

PROCUREMENT STANDARD OPERATING PROCEDURES

- Reference to SBDs in Annex I
- References to the PPA and cross-references within the procedures

These “Procurement standard operating procedures” include a collection of standard forms (Annex I)

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PROCUREMENT PROCEDURES

These Procurement standard operating procedures are set pursuant to Public Procurement Act of the CARICOM Law on Public Procurement, Law **No. 2016/** (PPA).

TITLE I

GENERAL MATTERS AND PRELIMINARIES

Section 1 Purpose

1.1 These procedures are issued on the basis of purposes set out in **Part I of the PPA**, with specific reference to the establishment of procedures and requirements by procuring entities for procurement of goods, services or works of an estimated value above the relevant threshold [**Part II of the PPA**], to facilitate and guide the full integration of a unified and open Caribbean Community single market.

1.2 Within the scope of the PPA, the present procedures shall be followed by procuring entities, any natural or legal person or group of persons, including any temporary association of undertakings (suppliers) as defined in PPA, with regard to Grouping suppliers for joint bidding.

1.3 Subject to exclusions included in the PPA, the present procedures apply to all public procurement activities conducted by procuring entities for the acquisition of goods, services or works.

Section 2 Scope of application

2.1 When conducting procurement activities leading to the award of a public contract for the acquisition of goods, services or works, a procuring entity shall use one of the main procurement methods specified within these procedures.

2.2. These procedures deal with the following procurement methods:

- Open tendering method;
- Restricted tendering method;
- Single source method of procurement.

Section 3

Procurement number

3.1 Any procurement activity shall be codified by the procuring entity with a “Procurement number” for swift identification and for monitoring activities, statistical purposes etc. The Procurement number, hereby established, is composed of:

- (i) Procuring entity identification
- (ii) Identification of the procurement year
- (iii) A serial number of 3 digits, restarting at 1 each procurement year
- (iv) Code for type of procurement
- (v) Code for method used.

3.2 The codes for type of procurement to be used in the Procurement number are the following:

1. Supply of Goods (G)
2. Services (S)
3. Works (W).

Section 4

Publication of the Annual Procurement Plan

4.1 In each fiscal year, every procuring entity that intends to conduct procurement activities in relation to procurement contracts to which PPA applies shall, not later than by the end of January of the given year, submit, by electronic means, its Annual Procurement Plan to the National Contact Point for publication on the Notice Board, using the standard form provided **in Annex I B1** to these procedures.

4.2 [The National Contact Point shall, not more than [] working days from his receipt of a procuring entity’s annual procurement plan submit the annual procurement plan, by electronic means, to the Community Contact Point for publication on the Notice Board.]

Section 5

Content of the Annual Procurement Plan

5.1 An Annual Procurement Plan shall set out the procuring entity’s procurement plans for the year including the types of goods, services or works that the procuring entity shall require.

5.2 Annual Procurement Plan is valid for a period of not more than 12 months from the date on which it was submitted to the Community Contact Point for publication on the Notice Board.

Section 6

Estimating the value of public contracts

6.1. The value of an envisaged public contract shall be estimated prior to the initiation of the procurement procedure. Such estimate shall be reasonable and realistic for the envisaged contract from the point of view of the most efficient, cost-effective, transparent and fair use of public funds and resources.

6.2 These procedures apply to public procurement for which each contract is of an estimated value, net of value-added tax (VAT), which is not less than the thresholds provided for by the PPA.

6.3 Where, in relation to a public procurement, the procuring entity is unable to specify a fixed contract price an estimated contract value shall be used subject to provisions included in the PPA of the estimated value of public procurement.

6.4 In case of contracts made up of a set of homogenous works, goods or services serving a similar purpose and where the combined value is such that only few suppliers would be able to provide them all, the contract may be divided into lots. This method may be used especially with the aim of encouraging the participation of the small and medium business, or for decreasing the procurement costs of the procuring entity. In any case, the division into lots does not imply division of contract value or avoidance from the value thresholds. In such cases the procuring entity shall take into account the total estimated value of all the lots and when the aggregate value of the lots is equal to or exceeds the value of the relevant threshold PPA apply to the awarding of each lot.

6.5 In case of public contracts which are regular in nature or which are intended to be repeated within a given period, the calculation of the estimated contract value shall be based on the foreseen need of the object of such contracts for the fiscal year or another relevant 12 months period.

Section 7

Division of contracts into lots

7.1 In the case procuring entities decide to award a contract in the form of separate lots, they shall indicate, in the procurement notice, whether tenders may be submitted for one, for several or for all of the lots. Procuring entities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the procurement notice or in the invitation to confirm interest. Procuring entities shall indicate in the procurement documents the objective and non - discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

7.2 The procuring entity may provide that, where more than one lot may be awarded to the same tenderer, procuring entity may award contracts combining several or all lots where they have specified in the procurement notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

Section 8

Setting time limits

8.1 Procuring entities shall ensure that all time limits applied to procurement opportunities, considering their complexity, are adequate to allow interested suppliers to prepare and submit tenders and, where appropriate, requests for participation.

8.2 Where using a method other than an open tendering, procuring entities shall provide a reasonable time limit consistent with the requirements of the procurement.

8.3 Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits, shall be fixed so that all suppliers concerned may be aware of all the information needed to produce tenders.

8.5 Procuring entities shall extend the time limits for the receipt of tenders so that all suppliers concerned may be aware of all the information needed to produce tenders in the following cases:

- (a) where, for whatever reason, additional information, although requested by the suppliers in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders;
- (b) where significant changes are made to the procurement documents.

8.6 The length of the extension shall be proportionate to the importance of the information or change. Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, procuring entities shall not be required to extend the time limits.

Section 9 Tender documents

9.1 The procuring entity shall draw up tender documents for each envisaged contract. Tender documents shall be prepared **in accordance with the relevant standard forms to be found in Annex I B4.**

9.2 The tender documents with annexes attached are the procurement documents where all relevant information on the concerned contract are to be found by the interested suppliers, clearly and understandably expressed, so that such suppliers can prepare their tender without further information.

9.3 Any supplier may make a reasonable request regarding information and clarification of standard bidding documents and procurement procedures, also through meeting of suppliers, according with these procedures. A request for information shall be deemed reasonable where information provided in response to the request shall not have the effect of giving a supplier an unfair advantage in relation to other competing suppliers.

9.4. The Procurement officer or the Procurement department is responsible for the preparation of tender documents in accordance with these procedures and PPA provisions. They are fully responsible for preparation of tender documents, qualification and selection criteria, and the award criteria, whereas the technical specifications shall be prepared by structures specialized in the object to be procured, inside the procuring entity in conjunction with the end-user. In case of complex or specific contracts, the procuring entity may appoint outside experts or contractors, in order to assist the unit in drafting the tender documents. In preparing the tender documents, the procuring entity must use the **standard forms of tender documents**. Minutes of any meeting shall be taken during the activity of drafting the abovementioned documents. The original copy shall be signed by all officials involved in the drafting process.

9.5. Procuring entity shall make copies of tender documents, which shall be delivered to any suppliers on their request. The cost of reproducing the tender documents may be covered by the suppliers and collected with the delivery of the tender documents.

Section 10 Mandatory use of standard forms

In conducting procurement procedures procuring entities shall prepare their tender documents by using the relevant standard forms to be found in Annex I B1–B9. “Using the standard forms” here means that tender documents shall contain at least all the information, requirements, specifications and conditions stated in the standard forms as obligatory information, and in general appear clear and understandable for the interested suppliers.

Section 11 Technical specifications

11.1 The procuring entity shall set forth in the procurement notice and/or the tender documents all technical specifications which any tender shall comply with. Such technical specifications shall describe and define, in a non-discriminating manner, the mandatory characteristics of the object of the contract, such as quality, performance, design requirements, dimensions, safety, quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling or its equivalent. The procuring entity shall indicate whether the technical specifications set forth are obligatory or minimum requirements.

11.2 Any reference to brand names, trademarks, labels, etc. should include the phrase “or its equivalent”.

11.3 A technical specification shall, to the extent possible, be stated by reference to the instructions provided in Part II of PPA.

Section 12 Subcontracting

The procuring entity shall ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

Section 13 Qualification requirements and criteria

13.1 A supplier shall not be disqualified, excluded or eliminated from the procurement procedure on basis of any requirement or criterion not specified in the procurement notice and/or the tender documents. Notification to disqualified or eliminated tenderers shall be prepared and dispatched promptly by use of the standard form to be found in Annex I B7.

13.2 The procuring entity may apply qualification requirements and criteria which should be satisfied by suppliers. Qualification requirements and criteria may concern professional suitability, economic or financial standing or technical and professional capability of suppliers.

13.3 Pursuant to regulation of qualification requirements provided by the PPA, where, in relation to a procurement opportunity, a procuring entity requires the supplier to whom the contract is awarded satisfies certain qualification requirements, the procuring entity shall ensure that the qualification requirements are set out in the tender documents; are limited to qualifications that are essential to

ensuring that the supplier possesses the necessary capabilities to perform the procurement contract; are not used to or have the effect of discriminating against suppliers who are not nationals of [*name of Member State*]; and decisions regarding qualifications of a supplier are based only on the qualification requirements that are set out in the bidding documents. Procuring entities shall not include as a qualification requirement a requirement that the procuring entity issued the supplier a previous award of contract; or the supplier has previous work experience in [*name of Member State*]. Where a supplier is rejected based on his qualifications, the procuring entity shall, upon receipt of a request for reasons for its decision from the supplier, promptly inform the supplier of the reasons for its decision.

13.4 Qualification requirements or criteria shall be clearly specified in the procurement notice and the tender documents as well as any and all documents or other information that an interested supplier is required to submit in order to be qualified.

13.5 A tender may be submitted by a group of suppliers, including temporary associations (by means of joint bidding).

13.6 Each supplier of such group must satisfy the legal requirements provided by these procedures. Procuring entities shall clarify in the tender documents how groups of suppliers are to meet the requirements as to economic and financial standing or technical and professional ability, provided that it is justified by objective reasons and it proportionate. Procuring entities shall justify, by objective and proportionate reasons, any conditions for the performance of a contract by groups of suppliers which are different from the conditions imposed on individual suppliers.

13.7 Suppliers are not allowed to present a tender as individual and as a member of a consortium at the same time. The consortium of suppliers shall not be modified after the submission of the tender; otherwise the tender must be refused.

13.8 Procuring entities may require groups of suppliers to assume a specific legal form before or after they have been awarded the contract to the extent that such legal form is necessary for the satisfactory of the contract.

13.9 During the performance of the contract, in case of bankruptcy of the representative of the consortium or other circumstances of interruption of its activity, the procuring entity may continue the contract with another supplier assigned as a representative after the proposal of non-representative members, provided that he has the legal, economical, financial and technical capabilities to perform the contract. Otherwise, the procuring entity may withdraw from the contract. In case these circumstances apply to the non-representative member of the consortium, if the representative of the group does not indicate a substitute, the tasks of the failed supplier may be carried out by the representative alone, or another member of the consortium, provided that they meet the necessary requirements.

Section 14

Grounds for exclusion of tenderers

14.1 Procuring entities are allowed to exclude from participation in a public procurement procedures (exclude) suppliers on grounds of:

- Bankruptcy,
- Submission of false declarations and
- Conviction for criminal offences.

14.2 In all cases, the submitting tenderer shall be required to acknowledge the possibility of criminal and civil sanctions, penalties and damages, if such supplier intentionally or negligently submits any document, declaration or statement containing materially false or misleading information.

Section 15

Professional suitability

In the event tenderers are required by the procuring entity to submit documentary evidence of professional suitability, a tenderer shall submit a copy of certificate, confirmed with the signature of the tenderer, from the competent administrative body responsible for attesting professional suitability or licenses.

Section 16

Economic and financial standing

With regard to economic and financial standing, procuring entities may impose requirements ensuring that suppliers possess the necessary economic and financial capacity to perform the contract. For that purpose, procuring entities may require, in particular, that suppliers have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, procuring entities may require that suppliers 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.

Section 17

Technical and professional capability

If, for any valid reason, a supplier is unable to provide the references requested by the procuring entity, such supplier may be permitted to demonstrate its technical and/or professional capability by any other document that the procuring entity, ensuring competition and reasonable treatment of newly established suppliers, considers appropriate. Alternatively, the procuring entity can ask for lists of reference projects and contact details at the referee and verify the references if appropriate with the contact details.

Section 18

Tender securities

17.1. When the procuring entity requires suppliers or contractors presenting submissions to provide a tender security (**Annex I B4**):

- (a) The requirement shall apply to all suppliers or contractors;
- (b) The bidding documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
- (c) Notwithstanding the provisions of subparagraph (b) of this paragraph, a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in this State if the tender security and the issuer otherwise conform to requirements set out in the solicitation documents, unless the acceptance by the procuring entity of such a tender security would be in violation of a law of this State;

- (d) Prior to presenting a submission, a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security or of a proposed confirmer, if required; the procuring entity shall respond promptly to such a request;
- (e) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy;
- (f) The procuring entity shall specify in the bidding documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to the conduct of the supplier or contractor presenting the submission may relate only to:
- (i) Withdrawal or modification of the submission after the deadline for presenting submissions, or before the deadline if so stipulated in the solicitation documents;
 - (ii) Failure to sign a procurement contract if so required by the solicitation documents; and
 - (iii) Failure to provide a required security for the performance of the contract after the successful submission has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.
- 17.2. The procuring entity shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the security document after the earliest of the following events:
- (a) The expiry of the tender security;
 - (b) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
 - (c) The cancellation of the procurement;
 - (d) The withdrawal of a submission prior to the deadline for presenting submissions, unless the solicitation documents stipulate that no such withdrawal is permitted.

Section 19

Tender form and submission

19.1 Procuring entities shall specify in the tender documents the tender form which shall be filled in and signed by tenderers. Such tender form shall contain the:

- a. Supplier identification,
- b. List of required documents,
- c. Financial proposal,
- d. Technical proposal.

Standard tender forms are attached to the Standard tender documents (**Annex I section B4**).

19.2 A tender including all its annexes shall be submitted to the procuring entity in one original exemplar and the number of copies that the procuring entity has stated clearly in the tender documents. The original tender shall be signed by the tenderer.

19.3 The tenderer shall seal the original tender and each copy in separate envelopes and mark the envelopes clearly as “Original” and “Copy”. On the front of each one of such envelopes shall be added exactly and nothing else than (i) the Procurement number as stated in the tender documents and (ii) the name and address of the tenderer. The envelopes shall then be sealed in an outer envelope marked with Procurement number and warning that the envelope is not opened before such date and time as stated for tender opening.

Section 20

Manner, location and deadlines for submission of the tender

20.1 Procuring entities shall state in the tender documents the manner, location and deadlines for submissions of tenders.

20.2 Where the tender validity period expires then the procuring entity shall if the contract has not yet been signed, give the tenderer the opportunity to renew their tender validity. It is open to each tenderer to decide whether it wishes to renew.

20.3 In relation to each procurement for which a procuring entity accepts submissions, the procuring entity shall set out in the invitation or bidding documents; and post on the Notice Board, the manner, location and deadline for presenting submissions.

20.4 Procuring entities shall express deadlines for presenting submissions as a specific date and time.

20.5 A procuring entity, in determining the deadlines for submissions, shall take into account:

- (a) the complexity of the intended procurement;
- (b) the possibility of publication delays;
- (c) time considerations involved in potential cross-border transport of documentation; and
- (d) the reasonable needs of the procuring entity.

20.6 Where a procuring entity issues a clarification or modification of the bidding documents, it shall, prior to the applicable deadline for presenting submissions, extend the deadline, [if necessary] [by no less than [] days].

20.7 Where, due to circumstances beyond his control, it is not possible for a supplier to present his application or submission within the deadline stipulated, the procuring entity may, in its absolute discretion, prior to the deadline for submission of tenders, extend the relevant deadline.

20.8 Where a procuring entity extends a deadline, the procuring entity shall promptly notify each supplier to which the procuring entity provided the tender documents.

Section 21

Establishment of Tender Evaluation Committees

21.1 A procuring entity shall establish a Tender Evaluation Committee (hereinafter referred to as “committee”) prior to the date specified in the bidding documents for the submission of bids, proposals or quotations, to –

- a) evaluate submitted bids, proposals or quotations;
- b) report the findings of the Committee;
- c) recommend which, if any, of the submitted bids, proposals or quotations the procuring entity is to accept.

21.2 The following principles shall form basis for the establishment and functions of such committee:

- a. The members of the committee shall provide for a declaration of objectivity, impartiality and confidentiality following the form provided in Annex I B5.
- b. All members of the committee are strictly subject to the provisions of confidentiality provided by the PPA with regard to protection of confidential business information.

- c. The Procurement Officer and/or staff members of the Procurement Department cannot serve as a member of the committee. They can assist the work of the Committee, if so required by the later, without having the right to vote or influence any decision.
- d. The procuring entity shall appoint among the members of the committee a chairperson of the committee that shall direct its work and ensure compliance with the provisions of the PPA and these procedures. The minimum number for the composition of the committee shall be (3) three selected from within [or outside of] the procuring entity, and the number shall be always odd.
- e. The procuring entity shall also appoint among the members of the committee a secretary of the committee, who prepares minutes of its meetings and reports of its work, keeps the documentation and performs other tasks as requested by the chairperson of the committee.
- f. The administrative order of the nomination shall clearly set the tasks to be performed by the Committee, which in any case does not restrict the independence in the decision-making process.
- g. The committee shall function from the day of adoption of the decision concerning its establishment until the fulfilment of all tasks given by the procuring entity in writing, or until a decision to terminate the procurement procedure may be taken. In case one or more members are not able to participate in the committee, due to objective factors and circumstances, they shall be substituted on the same way as their nomination.
- h. The committee shall adopt decisions at the meetings by a simple majority vote, voting by open ballot. The voting process shall be recorded in the minutes.
- i. The procuring entity shall have the right to invite, on its own or the committee's initiative, external experts where specific technical or specialized knowledge is required by the object of the procurement and is not otherwise available within the procuring entity. Such experts shall acknowledge in writing that they are strictly subject to the provisions of these procedures with regard to protection of confidential business information and out of conflict of interests.
- j. The committee, at the end of its task, shall provide the procuring entity with a recommendation together with a report on its work and a statement of reasons supporting that recommendation.
- k. The final decision on the award of the contract remains the responsibility of the Procurement Officer. The Procurement Officer may accept the committee's recommendation or reject it. Where the committee's recommendation is rejected, the Procurement Officer shall explain the reasons in writing. Such explanation shall be contained in the record of the procurement activity.

Section 22

Cancellation of Procurement Opportunity

22.1 When a procurement opportunity has been initiated by publication of a procurement notice, it may be terminated only for the following reasons:

- a. A public contract is concluded;
- b. The procurement opportunity is cancelled for one of the following reasons:
 - (i) no tenders are submitted within the specified deadline;
 - (ii) none of the received tenders are responsive;

- (iii) all responsive tenders contain prices which substantially exceed the procuring entity's budget;
 - (iv) the number of the received responsive tenders is less than 3;
- c. The award procedure is cancelled for other demonstrable reasons beyond the procuring entity's reasonable control and not predictable at the time of initiating the procurement procedure.

22.2 When a procurement opportunity is cancelled without the award of a contract, a cancellation notice shall be published by use of the Standard cancellation notice included in **Annex I B6**. Publication shall take place on the Notice Board in the same way as the concerned procurement notice was published. The provisions concerning the cancellation of procurement opportunity provided by the PPA shall apply.

22.3 The procuring entity shall incur no liability towards tenderers, participants or candidates for cancellation of a procurement procedure.

Section 23

Information, clarification and modification of tender documents

23.1 A supplier may make a reasonable request regarding information referred to in the tender documents. A request for information shall be deemed reasonable where information provided in response to the request shall not have the effect of giving a supplier an unfair advantage in relation to other competing suppliers. A procuring entity to which a request for information has been submitted shall, without identifying the source of the request, ensure that the request for information is posted on the Notice Board; and any information issued in response to the request is posted on the Notice Board; and accessible by every supplier to whom bidding documents have been issued.

23.2 A supplier may, within a reasonable time before the deadline for presenting submissions, request clarification of the tender documents from the procuring entity. Where a procuring entity receives a request from a supplier, the procuring entity shall respond to the request within **5 days** so as to enable the procuring entity to present his submission within the deadline stipulated in the bidding documents. Where a procuring entity responds to a request for clarification, the procuring entity shall, without identifying the source of the request, post its response on the Notice Board and communicate its response to all suppliers to whom the procuring entity has provided the tender documents.

23.3 At any time prior to the deadline for submission tenders, the procuring entity may, whether on its own initiative or as result of a request for clarification, modify the tender documents by promptly posting an addendum on the Notice Board. In addition to posting an addendum on the Notice Board, a procuring entity that has modified bidding documents shall communicate the modification to the suppliers to whom it provided the bidding documents. Where, as a result of a clarification or modification issued or posted pursuant to this section, the information posted or issued within **5 days** when the procuring entity first invited the participation of suppliers is rendered materially inaccurate, the procuring entity shall cause the amended information to be issued and posted in the same manner and to the same location as the tender documents; and extend the deadline for the submission of tenders.

23.4 Where a procuring entity convenes a meeting of suppliers and, during the meeting, a supplier requests clarification of the tender documents, the procuring entity, without identifying the source of the request, shall prepare minutes of the meeting containing the requests submitted at the meeting; and the procuring entity's response to the request; and promptly provide the minutes to each supplier to whom the tender documents were provided. A supplier who receives minutes shall take the minutes into account in preparing his tender.

Section 24

Abnormally low tenders

24.1 In case of abnormally low tenders, suppliers may give explanations in particular related to:

- (a) the economics of the manufacturing process, of the services provided or of the construction method;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- (c) the originality of the work, goods or services proposed by the tenderer;
- (d) compliance with obligations relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

24.2 Upon request, the procuring entity shall make available to other procuring entities by means of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed above.

TITLE II

SELECTION OF PROCUREMENT METHODS

Section 25

Use of open tendering method

25.1 Except as otherwise provided for in Part IV of the PPA, the procuring entity shall conduct public procurement by way of the open tendering method.

25.2 The invitation to tender in the open tendering method shall be made by means of a procurement notice, in accordance with the standard form to be found in the **Annex I Section B2** and to be submitted, in prescribed form and manner, to the National Contact Point for publication on the Community Public Procurement Notice Board.

Section 26

Conditions for use of the restricted tender method

Procuring entity may use the restricted tendering method of procurement where:

- a. the subject matter of the procurement, by reason of its highly complex or specialised nature, is available only from a limited number of suppliers;

- b. or the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the subject matter of the procurement;
- c. or given the nature of the procurement, it is in the public interest that the procurement procedure is conducted confidentially.

Section 27

Conditions for use of the single-source method of procurement

27.1 A procuring entity may use the single-source method of procurement only where, in respect of the subject matter of the procurement, a particular supplier is the only available source for the procurement activity; or has exclusive rights to the subject matter, such that there is no reasonable alternative or substitute and the use of any other procurement method would, therefore, not be possible; due to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other method of procurement would be impractical because of the time involved in using those methods;

27.2 The procuring entity may also engage in single-source method of procurement where it has procured from a particular supplier, goods, services or works which are, to the procuring entity satisfaction, effective in meeting the needs of the procuring entity and the procuring entity determined the need for additional goods to be procured from the supplier for reasons of standardisation or compatibility with existing goods, service or works; or the entity has determined that the subject of the procurement is of a highly sensitive or confidential nature; and the use of any other method of procurement is not appropriate for the protection of essential security interests of [name of Member State].

TITLE III

CONDUCT OF THE PROCUREMENT PROCEDURE

Chapter 1

Open tendering method

Section 28

General characteristics of the open tendering method

28.1 In the open tendering method, any interested supplier may submit a tender in response to the invitation to tender.

28.2 Interested suppliers shall submit tenders in the manner, at the place and by the deadline specified in the tender documents. Tenders shall be accompanied with the information for qualification of suppliers that is requested by the procuring entities.

28.3 An interested supplier shall submit a tender that is signed and [in writing] [in paper form] [electronic copy]. A procuring entity shall, upon receipt of a tender, provide the supplier with a receipt as proof of the date and time when the tender was received.

28.4 Where a procuring entity receives a tender after the deadline specified in the bidding documents, the procuring entity shall return the tender, unopened, to the supplier.

28.5 Notwithstanding above, a procuring entity may [accept] [consider] a tender submitted after the deadline specified in the bidding documents where it is satisfied that the supplier's delay was caused by *force majeure*.

28.6 Tenders shall be in effect during the period specified in the tender documents. Prior to the expiry of the period of effectiveness of tenders, a procuring entity may request suppliers to extend the period for a specified period of time.

28.7 Where a procuring entity makes a request for extension of the period of effectiveness in the manner specified above, the supplier may refuse the request without forfeiting its tender security. Where a supplier agrees to extend the period of effectiveness, the supplier shall extend or procure an extension of the period of effectiveness of the tender security it provides or provide a new tender security to cover the extended period of effectiveness of its tender.

28.7 Where a procuring entity makes a request for extension of the period of effectiveness of tender in the manner specified above and the supplier fails to satisfy the requirement, the supplier shall be considered to have refused the request to extend the effectiveness of its tender.

28.8 Unless otherwise provided in the tender documents, a supplier may modify or withdraw its tender prior to the deadline for submitting tenders without forfeiting its tender security. A supplier's modification or withdrawal is effective only if it is received by the procuring entity prior to the deadline for submitting tenders.

Section 29

Publication of a procurement notice

29.1 An open tendering method is initiated by publication of a procurement notice. Such procurement notice shall be prepared in accordance with the standard form attached in Annex I B2.

29.2 In the procurement notice the procuring entity shall specify the time limit for requesting the tender documents by interested suppliers. The procuring entity shall set a time limit for such request which allows interested suppliers a reasonable period of time to prepare and send their request.

Section 30

Delivery of tender documents

30.1 If a procuring entity sets the deadline for request of tender documents on such a date that suppliers may receive the tender documents on or later than the deadline for request for additional or clarifying information, it shall add in the tender documents: "suppliers must be aware, that late request of tender documents may hinder request of additional or clarifying information".

30.2 In the procurement notice if required shall be indicated any fee to be paid by suppliers to cover the expenses for delivery of the tender documents.

30.3 The procuring entity shall establish a "Tender documents request record" and register in this register names of requesting suppliers, date of receipt of requests and date of sending or delivery of the tender documents. Tender documents shall be also published on the procuring entities websites.

Section 31

Time limits for submission of tenders

31.1 The minimum time limit for the receipt of tenders shall be 40 calendar days from the date on which the procurement notice has been published on the Notice Board.

31.2 Where a state of urgency duly substantiated by the procuring entity renders impracticable the time limit laid down above, it may fix a time limit which shall be not less than 15 days from the date on which the procurement notice has been published.

Section 32 Receipt of tenders

32.1 Immediately upon the procuring entity's receipt of envelopes containing the submitted tenders, the procuring entity shall mark the sealed outer envelopes with a serial number as well as date and time of receipt. If a tender is delivered personally, the procuring entity shall issue to the person delivering the tender a receipt of delivery bearing the number, date and time information.

32.2 Information on number, date, time and identity of receiving officer as well as of the bringer of the envelope shall, for the timely received tenders be entered into a "Tender submission record" based on the "Tender documents request record" mentioned in **Section 30.3** of these procedures. A standard form for tender submission record is included in the tender evaluation forms, **Annex I section B5**.

32.3 If necessary where, due to circumstances beyond his control, it is not possible for a tender to present his application or submission within the deadline stipulated, the procuring entity may, in its absolute discretion, prior to the deadline for presenting applications to pre-qualify or for presenting submissions, extend the relevant deadline. Where, a procuring entity extends a deadline, the procuring entity shall promptly notify each tender to which the procuring entity provided the pre-qualification or bidding documents.

32.4 In the event that tenders are submitted to the procuring entity after expiry of the time limit for submission of tenders, receipt of such tenders shall be denied or received envelopes be kept unopened with a view to immediate return to the sender. A "Belatedly tender submission record" shall be established analogous to the "Tender submission record".

32.5 In the event that the procuring entity has received timely less than 3 tenders, it shall decide:

- a. either to cancel the procedure and return the received tenders unopened with the explanation, that less than 3 tenders were received,
- b. or, in case the procuring entity deems it reasonable, to proceed with the received tenders.

In case cancellation of the procedure is decided, a cancellation notice shall immediately be prepared in accordance with the standard form provided in **Annex I B 6** and published on the Notice Board.

Section 33 Tender opening

33.1 The tender evaluation committee established in accordance with these procedures, shall open the timely received tenders at the place and time fixed in the procurement notice and the tender documents, or if applicable, in the document extending the time limit. Tenders shall be opened publicly while every tenderer shall have the right to have a representative present to observe the opening of tenders. The standard form for Tender Opening Record form contained in **Annex I B5** shall be used.

33.2 As each tender is opened, the tender evaluation committee, shall announce to those present:

- (i) the name of the concerned tenderer;
- (ii) the total tender price specified in such tender and
- (iii) any discounts offered in the tender.

Where the selection is based on the price and other award criteria the tender evaluation committee, as well, shall announce that the contract will be awarded on the basis of an evaluation and comparison of the tenders according to all criteria specified in the tender documents, and not necessarily to the lowest-priced tender as announced.

33.3 The name and address of each supplier whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders; communicated, on request, to suppliers that have presented tenders and are not present or represented at the opening of the tenders; and immediately included in the record of the procurement proceedings.

Section 34

Proceedings for examination, evaluation and comparison of tenders

34.1 The procuring entity shall check that tenders comply in administrative terms with the formal requirements of the tender documents. A tender is deemed to comply in administrative terms, if it satisfies all the formal requirements and specifications in the tender documents without substantially departing from or attaching restrictions to them. Such examination of administrative conformity of tenders shall be completed by use of form for Administrative Compliance Grid to be found in **Annex I B5**.

34.2 The procuring entity shall evaluate the eligibility and, if applicable, the qualifications of the tenderers having submitted administratively conform tenders, according to the selection criteria specified in the procurement notice and the tender documents, on basis of the required documentary evidence. Such evaluation of eligibility and qualification of tenderers shall be completed by use of form of the Evaluators Grid to be found in **Annex I B5**.

34.3 Where a procuring entity establishes that the tenderer is eligible and meets the qualification criteria, if applicable, it shall examine the tender to determine whether it is responsive. Tender is responsive if it conforms to all the minimum requirements for responsiveness as set out in the bidding documents. Notwithstanding above, a procuring entity may regard a tender as responsive if it has minor deviations from the requirements set out in the bidding documents if the deviations do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents; or contains errors or oversights that can be corrected without altering the substance of the tender.

34.4 The procuring entity shall evaluate whether tenders comply in technical terms with the description, requirements and specifications of the tender documents. A tender is deemed to comply if it satisfies all the technical requirements and specifications in the tender documents without substantially departing from or attaching restrictions to them.

34.5 A tender which does not comply in administrative or technical terms with the tender documents, shall immediately be rejected and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction. As well, a tenderer that has failed to submit the required documentation demonstrating or affirming that the tenderer is not ineligible, or has failed to submit sufficient evidence, if applicable, that the tenderer meets the minimum qualification requirements, shall immediately be disqualified and may not subsequently make the tender comply.

34.6 The procuring entity may request clarification of any aspect of a tender from the concerned supplier in writing. No change in any material term or aspect of the tender shall be brought forward by such clarification. Without response from the concerned supplier, the procuring entity may reject the tender.

34.7 Tenders not rejected according to this Section shall be considered to be “responsive” tenders. The procuring entity shall evaluate and compare the responsive tenders according to the contract award criteria specified in the procurement notice and the tender documents.

34.8 A procuring entity shall disqualify a tender if the supplier that submitted the tender is not qualified; does not accept the procuring entity’s correction of an arithmetical error; it is not responsive; the supplier offers, gives or agrees to give, directly or indirectly, to a current or former officer or employee of the procuring entity or other governmental authority: a gratuity in any form; an offer of employment; or anything of service or value, so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the procurement proceedings; the supplier has an unfair competitive advantage; or there is a conflict of interest.

34.10 The procedure for examination, evaluation and comparison of tenders shall be completed by the procuring entity within the shortest possible period of time. The evaluation task is solely the responsibility of the tender evaluation committee. The Evaluation Committee evaluates tenders fairly, objectively and solely on the basis of the evaluation criteria and procedures specified in the tender documents. No criterion or proceeding shall be used that has not been set out in accordance with Section. **The standard form for Evaluator’s Grid form contained in Annex I B5 shall be used.**

34.11 Where a tender under evaluation is abnormally lower in price than other tenders submitted, the Committee shall recommend that the procuring entity make the necessary enquiries of the supplier who made the abnormally low tender to satisfy itself that the supplier who submitted the tender is capable of fulfilling the terms of the contract.

34.12 Evaluation minutes shall be prepared, containing deliberations and assessments of the tender examination, evaluation and comparison procedure. A successful tender shall be the tender with the lowest price, where price is the only award criterion or the most advantageous tender ascertained on the basis of the criteria and procedures for evaluating tenders specified in the tender documents.

After determining the final ranking, the committee must prepare a report to the procuring entity.

34.13 The procuring entity may approve or reject the recommendations of the Evaluation Committee. If the procuring entity rejects the recommendations it shall give reasons for its rejection; and direct the Evaluation Committee to re-evaluate the bids, proposals or quotations, as the case may be.

Section 35

Contract award and signing

35.1 The tenderer having offered the best ranked tender according to the contract award criterion or criteria specified in the procurement notice and the tender documents shall be awarded the contract. **Articles [...] of Part V of the PPA shall apply.**

35.2 The procuring entity shall publish on the Notice Board a contract award notice, prepared in accordance with the standard form for Award notice attached in **Annex I B6.**

35.3 Upon receipt of a contract award notice, a supplier who submitted a tender that was unsuccessful may, within five working days of being notified of the contract award, submit a request for the procuring entity to state its reasons for not awarding the contract to that supplier. A procuring entity

that receives a request under and in accordance with previous shall respond to the request not more than ten [calendar] days from the date on which the procuring entity received the request.

35.4 The procuring entity shall upon the expiry of the standstill period; or where there is no standstill period, promptly after identifying the successful bid, dispatch a notice to successful tender who submitted the successful bid (Annex I B7), and the letter to unsuccessful (Annex I B7).

35.5 The final contract shall be prepared and made ready for signing on the basis of the concerned tender documents, including its annexes and the winning tender, without any substantial deviations from the content of such documents. When the pre-conditions to the signing are fulfilled and the final contract is signed by all parties, it enters into force. When a public contract has entered into force, it shall be performed in conformity with its terms and condition.

Section 36 Cancellation of procurement opportunity

36.1 Pursuant to PPA a procuring entity may, for justifiable reasons and at any stage in the procurement process, cancel a procurement opportunity thereby rejecting all tenders without incurring liability.

36.2 If a supplier receives a notice of acceptance of successful bid from a procuring entity and he fails to sign the procurement contract, where required; or fails to provide security for the performance of the contract, where required, the procuring entity may cancel the procurement opportunity or decide to select the next successful bid from among the bids which remain in effect. Where a procuring entity selects the next successful bid the provisions of this Part shall apply *mutatis mutandis*.

36.3 Where a procuring entity cancels a procurement opportunity, the procuring entity shall promptly publish a notice of the cancellation of the procurement on Notice Board prepared in accordance with the standard form attached in Annex I B2; promptly notify the suppliers who submitted tenders; and request a statement of reasons for the cancellation; return any tenders that remain unopened at the time at which the decision to cancel the procurement was made to the suppliers that submitted them; and include in the record of the procurement proceedings the decision to cancel the procurement opportunity and the reasons for the decision.

Section 37 Summary records

37.1. The procuring entities shall establish and maintain a summary record in respect of each procurement procedure. It shall contain at least the information provided in Part V of PPA concerning the record of procurement proceedings and the “Procurement number”, as established by these procedures, timetable, main steps of progress of the procedure, and the outcome of the procedure.

37.2. No later than 30 calendar days after the beginning of each fiscal year, the procuring entity shall compile a consolidated summary yearly report on every public contract, concluded within the previous fiscal year. Such report shall be sent to [] within 5 calendar days upon its written request.

37.3. Any document, notification, decision or other information shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference, except as provided in following subsections.

Chapter 2

Restricted tendering method

Section 38

Two stage restricted tendering method

38.1 If the procuring entity uses the restricted tendering method under the circumstances referred to above in **Section 26 b)** the procuring entity shall invite, by means of a procurement notice prepared according to the standard form to be found in **Annex IB 2** to submit requests to participate, providing information about fulfilment of the qualification and selection requirements and criteria established by the procuring entity.

38.2 Procuring entities may limit the number of suppliers that they will invite to tender, by applying selection criteria, provided the minimum number of qualified candidates is available (short – listing)

38.3 The contracting authorities shall indicate, in the procurement notice or in the tender documents the objective and non-discriminatory criteria or rules they intend to apply for short - listing, the minimum number of suppliers they intend to invite and, where appropriate, the maximum number.

38.4 The minimum number of suppliers to be invited shall be five. In any event the number of suppliers invited shall be sufficient to ensure genuine competition.

38.5 The procuring entities shall invite a number of suppliers at least equal to the minimum number. However, where the number of suppliers meeting the selection criteria is below the minimum number, the procuring entity may continue the procedure by inviting the suppliers with the required capabilities. In the context of the same procedure, the procuring entity shall not include suppliers that did not request to participate, or suppliers that do not have the required capabilities.

38.6 The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice has been published.

Section 39

Receipt and opening of requests to participate

39.1 The provisions of **Section 32** of these procedures apply analogous for receipt of requests to participate in the procedure.

39.2 Timely received requests to participate shall be opened by the procuring entity immediately after the expiration of the deadline for submission of the requests. The procuring entity does not need to arrange a public opening meeting. The opening shall be arranged in such a way that the integrity and fairness of the opening procedure is ensured. The procuring entity shall respect and safeguard confidential business information, if any.

Section 40

Procedure for examination and evaluation of requests to participate

40.1 Sections 34 of these procedures apply analogous for the examination and evaluation of requests to participate in the procedure. Suppliers having passed the analogous tests of Section 34 of these procedures shall be considered qualified and selected to receive an invitation to tender. Form included in Annex I B5 shall be used during the examination and evaluation of requests to participate.

40.2 Notification to candidates who were not qualified and selected shall be made and dispatched promptly by use of the standard form to be found in Annex I B7.

Section 41

Invitation to tender and submission of tenders

41.1 Only those suppliers invited to do so by the procuring entity following its assessment of the information provided may submit a tender.

41.2 The minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.

Section 42

The restricted tendering method with a single stage

42.1 If the procuring entity conducts the restricted tender method in circumstance referred to in Section 26 a) and c) the procuring entity invites proposals from all suppliers from which the subject matter of the procurement is available.

42.2 A procuring entity shall engage in negotiations with the suppliers from which a proposal is solicited, unless the negotiations are not feasible in relation to the particular procurement opportunity.

42.3 The procuring entity shall negotiate with the suppliers to identify and define the means best suited to satisfy the procuring entity's need and ensure that all suppliers are treated equally.

42.4 During the negotiations the procuring entity may discuss all aspects of the procurement with the supplier.

42.4 The procuring entity shall continue the negotiations until it can identify solutions that are capable of meeting its needs.

Section 43

Submission, content and modification of final proposal. Contract signing

43.1 Where a procuring entity has identified solutions that are capable of meeting its needs, the procuring entity shall request suppliers to submit the final proposal that shall contain all of the elements

required for the delivery of the subject matter of the procurement opportunity. The procuring entity may request modification or clarification of a final proposal.

43.2 Section 35 of these procedures applies for contract award and signing, including award notice.

Chapter 3

Single source method of procurement

Section 44

Solicitation of proposal from a single supplier

Where a procuring entity employs the single source procurement procedure in accordance with Title II of these procedures, it shall solicit a proposal.

Section 45

Negotiations

45.1 A procuring entity shall engage in negotiations with the supplier or contractor from which a proposal is solicited, unless the negotiations are not feasible in relation to the particular procurement opportunity.

45.2 The procuring entity shall negotiate with the supplier to identify and define the means best suited to satisfy the procuring entity's need and ensure that all suppliers are treated equally.

45.3 During the negotiations the procuring entity may discuss all aspects of the procurement with the supplier.

45.4 The procuring entity shall continue the negotiations until it can identify solutions that are capable of meeting its needs.

Section 46

Submission, content and modification of final proposal. Contract signing

46.1 Where a procuring entity has identified solutions that are capable of meeting its needs, the procuring entity shall request to submit the final proposal that shall contain all of the elements required for the delivery of the subject matter of the procurement opportunity. The procuring entity may request modification or clarification of a final proposal.

46.2 Section 35 of these procedures applies for contract award and signing, including contract award notice.

ANNEX I

Section B1

Standard form for Annual Procurement Plan

Section B2

Standard forms for Procurement Notices

- 1.a 1. Standard form for Procurement Notice (works) open tendering
- 1.a 2. Standard form for Procurement Notice (works) restricted tendering
- 1.b 1. Standard form for Procurement Notice (services) open tendering
- 1.b 2. Standard form for Procurement Notice (services) restricted tendering
- 1.c 1. Standard form for Procurement Notice (goods) open tendering
- 1.c 2. Standard form for Procurement Notice (goods) restricted tendering
- 1.d Standard form for Procurement Notice (complex procurement)
- 1.e Standard form for Procurement Notice (IT procurement)

Section B3

Standard form of invitation to submit tenders in the restricted tendering method

Section B4

Standard Tender Documents

- 1. Standard form of a Letter to not short-listed candidates
- 2. Instructions to tenderers:
 - 2.a Instructions to tenderers (works)
 - 2.b Instructions to tenderers (services)
 - 2.c Instructions to tenderers (goods)
- 3. Standard Tender submission form
 - 3.a Standard Tender submission form (works)
 - 3.b Standard Tender submission form (services)
 - 3.c Standard Tender submission form (goods)
- 4. Standard Draft contract - special conditions

- 4.a Standard Draft contract - special conditions (works)
- 4.b Standard Draft contract - special conditions (services)
- 4.c Standard Draft contract - special conditions (goods)
- 5. Standard General conditions
 - 5.a Standard General conditions (works)
 - 5.b Standard General conditions (services)
 - 5.c Standard General conditions (goods)
- 6. Tender security form

Section B5

- 1. Standard form for Tender opening report
 - 1.a Standard form for Tender opening report (works)
 - 1.b Standard form for Tender opening report (services)
 - 1.c Standard form for Tender opening report (goods)
- 2. Standard form for Administrative compliance grid
 - 2.a Standard form for Administrative compliance grid (works and services)
 - 2.b Standard form for Administrative compliance grid (services)
 - 2.c Standard form for Administrative compliance grid (goods)
- 3. Standard form for Evaluator's grid
 - 3.a Standard form for Evaluator's grid (works and services)
 - 3.b Standard form for Evaluator's grid (goods)
- 4. Standard form for the Evaluation grid
 - 4.a Standard form for the Evaluation grid (works and services)
 - 4.b Standard form for the Evaluation grid (goods)
- 5. Evaluation Report
 - 5.a Evaluation Report (works)
 - 5.b Evaluation Report (services)
 - 5.c Evaluation Report (goods)
- 6. Declaration of objectivity, impartiality and confidentiality

Section B6

1. Standard form for Contract Award Notices
 - 1.a Standard form for Contract Award Notice (works)
 - 1.b Standard form for Contract Award Notice (services)
 - 1.c Standard form for Contract Award Notice (goods)
2. Standard form for Cancellation Notice

Section B7

Notice and letters

1. Standard form for notice to successful tenderers
 - 1.a Standard form for notice to successful tenderers (goods and works)
 - 1.b Standard form for notice to successful tenderers (services)
2. Standard form for letter to unsuccessful tenderers
 - 2.a Standard form for letter to unsuccessful tenderers (works)
 - 2.b Standard form for letter to unsuccessful tenderers (services)
 - 2.c Standard form for letter to unsuccessful tenderer (goods)

Section B8

1. Performance security form
2. Advance payment guarantee form
 - 2.a Advance payment guarantee form (works)
 - 2.b Advance payment guarantee form (services)
 - 2.c Advance payment guarantee form (goods)

Section B9

Annual reporting form

