, the effect will be that there is no competition and that Value for Money cannot be verified. Also, the trust with the Procuring Entity may decline, even corruption may be suspected.

7.9. Evaluation

The evaluation is the most critical and important part of Public Procurement, where the criteria and conditions defined in the preparation and defined in the Invitation to Tender are to be evaluated. It is important to understand and respect that no other criteria than the ones included and described in the ITT may be evaluated and in no other way than how they are described. If new criteria would be included in the evaluation, it will violate the principles of equal treatment and transparency.

If a new criterion would be proposed in a Tender and it would be a substantially beneficial criteria for the Procuring Entity, which should have been detected in a Market Assessment, a cancellation could be considered and a new Public Procurement reopened.

However, this should not be done too easily, since it would mean that all, or at least much of, the work and costs the Tenderers have had for preparing Tenders would be wasted and they may not be willing to participate in a new Public Procurement, having lost trust in the Procuring Entity. It is much better to spend some time on a Market Assessment before launching the ITT, thus saving time and money for the Procuring Entity and the Tenderers.

Regardless of the type of Public Procurement procedure used, after checking that the Tenders fulfil the administrative criteria and are not to be excluded, an Evaluation Committee with the Procuring Entities shall first evaluate the Tenderers and thereafter the Tenders. The evaluation and scoring shall be conducted in an objective manner.

The following criteria, as further described in this chapter, shall be taken into consideration during the consecutive evaluation procedure:

1. Administrative criteria
2. Exclusionary criteria
3. Eligibility criteria
4. Technical Evaluation criteria
5. Financial Evaluation criteria
6. Value for Money Evaluation conditions

The first three criteria are mandatory requirements which must be fulfilled by the Tenderer, whereas the remaining focus on evaluation of the Tenders, technically and financially. The Evaluation Committee, see 7.4.15, shall be responsible to carry out the evaluation procedures, which shall be conducted on the Tenderers' capacity before the Tenders are evaluated.

First of all, Tenders must have fulfilled the administrative requirements, i.e., been completely submitted in time, etc., to be considered.

7.9.1. Tenderer requirements

After the administrative evaluation, the Tenders fulfilling the administrative threshold have to be checked whether the Tenderers have sufficient capacity to fulfil the Contract or Framework Agreement, should they be Awarded. Finally, during this first stage, Tenderers that are subject to criminal convictions, etc., shall be excluded. Finally, in case minimum capacity criteria have been defined, only those Tenderers fulfilling these should be approved, for their Tenders to be evaluated.

7.9.1.1. Administrative criteria

The administrative criteria shall have been defined in the Invitation to Tender, e.g., that a Tender shall have been received in time, to the right place, that it shall be complete, signed by the right authority and follow all other instructions in the ITT, e.g., separate Tenders, format, marking, etc., as described in 7.4.10.

The Evaluation Committee shall reject all Tenders that are not in compliance with the instructions provided in the Invitation to Tender and shall note it in the Evaluation Report. If non-compliant, missing or incomplete information is of minor or insignificant character, the Evaluation Committee may request this information to be provided by the Tenderer within a reasonable period of time.

The judgement whether a left-out information is insignificant, it has to be considered if this may be in conflict with the principle of equal treatment, or if it is a matter that would take very limited effort and time or cost to complement, for any Tenderer.

Should e.g., a part of the technical Tender be missing, it should most likely be considered unequal, perhaps providing more time for a Tenderer to improve their Tender. However, it is important not to exclude Tenders due to insignificant formalities.

7.9.1.2. Exclusion criteria

Exclusion criteria refer to those situations that could pose a threat to the economic interest of the Government of Kiribati and are, or may constitute, ground for exclusion of Tenderers from Public Procurement. These criteria are described in 7.4.11. Some criteria shall obligatorily lead to an exclusion, 'mandatory exclusion criteria', whereas some, 'optional exclusion criteria', may be subject to a judgement, depending on the circumstances, as described in the following.

The Evaluation Committee may request a Tenderer to provide, within a reasonable time, further information and documentation to assess the existence of an exclusion criteria, to be able to decide on the Tenderer eligibility.

A written decision of the exclusion shall be provided to the Tenderer and shall be recorded in the Evaluation Report.

7.9.1.2.1. Mandatory exclusion

Exclusion criteria relate to committed criminal activities and unfulfilled mandatory obligations, for which an automatic exclusion is compulsory, and to insufficient financial stability and negative commercial behaviours of Economic Operators. The Evaluation Committee shall exclude a Tenderer from participating in Public Procurement when it is verified, or the Evaluation Committee is otherwise aware, that the Tenderer is in any such situation.

The following criteria, further explained in 7.4.11.1, are mandatory exclusion criteria, whereas Tenderers shall be excluded that are:

- Subject of a criminal conviction, that may include a member of its management, by final judgment for
 - (i) participation to a criminal organisation
 - (ii) corruption
 - (iii) fraud
 - (iv) terrorist offences or offences linked to terroristic activities
 - (v) money laundering or terrorist financing
 - (vi) child labour and other forms of trafficking in human beings; or any other violation of International Conventions of which the Government of Kiribati is a signatory party
- Subject to a judicial or administrative decision, with final and binding effect, concerning the breach of its obligations on the payment of taxes or social security contributions;
- Subject to a conflict of interest situation or in any other condition that prevents the impartiality of the process;
- Listed in the UN Sanctions list or sanctioned by any Donor; or
- In any other circumstance as established in the Invitation to Tender.

7.9.1.2.2. Optional exclusion

Further criteria can be used as exclusion criteria, subject to a decision by the Procuring Entity, on a case-by-case basis. The following criteria, further explained in

7.4.11.2, are exclusion criteria that may be applied, i.e., Tenderers that are subject to any of these circumstances, provided they are unambiguously detected and verified, may be excluded:

- Violation of international environmental, social and labour law provisions
- Bankruptcy
- Professional misconduct
- Collusion, distorting competition
- Conflict of interest
- Prior involvement in the preparation
- Deficiencies in previous performance
- Serious misrepresentation in supplying information
- Attempts to obtain confidential information

7.9.1.3. Eligibility criteria

Tenderers that have passed the administrative and exclusion phases shall then be evaluated whether they are eligible, fulfilling the minimum technical, professional and financial capacity requirements, proof of previous experience, and other requirements, that are necessary for them to implement the tasks of the Contract or Framework Agreement, as have been defined in the Invitation to Tender or Request for Prequalification. Eligibility criteria, see 7.4.12 for details, may relate to the following areas:

- suitability to pursue the professional activity
- economic and financial standing
- technical and professional ability

The Evaluation Committee shall exclude Tenderers that do not fulfil the eligibility criteria and shall record it in the Evaluation Report. The Tenderers shall be informed in writing of the decision.

7.9.2. Tender requirements

After the Tenderers have been evaluated, as above, only Tenders received from the approved Tenderers shall be evaluated.

The Tenders are to be evaluated in stages:

1. Mandatory technical criteria
2. Technical criteria
3. Financial criteria
4. Merging the Technical and Financial Evaluation results

All evaluation results and decisions shall be registered in the Evaluation Report.

7.9.2.1. Evaluation of mandatory technical criteria

If the Procuring Entity has set mandatory minimum technical performance criteria, the Evaluation Committee shall exclude Tenders that do not fulfil all such criteria.

Mandatory technical criteria are the minimum technical requirements for evaluation of Tenders, that the Tender must fulfil, as specified in the Specifications or Terms of Reference. If any of the defined criteria is not fulfilled, and the Tender is rejected, the reasons shall be explained in the Evaluation Report.

The Evaluation Committee may request a Tenderer to provide, within a reasonable time, further information and documentation to verify whether a minimum criterion is fulfilled.

In some cases, mandatory technical requirements are sufficient to satisfy the needs of the Procuring Entity, whereas no benefits are achieved with higher criteria, i.e., the lowest price of the compliant Tenders becomes the only selection criteria. Then the next step, the evaluation of technical criteria, see 7.9.2.2, by means of scoring different parameters, shall not be done, but the Financial Evaluation is the next step.

7.9.2.2. Evaluation of the technical criteria

Following the exclusion of Tenderers and Tenders, time has come to Evaluate the Tenders, with a scoring value for each technical criterion in relation to its importance, as defined in the Invitation to Tender, see 7.4.13.2, unless the definition of minimum technical criteria, as under 7.9.2.1, is sufficient, i.e., only the lowest price amongst the Tenders that fulfil these.

7.9.2.3. Evaluation Process

The Evaluation Committee shall score all eligible Tenders in accordance with the technical criteria set out in the Invitation to Tender. To ensure the best use of the evaluators' competence and judgement, the Technical Evaluation is done in accordance with a consecutive procedure, first by each individual evaluator, before being merged with the other evaluators. The complete evaluation process, including the finalisation, looks like this, in summary:

1. *Individual evaluations*
2. *Compilation of evaluations*
3. *Technical Evaluation meeting*
4. *Request for clarifications (if needed)*
5. *Finalisation of Technical Evaluation*
6. *Opening of Financial Tenders*
7. *Merging Technical & Financial components (VFM Evaluation)*

7.9.2.3.1. Individual evaluations

The assessment of technical proposals shall be carried out independently by each voting member. There should be no communication between the evaluators, or any other external persons during this phase, to secure that each evaluator makes her/his assessment independently, without any influence from any others.

Each criteria shall be scored, in accordance with the criteria defined in the Invitation to Tender 'Evaluation criteria and method' document, and included in the template for individual evaluation, found in 11.13.2.1, prepared and distributed by the secretary of the Evaluation Committee before the individual evaluations. To prepare for discussions during the evaluation meeting, each scoring should be justified with a comment, explaining the rationale behind the score. If anything is unclear, a special note on each such case and a description of the unclarities shall be included.

When the individual evaluation is completed, the filled in evaluation document shall be submitted to the secretary of the Evaluation Committee, at least two days before the Evaluation Committee meeting, to allow time for the secretary to compile all individual evaluations in the 'compiled evaluation form', found in 11.13.2.2.

7.9.2.3.2. *Compilation of Technical Evaluations*

The secretary of the Evaluation Committee, as appointed in accordance with 7.4.15, shall coordinate the individual evaluations and compile each evaluation, with scores and comments, in the in the 'compiled evaluation form', found in 11.13.2.2. In case of a Tender response to a criterion is unclear to the evaluator and difficult to evaluate, this shall be specifically commented.

The average score shall be calculated, by adding each individual score per criteria and divide it with the number of scorers, in the table for this purpose. Criteria with major discrepancies in the individual scores shall be highlighted. Also, comments from individual evaluators highlighting unclarities shall be separately listed. Criteria with major discrepancies between the evaluators and highlighted unclarities shall be subject to discussions during the evaluation meeting.

The consolidated evaluation results shall be distributed to the individual evaluators before the Evaluation Committee meeting.

7.9.2.3.3. *Technical Evaluation meeting*

The Technical Evaluation meeting with the Evaluation Committee shall take place after the consolidated Technical Evaluation has been distributed to all members, preferably at the date originally scheduled. It should be avoided to change the date, to make it easier for the Evaluation Committee members to participate. However, it is more important that the meeting is well prepared, i.e., that the consolidated Technical Evaluations have been finalised and distributed, than keeping the date. The risk of changing the date is that it may have to be substantially postponed, due to lack of immediate availability of the members. A change of members should also be avoided.

The chairperson shall coordinate the meeting, supported by the secretary, who shall take notes and prepare the draft Evaluation Report. The attendance of the members, who shall participate in the entire meeting, shall be noted.

The meeting shall start with raising the comments highlighting unclarities. A discussion may result in the unclarity becoming clear to the evaluator(s) that raised the issue. If not, all remaining unclarities should be listed and the Evaluation Committee should assist the secretary in formulating a request for clarification to each of the criteria and Tender, to be addressed to each relevant Tenderer, including setting a date for their response.

Then, the chairperson shall go through the criteria where individual scorings substantially differ and a discussion between the evaluators should take place. This is an important enhancement of the evaluation, where different individual observations and evaluations can provide new insights to other members. During these discussions, which should be conducted with an open mind from all members, evaluators has the right to modify their scores, as a result of new insights. The scores shall be updated in a separate version of the consolidated evaluation sheet, keeping the original version unchanged.

Depending on a possible need for clarifications from Tenderers, the meeting can either be concluded or, see 7.9.2.3.5, if there are clarifications required, be adjourned to a date after the response date defined.

If the meeting is adjourned, the reopened meeting shall go through the responses on the clarification requests from the Tenderers and the relevant criteria shall be re-evaluated, including criteria that may be impacted by the clarifications. If a clarification makes it clear that the criteria is no longer fulfilling the mandatory requirements, the Tender shall be disqualified.

The consolidated Technical Evaluation sheet shall be updated by the secretary with a new version and form a part of the Evaluation Report.

7.9.2.3.4. Request for clarifications

The secretary of the Evaluation Committee shall submit the questions, if any, to the relevant Tenderers. The time for clarifications shall be long enough to allow the Tenderers sufficient time and shall be adjusted to the complexity of the criteria subject to the requests for clarifications, whereas the longest time needed shall determine the time for all clarifications.

The responses shall be submitted to the Evaluation Committee members after the final date and time for receipt of clarifications but before the reopened evaluation meeting.

If a response has not been received by the deadline, the Tenderer shall be contacted for an explanation. They may be allowed to submit the clarification immediately, should there have been any miscommunication of other reasonable reason for the delay. This is motivated by the fact that the criteria in need of clarifications may be different between Tenderers, or even only relevant to one or a few of the Tenderers, i.e., may not violate the principle of equal treatment.

7.9.2.3.5. Finalisation of Technical Evaluation

Once the technical scoring is concluded, including possible modifications after discussions and clarifications the result, and all versions, shall be verified by all Evaluation Committee members, before being included in the Evaluation Report, which shall be prepared by the secretary of the Evaluation Committee and be signed by all members of the Technical Evaluation Committee.

7.9.2.4. Financial Evaluation

Upon completion of the Technical Evaluation the financial Tenders shall be opened, in case of a 2-envelope procedure, by at least two public officers, of which at least one shall be a Procurement Officer from the CPU and distributed to the Financial Evaluation Committee. The secretary of the Evaluation Committee shall prepare a spread sheet, comprising all costs per Tender, in a structured, comparable way for Financial Evaluation and submit, together with the Financial Tenders, to the financial Evaluation Committee before the meeting. The Model Document that, after adjustment, can be used for Financial Evaluation is found under 11.13.3. The secretary may discover unclarities during this, for which s/he should request clarifications from the Tenderers, before completing the spread sheet.

The comparison shall, except price, include, where applicable, operational and Life Cycle Costs, costs for disposal, training, maintenance, spare parts, warranties, etc., as specified in the Invitation to Tender.

The Financial Evaluation meeting members shall verify the correctness of the Financial Evaluation spread sheet, prepared by the secretary of the Financial Evaluation

Committee, including that the information transferred from the Financial Tenders into the Financial Evaluation spread sheet is correctly included. If there is any uncertainty, similarly as for the Technical Evaluation, if not discovered by the secretary when preparing the Financial Evaluation spread sheet, these shall be listed separately, to be checked by the secretary of the Financial Evaluation Committee. Then the meeting need to be adjourned until clarifications have been received.

The Financial Evaluation shall conclude the total price for each and every Tender, which will be included in the Value for Money Evaluation and merged with the Technical Evaluation result.

7.9.2.4.1. Specificities for Consulting Services from Firms & Works

Financial Proposals for Consulting Services and in some cases for Works may, besides fees and cost of materials, include Contingencies and Out-of-Pocket Expenses (OPE). Contingencies refer to incidental expenses, a possible event or circumstance, or similar, which may possibly occur but cannot be predicted with certainty. OPE refers to e.g., travel expenses, tickets, which are agreed but cannot be exactly determined at the signing of the contract. These should be separately included in the Invitation to Tender/RFP, requested to be quoted.

7.9.2.5. Value for Money Evaluation

Finally, the result of the Technical Evaluation and the Financial Evaluation outcome shall be merged, in order to determine which Tender totally represents the most Value for Money, unless it is only the lowest price among Tenders fulfilling minimum technical requirements. In the latter case, the most Value for Money is the lowest price.

This evaluation can be done by the Financial Evaluation Committee, after the conclusion of the Financial Evaluation, as the final part of the Financial Evaluation meeting, shall be a decision by consensus of the Evaluation Committee and shall be submitted to the awarding authority for review and for issuing the Award decision.

7.4.13.4.1, further clarifies how the evaluation scoring is to be done and the effects thereof.

The formula described in 7.4.13.5 and in the Invitation to Tender, Evaluation criteria and method, shall be applied for the evaluation. It gives a total score for each Tender, whereas the highest score is for the Tender representing best Value for Money, based on the criteria determined during the preparation phase. Obviously, it is crucial that these parameters were correctly reflecting the needs, or the result may be a Contract or Framework Agreement which may not be the best choice.

7.9.2.5.1. Example 1

In the following, an example is provided, for better understanding on how to define and evaluate the technical and financial components, to achieve a Value for Money Award recommendation. It is an extension of the example provided under 7.4.13.4.1, the first part duplicated for a full picture.

7.9.2.5.1.1. Technical criteria:

Criterion 1 – maximum score 40 points

Criterion 2 - maximum score 30 points

Criterion 3 - maximum score 30 points

Criterion 4 - maximum score 24 points

Criterion 5 - maximum score 20 points

Criterion 6 - maximum score 20 points

Criterion 7 - maximum score 16 points

Criterion 8 - maximum score 10 points

Criterion 9 - maximum score 10 points

The maximum score would be 200 points

The allocation of the technical component is set to 65% (and financial to 35%)

7.9.2.5.1.2. Let's assume we get three Tenders:

Tender A gets 175 points

Tender B gets 165 points

Tender C gets 180 points

7.9.2.5.1.3. This needs to be converted into percent:

Tender A: 175 points = 175 of 200 = 87,5% * the technical part 65% = **56,9%**

Tender B: 165 points = 165 of 200 = 82,5% * the technical part 65% = **53,6%**

Tender C: 180 points = 180 of 200 = 90,0% * the technical part 65% = **58,5%**

7.9.2.5.1.4. Adding an example of a financial comparison:

Tender A is AUD100.000

Tender B is AUD90.000

Tender C is AUD110.000

Comparing to the lowest Tender:

Tender A: AUD90.000/100.000=90% of max * the financial part 35% = **31,5%**

Tender B: AUD90.000/90.000=100% of max * the financial part 35% = **35,0%**

Tender C: AUD90.000/110.000=81,8% of max * the financial part 35% = **28,6%**

7.9.2.5.1.5. The consolidated result:

Tender A: 56,9+31,5=88,4

Tender B: 53,6+35,0=**88,6**

Tender C: 58,5+28,6=87,1

*In this example **Tender B** gets the best score/Value for Money*

7.9.2.5.2. Example 2

The margin is, however, very small. So, let's see what happens if the allocation between technical and financial would be different; technical 75%, financial 25%:

7.9.2.5.2.1. Technical Evaluation result:

Tender A: 175 points = 175 of 200 = 87,5% * the technical part 75% = **65,3%**

Tender B: 165 points = 165 of 200 = 82,5% * the technical part 75% = **61,9%**

Tender C: 180 points = 180 of 200 = 90,0% * the technical part 75% = **67,5%**

7.9.2.5.2.2. The financial result:

Tender A: AUD90.000/100.000=90% of max * the financial part 25% = **22,5%**

Tender B: AUD90.000/90.000=100% of max * the financial part 25% = **25,0%**

Tender C: $AUD90.000/110.000=81,8\%$ of max * the financial part 25% = **20,5%**

7.9.2.5.2.3. The final Value for Money result

Tender A: $65,3+22,5=87,8$

Tender B: $61,9+25,0=86,9$

Tender C: $67,5+20,5=88,0$

*In this example **Tender C** gets the best score/Value for Money*

7.9.2.6. Abnormally low Tenders

Sometimes, received Tenders present an unreasonably low price, which cannot be explained e.g., by a lower technical quality, or similar. Procuring Entities should then require Economic Operators to explain the price or costs proposed in the Tenders where Tenders appear to be abnormally low.

The Procuring Entity shall assess the information provided and it may only reject Tenders where the evidence provided does not justify the low level of price or costs proposed. This prove to be somewhat difficult in some cases, where the Tender may then need to be accepted.

The background to this principle is that Tenderers may intentionally or unintentionally submit unreasonably low Tenders, which they may not be able to fulfil under a Contract or Framework Agreement. Regardless of the reason, this would have severe consequences for the Procuring Entity, either having to cancel the Contract or Framework Agreement and do a new Public Procurement or come under pressure to increase the price to the Economic Operator.

Obviously, this could be used by unreliable Tenderers, to try to first win a Contract or Framework Agreement and later pressure the Procuring Entity to increase the price, being aware that the Procuring Entity does not want to lose a lot of time, by cancelling the Contract or Framework Agreement and reopen a new Public Procurement.

An amendment of a Contract or Framework Agreement, by substantially changing e.g., the price, would deem the evaluation completely meaningless, having done the Award on the wrong prerequisites and not representing equal treatment, at the end of the day. It would also mean that a new additional budget would need to be reallocated. There is also a risk that the non-successful Tenderers would suspect foul play from the Procuring Entity, intentionally Awarding a Contract or Framework Agreement to a preferred Tenderer, discrediting the Procuring Entity which may lose trust with the market and not receive Tenders in the future.

Even though a Tenderer may not have intentionally submitted a too low Tender, the consequences would be the same. They may have underestimated the time and/or cost to conclude the Contract or Framework Agreement in question. For a small Economic Operator, concluding the Contract or Framework Agreement could result in bankruptcy.

Malicious Tenderers may want to distort the competition, preventing their competitors from getting a Contract or Framework Agreement, by submitting an unrealistically low price.

Another reason for a very low price may be that the Tenderer intends to exploit labour or use child labour, or have poor work conditions, etc., as should be prevented by checking the conditions under 7.4.11.1.

What could be accepted is a correction of a Tender, should the exceptionally low price be due to e.g., a typo or an obvious arithmetic miscalculation, whereas this should be allowed to be corrected.

The Procuring Entity's decision to reject abnormally low Tenders shall be subject to approval by the Chief Procurement Officer. Before accepting an exceptionally low Tender, it is advised to consult the Chief Procurement Officer.

7.9.2.7. Rejection of Tenders

All received Tenders may be substantially non-responsive, non-compliant or substantially exceeding the available budget. The latter could be the result of a lack of effective competition. In such case, the Procuring Entity should consider rejecting all Tenders and cancel the Public Procurement.

The Procuring Entity shall review the causes, justify the rejection and consider revising the Invitation to Tender. If the available budget is not sufficient and the Tenders seem to reflect a reasonable market price, which is higher than expected, the process could be halted, while requesting additional budget. In this case, all Tenderers should be requested to extend their Tender validity time, to enable a possible appropriation of additional budget. However, should one Tenderer refuse to extend their validity, the process should be cancelled, unless a budget appropriation would be available before the validity time expires.

If all Tenders are to be rejected, an approval of the Chief Procurement Officer shall be obtained, before relaunching a new Public Procurement.

If the rejection of all Tenders is due to lack of effective competition, the Procuring Entity should consider a wider advertising of a new Invitation to Tender.

A Procuring Entity shall not reject all Tenders for the sole purpose of obtaining lower prices in a new Public Procurement, i.e., where the requirements are not revised.

7.9.3. Evaluation Report

The Evaluation Report, which is an important part of the Procurement Report, is consecutively developed during the Evaluation process, managed at all times by the secretary of the Evaluation Committee, who shall finalise the Report and submit to the relevant awarding authority. A template is found under 11.13.5.

Any observation, decision or other relevant information during the evaluation, including the Technical, Financial and Value for Money Evaluations, shall be noted and explained in an Evaluation Report. The Evaluation Report shall include an Executive Summary, which shall contain all relevant information, sufficient for the awarding authority to comprehend the rationale behind the recommendation for Award from the Evaluation Committee. All relevant supporting documents shall be attached as annexes to the Evaluation Report, to provide full insight if deemed necessary. The decision of the awarding authority should, however, be possible to be made based solely on the Executive Summary.

The Evaluation Report shall provide a recommendation for Award of a Contract or Framework Agreement. It shall be signed by all the members of the Evaluation Committee, separately for the Technical Evaluation and for the Financial Evaluation, including the Value for Money Evaluation, and shall be submitted to the relevant awarding authority, the Contract Award Committee (CAC) for MVP and the Central Contract Award Board (CCAB) for HVP.

The Evaluation Report shall include a separate summary version of the evaluation which can be provided to all Tenderers together with the Award decision. The summary version shall provide relevant information to each unsuccessful Tenderer on their shortcomings, in the form of the scoring results and relevant brief comments, so that they clearly understand why they were not selected. This is to minimise the risk for complaints and to help them to improve for future Public Procurement.

In summary, the Evaluation Report should include all versions of the following and be signed as relevant:

- An Executive Summary (former “Tender Summary Form”)
- A recommendation for Award
- Who participated in the Evaluation Committee, Technical and Financial
- The Value for Money evaluation
- The Financial Evaluation
- The Technical Evaluation, including the individual scorings and comments
- Requests for clarifications and responses
- A list of Tenderers that were excluded and the reasons
- A list of Tenders that were excluded and the reasons
- If the Opening was public and which Tenderers attended
- Extraordinary observations during the evaluation process, i.e., corruption attempts, suspected collusion, conflicts of interest, etc.
- A summary version for distribution to Tenderers

7.10. Contract or Framework Agreement Award

Depending on the value of the Contract or Framework Agreement to be Awarded the Contract Award Committee (CAC) or the Central Contract Award Board (CCAB) shall be the awarding authority responsible for reviewing the evaluation process and for issuing the decision on the Contract or Framework Agreement Award.

It should be noted that the review is limited to the evaluation process and does not include a review of the events preceding the evaluation by the Evaluation Committee. This, because these procedures have been checked throughout the process with the implementation of the principle of ‘early detection and correction’, which does not allow Public Procurement procedures to continue until approved at each step.

All members of the awarding authority shall, before deciding on the Award, carefully review the Evaluation Report, to determine whether the Award recommendation is based on a correctly conducted evaluation. The awarding authority may request the Chairperson of the Evaluation Committee to provide further information or clarifications, in a meeting and in writing, to ascertain that the Award will be correct.

The Contract or Framework Agreement Award decision shall be reached by consensus. In case of disagreement between the members on the Award decision or on the review of the evaluation process, the matter of disagreement shall be noted in the minutes of the Award meeting, for internal use. The communication of the Award shall not include this information.

In case of absence of one or more of the members of the awarding authority, a corresponding number of substitutes shall be appointed, to guarantee the minimum necessary composition of the awarding authority.

Upon finalisation of the Award decision, the secretary of the awarding authority shall provide the Procuring Entity and the CPO with the Contract or Framework Agreement Award decision, signed by all members of the awarding authority, the draft Procurement Report and all other relevant documentation and information.

7.10.1. Award Letter

The communication of the Contract or Framework Agreement Award decision, the Award Letter, shall be drafted by the secretary of the awarding body – CAC or CCAB – using the relevant Model Documents, and distributed without delay, in writing, at the same time to all participating Tenderers and include the following:

- The reference of the Public Procurement (as was in the Invitation to Tender)
- The date of the Award
- The name of the awardee
- The value of the Contract
- The evaluation summary (the annex to the Evaluation Report)
- Information on the Tenderer's right to complain and on what
- The address where to submit a complaint
- The last day for receipt of a complaint, see 7.11.2
- The possibility of a debriefing, see 7.10.5

7.10.2. Central Contract Award Board (CCAB)

A Central Contract Award Board is established as the permanent body for review and decision for Award of High-Value Procurement (HVP) Contracts or Framework Agreements.

The CCAB shall, to be eligible to make an Award decision, be composed of the following representatives:

- a) The Secretary of the Ministry responsible for Finance, with the responsibility to coordinate the work and to act as Chairperson;
- b) The Chief Procurement Officer;
- c) A representative of the Office of the Attorney General;
- d) A representative of the National Economic Planning Office within the Ministry responsible for Finance, which would normally be represented by the Development Coordinating Committee (DCC);
- e) A representative from the Procuring Entity in the quality of budget owner or equivalent, which would normally be the Secretary of the Ministry or the CEO of an SOE or similar from a statutory corporation, who has not participated in the Evaluation Committee recommendation; and
- f) A Procurement Officer within the Central Procurement Unit, with the role of Secretary of the Board, without participation in the decision.

A member from the Ministry responsible for Commerce and a member from the Ministry responsible for Public Service shall be invited to form a part of the Central Contract Award Board. This means that these representatives are invited but not obliged to participate and that their absence does not prevent an Award decision.

External experts may be invited, without partaking in the decision. Also, a representative from the Evaluation Committee may be invited to present the Evaluation Report.

The above constitution means that there will be 5-7 public officers taking the Award decision, depending on participation from the Ministry responsible for Commerce and the Ministry responsible for Public Service.

The Central Contract Award Board operates in accordance with the rules established by the Public Procurement Regulations and this Manual.

7.10.2.1. Responsibilities of the CCAB members

The responsibility and tasks of each member of the Central Contract Award Body is described in the following. In general, all members shall, of course, fulfil her/his responsibilities in accordance with the principles, rules and procedures defined in the Public Procurement Act and Regulations and further explained in this Manual, in particular in section 3. They all have a responsibility to detect possible non-compliance or violations.

7.10.2.1.1. Chairperson

The Chairperson, being the Secretary of the Ministry responsible for Finance, shall coordinate and lead the meeting which shall be concluded with an Award decision.

7.10.2.1.2. Chief Procurement Officer

The Chief Procurement Officer (CPO) is the expert on Public Procurement in the GoK with the role to provide advice to the Board on legal compliance and that Value for Money is achieved. The CPO has had insight throughout the Public Procurement procedure, by means of the established principle of 'early detection and correction' with the legal framework and can verify the application having been compliant.

7.10.2.1.3. Office of the Attorney General

The Office of the Attorney General (OAG) is the highest legal authority within the GoK, including a responsibility that Public Procurement Contracts do not expose the GoK to excessive risks. The Model Documents for Contracts approved by the OAG, i.e., Specific Contract Conditions and General Contract Conditions should, as a main rule have been used and included in the Invitation to Tender. An important role for the representative of the OAG is to ascertain that the Contract to be signed has been approved, either by using the Model Document, without modification, or a separately approved modified Standard Contract.

7.10.2.1.4. National Economic Planning Office

All Public Procurement shall be approved before initiation, by having an approved budget and be included in the Annual Procurement Plan. The role for the National Economic Planning Office (NEPO) is to verify that the budget required for the Contract to be Awarded is approved and sufficient. The representative from NEPO, normally from the DCC, shall also confirm that a Contract to be awarded is still relevant for the project concerned as in the approved Project Concept Note.

7.10.2.1.5. Procuring Entity

The representative of the Procuring Entity, the Permanent Secretary, or CEO of an SOE or similar at a statutory corporation, or a representative appointed by any of these has the responsibility to verify that the budget necessary for the Contract is available and that the Contract will represent the real needs of the Procuring Entity with Value for Money.

7.10.2.1.6. Secretary

The Secretary, being a Procurement Officer within the Central Procurement Unit, shall support the Chairperson in preparing and coordinating the meeting. Based on the Annual Procurement Plans for each year, the Secretary shall draft a preliminary meeting schedule for the year.

The Secretary shall also take minutes of the Board meeting, that shall be signed by all members, and draft the Award Letter, to be approved by the Board members and signed by the Chairperson.

Following the Award decision, the Secretary shall distribute the Award Letter to all Tenderers, as regulated in 7.10.1, and to the Procuring Entity Procuring Officer, the Central Procurement Unit and other stakeholders in accordance with the Delegation of Authority (DOA) of the Public Procurement Regulations.

7.10.2.1.7. Ministry responsible for Commerce

The Ministry responsible for Commerce is invited to give them an opportunity to safeguard that the Public Procurement is in line with fair competition and that the Award goes to an Economic Operator that fulfils the mandatory legal requirements for a firm, e.g., that they are properly registered, etc. It also provides insight into Public Procurement so that the Ministry may suggest improvements, e.g., for development of domestic firms.

7.10.2.1.8. Ministry responsible for Public Service

The Ministry responsible for Public Service is invited because they have a general responsibility towards the public for the services of the Government of Kiribati. The result of Public Procurement is directly or indirectly affecting the general public, whereas this insight and possibility to propose improvements of the Public Procurement system is beneficial to the public.

7.10.3. Contract Award Committee (CAC)

A Contract Award Committee is established as the permanent body for review and decision for Award of Medium-Value Procurement (MVP) Contracts or Framework Agreements.

The CAC shall, to be eligible to make an Award decision, be composed of the following representatives:

- a) A Procurement Officer from the Central Procurement Unit, with the responsibility to coordinate the work and to act as Chairperson;
- b) A representative from the Procuring Entity in the quality of budget owner or equivalent, which would normally be the Secretary of the Ministry or the CEO of an SOE or similar from a statutory corporation, who has not participated in the Evaluation Committee recommendation
- c) At least one representative from another relevant Procuring Entity, besides the Ministries responsible for Commerce and Public Service, preferably a Procuring Entity which is involved in the project or will benefit from the effects of the Contract; and
- d) The Procuring Entity Procuring Officer, with the role of Secretary of the Committee but also to partake in the Award decision.

A member from the Ministry responsible for Commerce and a member from the Ministry responsible for Public Service shall be invited to form a part of the Contract Award Committee. This means that these representatives are invited but not obliged to participate and that their absence does not prevent an Award decision.

External experts may be invited, without partaking in the decision. Also, a representative from the Evaluation Committee may be invited to present the Evaluation Report.

The above constitution means that there will be 4-6 public officers taking the Award decision, depending on participation from the Ministry responsible for Commerce and the Ministry responsible for Public Service.

The Contract Award Committee operates in accordance with the rules established by the Public Procurement Regulations and this Manual.

7.10.3.1. Responsibilities of the CAC members

The responsibility and tasks of each member of the Contract Award Committee is described in the following. In general, all members shall, of course, fulfil her/his responsibilities in accordance with the principles, rules and procedures defined in the Public Procurement Act and Regulations and further explained in this Manual, in particular in section 3.

7.10.3.1.1. Chairperson

The Chairperson, being a Procurement Officer from the Central Procurement Unit, shall coordinate and lead the meeting which shall be concluded with an Award decision, signed by the Chairperson.

7.10.3.1.2. Procuring Entity

The representative of the Procuring Entity, the Permanent Secretary, or CEO of an SOE or similar at a statutory corporation, or a representative appointed by any of these has the responsibility to verify that the budget necessary for the Contract is available and that the Contract will represent the real needs of the Procuring Entity with Value for Money.

7.10.3.1.3. Another relevant Procuring Entity

A representative from another Procuring Entity, which has an interest in or knowledge on the subject of the procurement, with the responsibility to safeguard that the award is in line with the real needs of the Government of Kiribati, and/or of the Procuring Entity represented in this role.

7.10.3.1.4. Secretary

The Secretary, being a Procuring Officer within the Procuring Entity, shall support the Chairperson in preparing and coordinating the meeting. The Secretary shall also take minutes of the Board meeting, that shall be signed by all members, and draft the Award Letter, to be approved by the Board members and signed by the Chairperson.

Following the Award decision, the Secretary shall distribute the Award Letter to all Tenderers, as regulated in 7.10.1, and to the Central Procurement Unit and other stakeholders in accordance with the Delegation of Authority (DOA) of the Public Procurement Regulations, including keeping a copy with the Procuring Office within the Procuring Entity.

7.10.3.1.5. Ministry responsible for Commerce

The Ministry responsible for Commerce is invited to give them an opportunity to safeguard that the Public Procurement is in line with fair competition and that the Award goes to an Economic Operator that fulfils the mandatory legal requirements for a firm, e.g., that they are properly registered, etc. It also provides insight into Public Procurement so that the Ministry may suggest improvements, e.g., for development of domestic firms.

7.10.3.1.6. Ministry responsible for Public Service

The Ministry responsible for Public Service is invited because they have a general responsibility towards the public for the services of the Government of Kiribati. The result of Public Procurement is directly or indirectly affecting the general public,

whereas this insight and possibility to propose improvements of the Public Procurement system is beneficial to the public.

7.10.4. Award

The awarding authority shall without delay inform all participating Tenderers of the Contract or Framework Agreement Award decision and, at the same time, inform the unsuccessful Tenderers of the outcome of the evaluation, in accordance with 7.10.1.

During a timeframe of 14 calendar days following the notification of the Contract or Framework Agreement Award decision issued by the Procuring Entity, the Procuring Entity shall not sign the Contract or Framework Agreement. In the event that a complaint or an appeal is filed by a Tenderer, the Procuring Entity shall wait until a final decision is issued on possible complaints before signing a Contract or Framework Agreement.

The Secretary of the awarding authority shall also inform the Evaluation Committee, the Central Procurement Unit and the Procuring Entity on the outcome of the Award decision.

An Award decision may have the effect of cancelling the Public Procurement and not Award a Contract or Framework Agreement.

7.10.5. Debriefing

In case a non-successful Tenderer claims that the reason provided in the Contract or Framework Agreement Award decision notification for the non-selection of their Tenders is not sufficiently clear, the Procuring Entity may decide, if the request is considered reasonable, to provide further information or a debriefing session.

Such a debriefing should be efficient and may be conducted by email, internet communication or phone. Only if absolutely necessary and possible the Procuring Entity may, if found more efficient and effective, allow for a meeting. Regardless of method, the communication shall be documented and included in the file of the actual Public Procurement.

During a debriefing, the only information shall be on the Tender submitted by the actual Tenderer and no information or details from other Tenders shall be provided. If such other information is requested, it could be asked from the requester if they would be satisfied if information or details of their own Tender would be provided to their competitors, which may make them understand why it is not done.

It is, however, the Procuring Entity that, at its sole discretion, decides whether or not to provide a separate debriefing to a requesting Tenderer. If, for instance, there Procuring Entity reasonably does not have the resources or time for a separate debriefing, this would be a reason to decline a request.

It should be noted, though, that availing debriefings will contribute to higher trust with Economic Operators and make them more willing to participate in future Public Procurement, thereby increasing competition and Value for Money.

7.11. Complaints Procedure



To gain trust and confidence in the Public Procurement of Kiribati, one important ingredient, following the principle of transparency, is the possibility for Tenderers to complain if they believe that the Public Procurement procedures and/or their Tender has not been in compliance with the rules. If Tenderers feel welcome and it's easy to file a complaint, the less suspicion there will be. At the same time, the way complaints are handled and communicated is just as important. However, the main means of gaining trust and at the same time minimise complaints is to provide clear information on how their Tender was evaluated, i.e., in the Award Letter.

7.11.1.1. The Public Procurement process

Even though not regulated as a standstill period, Tenderers may, besides the evaluation and Award decision, also complain on the Public Procurement process, i.e., before the Award has been communicated. Such complaints may refer to e.g.:

- Too short Tender time
- Unclear Invitation to Tender, in particular regarding Specification or TOR
- Non-proportionality
- Inequal treatment
- Wrong procedure
- Other procedural errors



A complaint on the procedures shall be analysed by the Procuring Entity and, if found valid, corrected and communicated to all Tenderers, by the same means as the Invitation to Tender has been issued, i.e., posted if Open Procedure has been used, or by direct communication if Limited Procedure has been used.

If the correction would need an extension of the deadline for submission of Tenders or Applications, the time schedule shall be adjusted accordingly.



"The alarm didn't go off, my car wouldn't start, missed the bus, my back's aching, haven't had a raise in two years ..."

7.11.1.2. The Contract or Framework Agreement Award

Complaints on the Award decision shall be handled as described in the following, see 7.11.3.

7.11.2. Complaints Period

Complaints regarding Invitation to Tender procedures shall be received by the Procuring Entity at the latest 10 calendar days before the deadline for the submission of Tenders.

For complaints regarding a Contract or Framework Agreement Award, a standstill period of at least 14 calendar days shall apply between the communication of the Contract or Framework Agreement Award and the Contract or Framework Agreement signature, to allow Tenderers a period of time to review the Contract or Framework Agreement Award notification and assess if it is appropriate to submit a complaint.

Complaints regarding Contract or Framework Agreement Awards shall be received by the Procuring Entity before the deadline for complaints, to be considered by the Procuring Entity. It is, as shall be stated in the Invitation to Tender, the responsibility of the Tenderer that a complaint has been received by the Procuring Entity by the last day for submission. The last date and time for receipt shall be stated in the Award Letter and be at least 14 calendar days.

For appeals, the complaints period is 14 calendar days following the communication of the decision on the complaint by the Procuring Entity.

Due to the embedded incentive with the Procuring Entities, not being able to sign any Contract or Framework Agreement until settlement, there are no time limits on resolving the complaints or appeals. However, this should be done as promptly as possible.

7.11.3. Complaints Procedure

A Tenderer that claims to have suffered, or that risks suffering loss or injury due to a breach or violation by a Procuring Entity of its duties or obligations under the Public Procurement legal framework may submit a written complaint, with a request for a review of the circumstances surrounding the complaint, to the appropriate Procuring Entity, and shall be entitled to have its claim suitably addressed in accordance with the procedures below and within the timelines stated in 7.11.2 above.

There are different procedures for complaints on the Public Procurement process and on the Contract or Framework Agreement Award, as well as for MVP and HVP.

The procedure for complaints on the process, in summary, as described in 7.11.1.1:

1. To the Procuring Entity, and if still not satisfied, appeal
2. To the Chief Procurement Officer – final decision for both MVP and HVP procedures

The procedure for complaints on the Award, in summary, but further described in the following paragraphs:

1. To the Procuring Entity, and if still not satisfied, appeal
 - a. MVP to the CPO – final decision
 - b. HVP to the PCB – final decision

7.11.4. Award complaints – first instance

Tenderers that are dissatisfied with the decision by the Contract Award Committee shall be entitled to raise the matter of dissatisfaction to the Procuring Entity, before the deadline specified in 7.11.2.

The Procuring Entity shall, without delay, analyse a complaint received within the deadline, with guidance and support from the Central Procurement Unit. The Procuring Entity shall thereafter issue a written decision on the complaint to the Tenderer.

The notification to the Tenderer shall be clear and provide information on why the complaint has not been regarded or on possible corrections, and instructions on how the Tenderer may appeal if not satisfied with the decision, i.e., deadline and address.

7.11.5. Award appeals – second instance

Tenderers that are dissatisfied with the decision by the Procuring Entity shall be entitled to raise the matter of dissatisfaction by an appeal. The procedures for appeals depend on whether it is Medium- or High-Value Procurement, as described in the following.

7.11.5.1. Medium-Value Procurement

For Medium-Value Procurement, Tenderers that are dissatisfied with the decision by the Procuring Entity on a complaint shall be entitled to raise the matter of dissatisfaction, with an appeal to the Chief Procurement Officer. An appeal must be received by the Chief Procurement Officer at the latest 14 calendar days after the Procuring Entity's decision has been communicated.

The Chief Procurement Officer shall, without delay, analyse the matter and issue a decision, which shall be notified in writing to the Tenderer, with a copy to the Procuring Entity, and provide information on why the complaint has not been regarded or on possible corrections to be done by the Procuring Entity.

The decision of the Chief Procurement Officer is final.

7.11.5.2. High-Value Procurement

For High Value Procurement, Tenderers that are dissatisfied with the decision by the Procuring Entity shall be entitled to raise the matter of dissatisfaction, with an appeal to the Procurement Complaints Board. An appeal must be received by the Procurement Complaints Board at the latest 14 calendar days after the decision of the Central Contract Award Board has been communicated.

The Procurement Complaints Board shall, without delay, analyse the matter and issue a decision, which shall be notified in writing to the Tenderer, with a copy to the Procuring Entity, and provide information on why the complaint has not been regarded or on possible corrections to be done by the Procuring Entity.

The decision of the Procurement Complaints Board is final.

7.11.6. Procurement Complaints Board (PCB)

The Procurement Complaints Board is a semi-permanent board responsible for appeals to complaint decisions by the Procuring Entity and shall be composed of at least the following representatives:

- a) Permanent Secretary of the Ministry responsible for Finance, with the responsibility to coordinate the work and as chairperson of the board;
- b) Attorney General;
- c) Permanent Secretary or a high-level representative from the management board of the Procuring Entity as owner of the Public Procurement budget; and
- d) The Chief Procurement Officer with the role to provide a reasoned opinion, not participating in the final decision.

7.11.6.1. Responsibilities of the Procurement Complaints Board

The responsibility and tasks of the members of the Procurement Complaints Board (PCB) is described in the following. In general, all members shall, of course, fulfil her/his responsibilities in accordance with the principles, rules and procedures defined in the Public Procurement Act and Regulations and further explained in this Manual, in particular in section 3.

The Chief Procurement Officer shall, before the PCB meeting, provide a written assessment and a reasoned opinion to the PCB of the Award decision taken by the Central Contract Award Board, the original complaint from the Tenderer, the response to the complaint by the Procuring Entity and the arguments in the appeal of the decision taken by the Procuring Entity.

The PCB shall analyse the Award decision taken by the Central Contract Award Board, the original complaint from the Tenderer, the response to the complaint by the Procuring Entity, the arguments in the appeal of the decision taken by the Procuring Entity and the assessment of the case by the Chief Procurement Officer.

Based on the above, the Procurement Complaints Board shall take a decision in consensus on the case. The decision shall be based on compliance with the Public Procurement legal framework and provide the best Value for Money.

The decision shall be communicated to the Tenderer that appealed the decision by the Procuring Entity and to the Procuring Entity and shall include the decision, with a motivation, and either an approval of the Award decision or an approval of the appeal, with instructions and a reference to which breach has been committed to the Procuring Entity to correct the erroneous Award.

The Procuring Entity shall then correct the procedure as from where it was found to be in non-compliance with the Public Procurement legal framework. Since this can vary significantly, it is not possible to provide instructions in this Manual on which corrections or remedies to be taken, but it can be from minor corrections to a new evaluation, resulting in an Award to another Tenderer. From a new starting point of a correction, if so decided, the full procedures shall be applied.

7.12. Contract or Framework Agreement Signing

Following the expiration of a standstill period, during which no complaints have been received, or the completion of all decisions on complaints or appeals, the Procuring Entity shall without delay finalise the Contract or Framework Agreement documents and submit them to the finally decided awarded Tenderer for its signature.

The Contract or Framework Agreement documents shall comprise the finalised Contract or Framework Agreement, including updates in line with The Public Procurement Regulations, Article 25, e.g., the final version of the Specifications or Terms of Reference, the General Contract Conditions, the technical and financial offer of the Tenderer, and any other information relevant to the Contract.

The Procuring Entity shall ensure that the Contract or Framework Agreement is signed by the Tenderer before it is being signed by the Procuring Entity, in accordance with the Delegation of Authority, or by both parties simultaneously. Only in exceptional circumstances shall the Contract or Framework Agreement be signed by the Procuring Entity before being signed by the Tenderer. The reason for this is to secure that there have been no modifications of the documents by the Tenderer after the Procuring Entity signed them.

Two identical copies of the Contract or Framework Agreement documents shall be signed on the place therefore in the Specific Contract Conditions Model Document.

Every page of the Contract or Framework Agreement shall be signed by a short signature on each bottom corner, by each of the parties, to ascertain no modification of any of the versions.

The Procuring Entity original copy shall be submitted to the Central Procurement Unit, for registration, and a copy shall be submitted to the Procuring Entity Procuring Officer and one copy to the Contract Manager. Stakeholders, in accordance with the DOA shall be informed.

Contracts or Framework Agreements shall take effect from the date of signature of the last signatory party. All Contracts or Framework Agreements shall reflect the actual dates on which the contracting parties sign them, i.e., back-dating is not allowed.

Upon successful completion of the Contract or Framework Agreement signing, information that the Contract or Framework Agreement has been signed shall be published, in line with 7.5.6.1. The publication shall include the following information:

- Name of the Procuring Entity
- Name of the Public Procurement, as used in the Invitation to Tender
- Contract amount
- Name of the Economic Operator of the Contract or Framework Agreement

7.12.1. Clarifications (no negotiations)

In the finalisation of the Contract or Framework Agreement, there may be a need for clarifications, to minimise the risk of disparate interpretations during the execution of the Contract or Framework Agreement. However, not to invalidate the evaluation, no negotiations should take place, i.e., leading to a substantial modification of the Specification or TOR, or other terms and conditions.

7.12.2. Requesting information only once

During the finalisation of the Contract or Framework Agreement, Procurement Entities shall refrain from asking Tenderers to provide the same information again that has already been provided in the Tender.

7.12.3. Communication

For Contracts or Framework Agreements deemed to be of major public interest, e.g., that will result in substantial positive effects on the society, such as infrastructure projects, etc., a press release or similar should be considered. Also, if the Public Procurement has been very successful and led to substantial savings, a press release or similar should be considered, to provide a positive picture of the effects that can be achieved with Public Procurement.

7.12.4. Public Procurement Database

All Contracts or Framework Agreements on MVP and HVP shall be submitted to the Central Procurement Unit, as stipulated in 7.12. A comprehensive register of all MVP & HVP shall be listed in a relevant structure, including e.g., value, dates of the Contract or Framework Agreement, Procuring Entity, number of Suborders to a Framework Agreement, performance assessments, etc., in a Public Procurement Database with the CPU.

Procuring Entities shall annually check the Public Procurement Database and prepare a list of missing used or potential Economic Operators in accordance with their

respective fields of operation and sectors of competence and graded for their performance. The lists received from Procuring Entities shall be compiled by the Central Procurement Unit and saved in a Public Procurement database.

The database shall include basic information on all Tenderers or potential Tenderers, e.g., business area, number of Contracts or Framework Agreements with GoK including value, contact details, and performance grading.

The database shall be managed by the Central Procurement Unit and be available and searchable for statistics and for Procuring Entities for market assessment and for preparing Invitations to Tender. Procuring Entity Procuring Officers may obtain access by the CPU to register information on potential Tenderers, which shall, however, be checked by the CPU, e.g., on a regular basis by creating reports on new entries.

7.12.5. Archiving

Procuring Entities shall maintain a well-ordered and comprehensive set of records for all Public Procurement that they conduct, in line with the requirements of the Government of Kiribati Finance Regulations.

The original copies of Contracts or Framework Agreements of Medium-Value or High-Value Procurement, including all communication and documents related, e.g., the complete Procurement Report, including the Evaluation Report, Award decision, Contract Management Reports, performance assessments, etc., shall be stored at the Central Procurement Unit, in parallel with being registered in the Public Procurement Database, see 7.12.4. They shall be archived in a consecutive, chronological order and any Public Procurement folder shall be easy to find.

Each Public Procurement folder shall be organised in sections for each procedure, following the structure of the Procurement Report, which forms the basis for the folder:

1. Market assessment
2. Preparatory notes, e.g., minutes from user group meetings
3. Appointment of Evaluation Committee members and signed Certificates
4. Invitation to Tender documents
5. Questions and answers communications
6. All Tenders received in time
7. The Procurement Report Report, from Opening minutes to recommendation for Award, including all evaluations – individual and consolidated – clarifications, meeting minutes, etc.
8. The Evaluation Report
9. The Award decision and the Award Letter
10. Complaints and appeals, including decisions
11. The Contract or Framework Agreement (Requests for Sub-Tenders and Sub-Tenders, and Suborders to be included as they are executed) including Contract or Framework Agreement Amendments, including minutes of meetings with Economic Operators
12. Contract Management Report and performance grading

7.12.6. Framework Agreements

A Framework Agreement is an agreement defining the terms and conditions for subsequent Suborders (SO). The purpose of a Framework Agreement is to make it more efficient and effective to procure standard Goods or Services that are frequently used by one or many Procuring Entities. Efficient, since a complete Public Procurement procedure doesn't have to be done for each need, and effective, since the volume will most likely result in better terms and conditions and there is less need to store Goods.

A Framework Agreement can be concluded with one single Supplier or Service Provider or with more than one, depending on the market conditions. To secure availability, when Goods or Services are needed, an FWA with more than one Supplier or Service Provided may be beneficial, or on dynamic markets, where price varies on a short term, and instant competition may provide the best price.

Framework Agreements and procedures for Sub-ordering differs between a single-supplier and a multi-supplier FWA and are described in 7.7.2.8.

7.13. Contract Management & Closure

Once a Contract of Framework Agreement of MVP or HVP has been signed, the actual execution of the scope begins. Thus, the compliance and performance of Economic Operators against the terms and conditions of the Contract or Framework Agreement must be continuously monitored.

Contract Management is a shared responsibility between a Project Manager, appointed and instructed by the Procuring Entity for each project, and a Contract Manager, appointed for and responsible for each Contract resulting from a Public Procurement. Though 'shared', each has a decisive role during different stages of the process. Briefly described, the Project Manager is responsible for the decisions taken before the Contract enters into force, whereas formal decisions on the Contract execution, such as amendments, are taken by the Contract Manager, however, duly signed by the authority assigned in the Delegation of Authority – Annex I to the Public Procurement Regulations.

No later than at the signature of a MVP or HVP Contract or Framework Agreement, for performance of Services or execution of Works, the Procuring Entity shall appoint a Project Manager and a Contract Manager with functions and responsibilities described under 7.13.1 and 7.13.2. It is recommended to consider the Project Manager and/or the Contract Manager to be included in the preparation of the Specification or TOR and to be appointed to the evaluation committee. This, for them to safeguard that the criteria defined for evaluation reflect the needs and are able to evaluate, as well as for them to recognise the criteria for evaluation and Contract Management.

For Framework Agreements, it may not be necessary to appoint a Project Manager, whereas the Contract Management includes relevant parts of Project Management, if applicable. In the following parts of this 7.13, the word 'Contract' includes 'Framework Agreement'.

The Project Manager and the Contract Manager shall work closely together to monitor and secure the performance under the Contract, manage deviations and keep the Contract updated on modifications agreed between the parties as Contract Amendments.

It should be pointed out that Contract Amendments leading to an increased Contract price does invalidate the outcome of the evaluation. It would raise the question whether the correct Tender was selected, if major increases would be accepted.

Procuring Entities shall ensure that Project Managers and Contract Managers undergo relevant training and capacity building, as well as having proper and suitable management and supporting tools, to ascertain and increase their operational functionality and expertise.

7.13.1. Project Management

The Project Manager shall continuously monitor the compliance and performance of Suppliers, Service Providers, Consultants or Contractors against the terms and conditions of the Contract. Therefore, the Project Manager must develop and implement necessary and sufficient monitoring procedures.

Should the Project Manager be aware of any deviation from or breach of the Contract s/he shall inform the Contract Manager and provide a written recommendation on a Contract Amendment.

The Project Manager shall also monitor the Contract as regards its suitability in relation to other parts of any relevant project, coordinate possible improvements or adjustments with the project manager, or equivalent, of the Economic Operator under the Contract, and inform the Contract Manager with a written recommendation on a Contract Amendment.

The Contract can only be amended with a binding effect on the Procuring Entity by a Contract Amendment signed by the public officer delegated with such authority in the DOA.

The Project Manager shall, in addition, follow the rules and instructions on Project Management separately provided by the Procuring Entity.

7.13.2. Contract Management

Procuring Entities shall appoint a Contract Manager who shall be responsible for all contractual matters of the Contract, including monitoring and evaluation, change management and Contract Amendments and for ensuring that appropriate approvals are obtained in relation to the Contract. All changes to a Contract shall be documented in a written and numbered Contract Amendment.

The Contract Manager is to be listed in the Model Document, Specific Contract Conditions, for each Contract as the contact person for 'notices and requests'.

The Contract Manager shall operate in close cooperation with the Project Manager, if a Project Manager is appointed, and shall ensure that all necessary Contract monitoring and evaluation procedures are in place. Upon a recommendation of the Project Manager for a Contract Amendment, the Contract Manager shall assess the request and, if agreed, the Contract Manager shall prepare a Contract Amendment to be signed in accordance with the Delegation of Authority.

Notwithstanding the cooperation and inputs from the Project Manager, the Contract Manager shall also monitor compliance of the terms and conditions of the Contract, e.g., proactively check deliverables, possible indexes, billing and payment, and other possible variables or risk factors of the Contract.

In case of a breach of the Contract, e.g., a delayed deliverable or lower quality than agreed, this shall be fully reflected in a Contract Amendment, after being resolved and agreed between the parties, including possible remedies.

For longer term Contracts, Economic Operators should be advised during the Contract execution as to how their performance is meeting expectations and Contract conditions. Thus, if necessary, follow-up meetings should be considered at suitable

milestones in the Contract, e.g., in conjunction with deliverables and payment instalments or other logical points. Such meetings could be held in person, for bigger Contracts, which should be indicated in the Invitation to Tender, or with e.g., phone, Skype or WhatsApp.

Upon conclusion of the Contract, the Contract Manager shall, together with the Project Manager and possibly end users, evaluate the performance of Suppliers, Service Providers, Consultants and Contractors and submit a report to the Central Procurement Unit for updating of the information in the Public Procurement Database on Economic Operators with the relative performance scoring and any other relevant information.

7.13.3. Performance evaluation

An important prerequisite for a good outcome of a Contract is to select Economic Operators that has a good performance history and fulfil other quality criteria. Requesting references from similar projects is one means. Monitoring and evaluating the performance in Contracts with the Government of Kiribati is another method to secure that poor performers are not being used again, without proof of remedies for improvements.

However, new Tenderers, not graded, must not be eliminated, whereas for evaluation criteria, where performance grading is providing additional scoring, and in Limited Competitive Procedures, new Tenderers must be allowed. In evaluations, performance grading should not be given too high a score, and for Limited Competitive Procedures, new Tenderers should be invited, see 7.6.3.2.1.

A performance grading, based on a structured evaluation of Contracts, registered in a Public Procurement Database, is implemented with the new legal framework from 2020, as described in the following. The evaluation and grading is done by the Project Manager and Contract Manager, together, upon the closure of the Contract, and submitted to the CPU for registration in the Public Procurement Database, see 7.12.4. The database is available for Procuring Entities, when preparing evaluation criteria and for inviting Tenderers under a Limited Competitive Procedure, and for Evaluation Committees, for evaluation under Standard Procedures (Open Competitive and Prequalification Procedures).

The grading is defined in the following table

Grading	Score	Criteria
Exceptional	5	Exceeds many of the objectives as per the contractual deliverables to the benefit of the Procuring Entity; deliverables completed early or on time; where necessary, any corrective actions taken were effective; deliverables including technical performance exceeded expectations
Very good	4	Meets the objectives as per the contractual deliverables and exceeds some to the benefit of the Procuring Entity; deliverables were completed on time; corrective actions taken were effective; deliverables including technical performance were within expectations
Satisfactory/good	3	Meets the minimum requirements as per the contractual deliverables; most of the deliverables

		were completed on time; corrective actions taken required Procurement Entity input
Acceptable	2	Failed to meet some of the requirements as per the contractual deliverables; the current scope of deliverables partially completed; and deliverables were partially met but full completion unlikely
Unsatisfactory	1	Does not meet most contractual obligations; full completion unlikely; corrective actions were ineffective; the current scope of deliverables incomplete; corrective actions failed to resolve related issues or were not implemented; deliverables were not met
Not evaluated/new	0	Not yet evaluated. Has had no Contract with the Government of Kiribati since the system of Performance Evaluation was introduced.
Blacklisted	-1	Blacklisted by the Government of Kiribati or in accordance with the mandatory exclusion criteria described in 7.4.11.1.

7.13.4. Closure

The Project Manager and the Contract Manger shall determine when the Contract has been fully and satisfactorily executed. A confirmation of the expiration and closure of the Contract shall be sent to the Economic Operator. The confirmation should include a performance assessment summary.

The Contract Manager shall, upon completion of the Contract, collect all information and documentation related to the Contract, and prepare the final Procurement Report, including Market Assessment, the Invitation to Tender, Questions & Answers, the Evaluation Report, possible complaints and appeals handling, the Award Letter, the Contract and a performance evaluation, see 7.13.3. A Public Procurement dossier, titled with the Public Procurement reference number, containing the complete history and procedures shall be created and submitted to the Central Procurement Unit for final registration and archiving.

7.14. Monitoring and Evaluation

It is imperative that the Public Procurement system is monitored, being a complex process involving many actors with different tasks, interests, background, qualifications and competence, to detect potential shortcomings, inefficiencies and improvements.

The Chief Procurement Officer has the overall responsibility for an efficient and effective Public Procurement, providing Value for Money. However, inputs from the Procuring Entities are important, since they experience the application and consequences while executing Public Procurement.

This Manual, for which the CPO is responsible, is the main operating instrument for the Procuring Entities, whereas improvements are predominantly expected by updates of the Manual. However, the CPO can also propose changes to the Public Procurement Act and Regulations, e.g., in the Annual Procurement Report.

Post-procurement audits will also provide inputs to improvements of the legal framework, enhanced training or other actions.

7.14.1. Annual Public Procurement Reports

The Chief Procurement Officer shall prepare an Annual Public Procurement Report after each fiscal year. The report shall provide information and statistics on the Public Procurement including an assessment on how the defined strategic goals have been achieved. The Annual Public Procurement Report shall include at least the following, where possible:

- Period covered
- The strategic goals
- Suggestions for improvements
- An executive summary
- A brief overview of the Public Procurement system in Kiribati
- Statistics:
 - The value of public procurement, if possible, per PE and deviation from APP's
 - The value and number of MVP and HVP respectively
 - The allocation between Goods, Consulting Services, Standard Services and Works
 - The number of Economic Operators awarded contracts
 - The average number of Tenders for MVP and HVP, respectively
 - The number of Single-Source Procurements, including per PE, and which were compliant, and which were irregular and why
 - The number and value of Framework Agreements concluded
 - The number of CCAB and CAC meetings
 - The number of non-approved procurement award requests at CCAB
 - The most common types of non-compliances
 - The number of complaints and appeals, respectively, and the share of corrected awards versus total number of cases
 - The value of international and domestic contracts, respectively, and cooperation's between such actors
 - The level of contracts with sustainable criteria
- Efficiency and activities for improvement
- Effectiveness and activities for improvement
- Trust with stakeholders (survey)
- Domestic growth activities

The Annual Public Procurement Report shall be submitted to the Permanent Secretary of the Ministry responsible for Finance during the first quarter of the year following the year of the Report. The executive summary, or equivalent summary information, shall be published on the Kiribati Public Procurement Web Portal after approval by the Permanent Secretary of the Ministry responsible for Finance.

8. Frequently Asked Questions – FAQ

This section shall be a separate function on the Kiribati Public Procurement Web Portal (to be deleted)

9. Quick index

Key words with links to most relevant content may be developed, if deemed necessary, unless the Index at the beginning is sufficient (which is my current standpoint)

10. Reference literature

- § Public Procurement Act 2019
- § Public Procurement Regulations 2020
- § National Anti-Corruption Strategy 2017
- § Penal Code CAP. 67
- § Environment Act 1999
- § Kiribati Public Service Code of Conduct (KPSCC) Policy
- § ILO Conventions (<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>)

11. List of and links to Model Documents (templates)

The links below are to the Model Documents for use for the selected procedure. For links to the relevant set of Model Documents to use for each procedure, please refer to **I want to do this Public Procurement** under 7.7.2, which links will be connected within the Kiribati Public Procurement Web Portal.

The links below, which are pointing to each individual Model Document, will also be referred to in the Kiribati Public Procurement Web Portal.

11.1. Purchase Orders

The Purchase Orders are used to confirm a Public Procurement agreement of VLVP.

11.1.1. Goods Purchase Order (GPO)

11.1.1.1. GPO, one signs

<http://procurement.gov.ki/>

11.1.1.2. GPO, both sign

<http://procurement.gov.ki/>

11.1.2. Services Purchase Order (SPO)

11.1.2.1. SPO, one signs

<http://procurement.gov.ki/>

11.1.2.2. SPO, both signs

<http://procurement.gov.ki/>

11.2. Invitation letter

11.2.1. RFO

The RFO includes a complete ITT for LVP and a Contract.

11.2.1.1. Goods

<http://procurement.gov.ki/>

<http://procurement.gov.ki/>

11.2.1.2. Services

<http://procurement.gov.ki/>

<http://procurement.gov.ki/>

11.2.1.3. Works

<http://procurement.gov.ki/>

<http://procurement.gov.ki/>

11.2.2. RFQ

11.2.2.1. Standard Goods

<http://procurement.gov.ki/>

11.2.2.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.2.2.2. Standard Services

<http://procurement.gov.ki/>

11.2.2.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.2.3. RFP

11.2.3.1. Specified Goods

<http://procurement.gov.ki/>

11.2.3.2. Consulting Services

<http://procurement.gov.ki/>

11.2.3.3. Works

<http://procurement.gov.ki/>

11.2.4. RFPQ

<http://procurement.gov.ki/>

11.3. Instructions on submission

11.3.1. RFQ

11.3.1.1. Standard Goods

<http://procurement.gov.ki/>

11.3.1.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.3.1.2. Standard Services

<http://procurement.gov.ki/>

11.3.1.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.3.2. RFP

11.3.2.1. Specified Goods

<http://procurement.gov.ki/>

11.3.2.2. Consulting Services

<http://procurement.gov.ki/>

11.3.2.3. Works

<http://procurement.gov.ki/>

11.4. Time schedule

11.4.1. RFQ

11.4.1.1. Standard Goods

<http://procurement.gov.ki/>

11.4.1.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.4.1.2. Standard Services

<http://procurement.gov.ki/>

11.4.1.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.4.2. RFP

11.4.2.1. Specified Goods

<http://procurement.gov.ki/>

11.4.2.2. Consulting Services

<http://procurement.gov.ki/>

11.4.2.3. Works

<http://procurement.gov.ki/>

11.5. Specifications or Terms of Reference

11.5.1. RFQ

11.5.1.1. Standard Goods

<http://procurement.gov.ki/>

11.5.1.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.5.1.2. Standard Services

<http://procurement.gov.ki/>

11.5.1.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.5.2. RFP

11.5.2.1. Specified Goods – Specification

<http://procurement.gov.ki/>

11.5.2.2. Consulting Services – TOR

<http://procurement.gov.ki/>

11.5.2.3. Works – Specification

<http://procurement.gov.ki/>

11.6. Evaluation Criteria and Method

11.6.1. RFQ

11.6.1.1. Standard Goods

<http://procurement.gov.ki/>

11.6.1.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.6.1.2. Standard Services

<http://procurement.gov.ki/>

11.6.1.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.6.2. RFP

11.6.2.1. Specified Goods

<http://procurement.gov.ki/>

11.6.2.2. Consulting Services

<http://procurement.gov.ki/>

11.6.2.3. Works

<http://procurement.gov.ki/>

11.7. Technical Evaluation form

11.7.1. RFP

11.7.1.1. Consulting Services – narrative

<http://procurement.gov.ki/>

11.7.1.2. Consulting Services – allocation

<http://procurement.gov.ki/>

11.8. Financial Evaluation form

11.8.1. RFP

11.8.1.1. Consulting Services

<http://procurement.gov.ki/>

11.9. Specific Contract Conditions

11.9.1. RFO

11.9.1.1. Standard Goods

<http://procurement.gov.ki/>

11.9.1.2. Standard Services

<http://procurement.gov.ki/>

11.9.2. RFQ and RFP

11.9.2.1. Specified Goods

<http://procurement.gov.ki/>

11.9.2.2. Consulting Services

<http://procurement.gov.ki/>

11.9.2.3. Works

<http://procurement.gov.ki/>

11.9.2.4. Framework Agreement

<http://procurement.gov.ki/>

11.10. General Contract Conditions

11.10.1. RFO

Are included in the Specific Contract Conditions, see 11.9.1.

11.10.2. RFQ and RFP

11.10.2.1. Standard Goods

<http://procurement.gov.ki/>

11.10.2.2. Standard Services

<http://procurement.gov.ki/>

1.1.1.1. Specified Services

<http://procurement.gov.ki/>

1.1.1.2. Consulting Services

1.1.1.2.1. Firms

1.1.1.2.1.1. Time-based

<http://procurement.gov.ki/>

1.1.1.2.1.2. Lump-sum

<http://procurement.gov.ki/>

1.1.1.2.2. Individuals

<http://procurement.gov.ki/>

1.1.1.3. Works

<http://procurement.gov.ki/>

1.1.1.4. Framework Agreement

<http://procurement.gov.ki/>

11.11. Certificate of Compliance form

Besides the Certificate of Compliance form, which refers to the UN Supplier Code of Conduct, this Code of Conduct is available as a Model Document, applicable to all the below alternatives.

<http://procurement.gov.ki/>

11.11.1. RFQ

11.11.1.1. Standard Goods

<http://procurement.gov.ki/>

11.11.1.1.1. Framework Agreement

<http://procurement.gov.ki/>

11.11.1.2. Standard Services

<http://procurement.gov.ki/>

11.11.1.2.1. Framework Agreement

<http://procurement.gov.ki/>

11.11.2. RFP

11.11.2.1. Specified Goods

<http://procurement.gov.ki/>

11.11.2.2. Consulting Services

<http://procurement.gov.ki/>

11.11.2.3. Works

<http://procurement.gov.ki/>

11.12. Framework Agreement Sub-Tendering

11.12.1. Goods

11.12.1.1. Request for Sub-Tender

<http://procurement.gov.ki/>

11.12.1.2. Sub-Order

<http://procurement.gov.ki/>

11.12.2. Services

11.12.2.1. Request for Sub-Tender

<http://procurement.gov.ki/>

11.12.2.2. Sub-Order

<http://procurement.gov.ki/>

11.13. Evaluation templates

11.13.1. Declaration of impartiality and confidentiality

<http://procurement.gov.ki/>

11.13.2. Technical Evaluation

11.13.2.1. Individual evaluation

<http://procurement.gov.ki/>

11.13.2.2. Compiled evaluation

<http://procurement.gov.ki/>

11.13.3. Financial evaluation

<http://procurement.gov.ki/>

11.13.4. Value for Money Evaluation

<http://procurement.gov.ki/>

11.13.5. Evaluation Report

<http://procurement.gov.ki/>

11.14. Award templates

11.14.1. Award Letter

<http://procurement.gov.ki/>

11.14.2. Regret Letter

<http://procurement.gov.ki/>

12. Public Procurement process flowchart

The process flowchart for Public Procurement in Kiribati is found here:

<http://procurement.gov.ki/>