



GOVERNMENT OF BERMUDA

Cabinet Office

**Office of Project Management and Procurement**

# Code of Practice for Project Management and Procurement

*2 July, 2018*



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**CODE OF PRACTICE  
FOR  
PROJECT MANAGEMENT AND PROCUREMENT**

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## INTRODUCTION

The Office of Project Management and Procurement (“OPMP”) was established under section 32B of the Public Treasury (Administration and Payments) Act 1969 to-

- (a) provide professional, qualified procurement expertise and advice to Government;
- (b) ensure that there is no bias in the awarding of Government contracts;
- (c) identify and apply performance measures to ensure that Government obtains value for money;
- (d) ensure that best practices are adhered to in the oversight of capital projects; and
- (e) advise on, guide and support the development of, and adherence to, procurement regulations, policy and best practice.

The Director of Project Management and Procurement performs the following functions to achieve the principal purposes of OPMP—

- (a) oversight of all Government procurement, including contracts and all pre-contract negotiations, such as requests for proposals, invitations to tender and the obtaining of quotations and estimates;
- (b) oversight of all capital projects for Government;
- (c) handling of complaints relating to the awarding of Government contracts; and
- (d) such other functions conferred under law or by the Minister responsible for OPMP.

This Code of Practice for Project Management and Procurement outlines how public officers will procure goods or services on behalf of the Government.

## 1 Purpose

- 1.1 This Code of Practice is issued by the Director of Project Management and Procurement under section 32B(4) of the Public Treasury (Administration and Payments) Act 1969 (the “Act”), and should be read with the Bribery Act 2016, the Financial Instructions and other applicable policies, laws and regulations identified in the Appendix.
- 1.2 This Code sets out the requirements and procedures (“Rules”) for the procurement of goods or services for the Government. By following these Rules, public officers will ensure that the Government’s procurement activities achieve the best value for money in the expenditure of public funds while being fair, ethical and transparent.

## 2 Definitions and Interpretation

- 2.1 In this Code, the words and phrases below have the following meanings:

“**Accounting Officer**” means the Permanent Secretary, head of department, or Government employee acting as such, that procures the goods or services.

“**Act**” means the Public Treasury (Administration and Payments) Act 1969.

“**Approved Contractor List**” means a list of approved contractors that can be invited to tender for contracts of specified categories of goods, services or values.

“**Authorised Officer**” means the officer authorised to engage in a procurement under paragraph 4.2.

“**Best Value**” means the optimum combination of whole-life costs, price, quality and benefits to meet the Government’s requirement.

“**Bid/Proposal/Tender**” are interchangeable terms that refer to an offer made by a Bidder in response to an invitation to tender.

“**Bid**” also means the price submitted as part of a Tender. In this Code, the term “bid” is sometimes used instead of “tender”.

“**Bidder**” means a contractor who responds to a request for proposal/tender/quote.

“**Capital Project**” is defined in section 32B(6) of the Act.

“**Capital Expenditure**” is defined as the acquisition, construction or development of any tangible capital asset valued in excess of \$3,000. Capital Expenditure is distinguished from current account expenditure for repair and maintenance. The cost incurred to enhance the service potential of a capital asset is a betterment and therefore would be charged to capital expenditure. The cost incurred in the maintenance of the service potential of a capital asset is a repair (not a betterment) and therefore would be charged to current account expenditure. There are two types of capital expenditures:

- (a) Capital acquisitions include vehicles and heavy equipment, plant machinery and equipment, vessels and boats, furniture and fixtures, office equipment, computer hardware and equipment and computer software; and
- (b) Capital developments include land, buildings and infrastructure.

“**Claim**” is a written statement in which one party to a contract attributes responsibility to the other party for extra expense, loss or damage suffered from the performance of the contract and which includes a request for compensation beyond that agreed upon in the contract.

“**Client Department**” means a Government department which has instructed another Government department to carry out a procurement on their behalf.

**“Code”** means this Code of Practice issued by the Director of Project Management and Procurement under section 32B(4) of the Public Treasury (Administration and Payments) Act 1969.

**“Consultant”** means any individual, local or foreign, self-employed or engaged from a company, who performs Government duties as directed. A consultant may act on behalf of or as an agent for the Government as required.

**“Conflict of Interest”** is an obligation, interest or other condition relating to a person that interferes with or appears to interfere with or otherwise impact the independent exercise of judgement in the Government’s best interest by that person.

**“contract”** means an agreement between the Government and any Person made by executing a formal written agreement or issuance of an official purchase order for the procurement by the Government of goods or services.

**“contractor”** means any Person bidding for a Government contract; and where the Person bidding is a company or partnership, any director, partner, officer, employee or associate acting on behalf of the company or partnership. A contractor may not act on behalf of or as an agent for the Government.

**“Director”** means the Director of Project Management and Procurement.

**“Financial Instructions”** means all instructions issued by the Minister of Finance or by direction of the Minister of Finance under section 3 of the Act.

**“Framework Agreement”** constitutes a non-binding offer by a contractor to supply goods or services to the Government. A binding contract takes effect when the Government purchases the goods or services from the contractor. If a framework agreement is in place, it should be used unless the Authorised Officer in consultation with the Director determines that the best value for money may be achieved by conducting a separate procurement;

**“goods”** means an inherently useful tangible item required by the Government, from time to time, and supplied by a contractor in accordance with a contract.

**“Government”** means the Government of Bermuda and includes a public authority.

**“Government requirement”** means the outputs, outcomes and the scope and nature of goods or services required by the Government from a procurement process.

**“High Risk Procurement”** means the provision of goods or services where the probability of failing to achieve planned outcomes is high.

**“High Value Procurement”** means contracts or orders for goods or services with an estimated value of at least \$100,000.

**“Intermediate Value Procurement”** means contracts or orders with an estimated value of between \$5,000 and \$99,999.

**“Letter of Intent”** means a letter that expresses an intention to enter into an agreement.

**“Low Value Procurement”** means contracts or orders with an estimated value less than \$5,000.

**“non-responsive”** means a Bid/Proposal/Tender that does not conform to all the requirements set out in the Tender Documents. A public officer may regard a Bid/Proposal/Tender as non-responsive if it contains -

- (a) major deviations that materially alter or depart from the characteristics, terms, conditions and other requirements set in the tender documents; or
- (b) errors or oversights that cannot be corrected without materially altering the substance of the Bid/Proposal/Tender.

**“Open Procedure”** means a procedure for inviting tenders without developing a list of selected candidates

from which a final choice is made.

“**OPMP**” means the Office of Project Management and Procurement.

“**Options Appraisal**” is a technique for setting objectives, creating and reviewing options and analysing their relative costs and benefits. An effective options appraisal will assist public officers to answer three questions: (i) Have all relevant factors been taken into account in defining the project? (ii) Should the public officer proceed with the project? (iii) What is the best way to carry out the project? An options appraisal should be used when public officers are planning projects for which there are a number of ways to meet the desired objectives. The broad stages that constitute an options appraisal include: (i) defining the objective; (ii) developing the options; (iii) gathering information; (iv) assessing the costs and benefits of each option; (v) identifying the pros and cons of the options and quantifying them and valuing them wherever possible; considering any risks and sensitivities; and (vi) considering the most appropriate and best use of resources.

“**Person**” includes any individual, sole trader, partnership or company (with limited or unlimited liability) or any duly incorporated trade, professional or commercial body.

“**procurement**” means the provision of any goods or services to the Government otherwise than by a public officer.

“**public authority**” is defined in section 3 of the Interpretation Act 1951.

“**public officer**” includes a person employed by, or acting as an agent for, a public authority.

“**Purchase Order**” is a standard form used by the Government to commit funds for the purchase of goods or services. The Purchase Order contains specific transaction details and may constitute a basic contract between the buyer and seller.

“**responsive**” means a Bid/Proposal/Tender that conforms to all the requirements set out in the Tender Documents. A public officer may regard a Bid/Proposal/Tender as responsive even if it contains -

- (a) minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set in the tender documents; or
- (b) errors or oversights that can be corrected without materially altering the substance of the Bid/Proposal/Tender.

“**Restricted Procedure**” means a procedure in which persons are invited to tender whose names have been included on a list of selected candidates from which a final choice is made.

“**services**” means the time, effort and expertise required by the Government, from time to time, and supplied by a contractor, in accordance with a contract, instead of a tangible product, and includes “**works**” as defined in this section.

“**Solicitation**” refers to the procurement documents issued by the Government during a procurement process, such as an invitation to tender or Tender Documents, a request for proposals, and a request for quotation.

“**specification**” is a precise description of the physical or functional characteristics of goods, services or a combination. A specification enables contractors to compare their goods and services against stated requirements. It also allows public authorities to competitively evaluate responses to solicitations and determine functional equivalency, if appropriate.

“**specified business**” means a Bermudian-owned and owner-operated business enterprise with such characteristics as the Bermuda Economic Development Corporation may determine and -

- (A) gross annual sales of less than one million dollars, or an annual payroll of less than five hundred thousand dollars; or
- (B) a least three of the following attributes: (i) gross annual revenue of between \$1,000,000 and \$5,000,000; (ii) net assets of less than \$2,500,000; (iii) an annual payroll of between \$500,000 and

\$2,500,000; (iv) between a minimum of 11 and a maximum of 50 employees; and (v) been in operation for a minimum of 10 years.

“**Tender**” means a formal offer to supply or purchase goods or materials or provide services at a stated price.

“**Tender Documents**” means the conditions and instructions of the tender, the form of tender, the specifications for goods or services to be acquired, the form of Contract, if included, and any other related documents.

“**Tenderer**” means any person submitting a tender.

“**Total Cost of Ownership**” is an estimate of the total cost of goods or services over the whole of their life. It is a combination of the purchase price plus all of the other costs incurred.

“**Total Value**” is the value of goods or services to be procured during the term of a contract, or by the Government’s financial year.

“**Unsolicited Proposal**” is a written proposal submitted to a public authority for the purpose of obtaining a contract where the proposal is not submitted in response to an informal or formal request.

“**Value for Money**” is the desired result to be achieved for all procurements incorporating **economy, efficiency and effectiveness** (as defined below) in the use of resources.

- (a) “Economy” is the acquisition of the appropriate quality and quantity of financial, human and physical resources at the appropriate times and at the lowest cost.
- (b) “Efficiency” is the use of financial, human and physical resources so that output is maximised for any given set of resource inputs, or input is minimised for any given quantity and quality of output provided.
- (c) “Effectiveness” is the achievement of the objectives or other intended effects of programs, operations or activities.

The best value for money is the lowest Total Cost of Ownership. It involves identifying the initial purchase price and estimating all future costs and returns.

“**works**” means the provision of physical or mental effort or activity which is directed toward the production or accomplishment of something by the contractor, from time to time, in accordance with the specification.

- 2.2 Except as otherwise specifically set out in this Code, the requirement that any document must be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted or stored by electronic means, in legible form, and capable of being used for subsequent reference.

### 3 Application

- 3.1 This Code applies to all public officers concerned with obtaining goods or services for the Government. The Director is authorised under the Act to take steps the Director considers necessary to ensure that this Code is followed by all public officers. Public officers in the Ministry of Public Works are also required to comply with Management Procedure PFA 2000 – Purchase of Goods and Materials and Management Policy and Procedure PFA 2002 – Procurement of Contract Services.
- 3.2 Public officers must adhere to the following principles, which underpin the practice requirements of this Code:
  - (a) Maximizing economy, efficiency and effectiveness in procurement;
  - (b) Fostering and encouraging participation in procurements by contractors;
  - (c) Promoting competition among contractors for the supply of goods and services;

- (d) Providing for fair, equal and equitable treatment of all contractors;
- (e) Promoting the integrity of, and fairness and public confidence in, the procurement process;
- (f) Achieving transparency in the procedures relating to procurement; and
- (g) Employing sustainable procurement practices to achieve value for money by generating efficiency savings and good quality outcomes for the Government, and benefits to society and the economy, whilst minimizing damage to the environment.

The Government aims to: (i) use its purchasing power to promote equality of opportunity with regard to disability, gender and race; (ii) facilitate the establishment of a more level playing field and diverse contractor base by ensuring that specified businesses have access to, and the opportunity to win Government contracts; and (iii) work with local contractors to support the local economy.

### 3.3 This Code does not apply to:

- (a) Employment contracts for permanent posts, interim appointments or relief staff appointments where the policies of the Department of Human Resources must be followed;
- (b) Contracts relating solely to the disposal or acquisition of securities or of an interest in land and property;
- (c) The engagement of legal counsel by the Attorney General or engagement of external counsel to provide specialized services with the approval of the Attorney General;
- (d) The engagement of experts for legal or potential legal proceedings, i.e. expert witnesses;
- (e) Hiring/Rental of premises;
- (f) Hiring of performance artists;
- (g) Medical claims and other benefit payments made under the Government Employees Health Insurance plans;
- (h) The appointment of pension fund asset managers by the Public Funds Investment Committee; and
- (i) Advisors or consultants (political or expert) appointed under section 9 of the Ministerial Code of Conduct.

3.4 The Cabinet is the ultimate decision-making body in Government, and is responsible for setting national policy for public procurement. The Cabinet also approves the award of contracts with values above the prescribed threshold. All Ministers are bound by the collective decisions of the Cabinet and carry joint responsibility for all the Government's policies and decisions. Ministers are responsible for ensuring that the public authorities under their direction and control take the action that is necessary to implement decisions made by the Cabinet.

3.5 Where a mandate of the Cabinet supersedes the requirements of this Code, the responsible Permanent Secretary must inform the Secretary to the Cabinet of the mandate, and consult with the Director.

3.6 Where the Director objects to the proposed course of action of the responsible Minister on grounds of propriety, regularity or value for money relating the proposed expenditure, he must record in writing his objection to the proposal and the reasons that support the objection. If the Minister rejects the advice and decides nonetheless to proceed, the Permanent Secretary must request a written instruction to take the action in question, bring the status of the matter to the attention of the Secretary to the Cabinet, and send the relevant documentation to the Auditor General. A similar procedure will apply with respect to the Parliamentary Standing Committee of the Public Accounts if the Permanent Secretary wants to ensure that the Committee will not hold him personally responsible for the action being taken.

## 4 Compliance, Inspection and Advice

4.1 The Accounting Officer must ensure that all public officers in the public authority comply with this Code and the Bribery Act 2016.

- 4.2 The Accounting Officer may delegate the authority to engage in a procurement to an Authorised Officer. The Accounting Officer will not be relieved of accountability and responsibility by such delegation.
- 4.3 Procurements must be properly authorised and carried out by public officers with the appropriate authority. Public officers may only delegate authority to other public officers who have suitable experience and seniority. The Accounting Officer must inform public officers in writing of the extent of any delegated authority and financial thresholds that apply to each procurement.
- 4.4 Any person who is not a public officer and is required to monitor the performance of a contract on behalf of the Government must comply with the requirements of this Code.
- 4.5 All decisions, documents, quotations, tenders and contracts made, produced, submitted or executed under this Code may be subject to inspection and monitoring by the Financial Secretary or the Accountant General, the Director, the Director of Internal Audit, and the Auditor General.
- 4.6 In the event of any doubt as to the interpretation of this Code, or as to the proper procedure to be followed, advice should be sought from the Director.

## **5 Offences and Penalties**

- 5.1 Applicable offences and penalties are set out in sections 33A and 33B of the Act, and the Bribery Act 2016.

## **6 Waivers of Code of Practice Requirements**

- 6.1 In exceptional circumstances, the Authorised Officer may ask the Director to waive certain requirements of this Code. The Director may consult with the Accountant General or the Financial Secretary before granting any waiver. If the Director is not available, the Permanent Secretary responsible for OPMP may grant the waiver. All requests for a waiver must be made in writing on the prescribed waiver form or in such other manner as prescribed by the Director.
- 6.2 Waivers must not be granted retroactively except in emergency situations as described in paragraph 6.3.
- 6.3 In emergency circumstances, the Permanent Secretary for the relevant Ministry may seek oral permission from the Director or a designee to waive certain requirements of this Code. An emergency exists where there is an immediate risk to the public, public officers or property to an extent where any part of a Government service is or will be disrupted without immediate action being taken. In such cases, where oral permission has been granted, the procedure to obtain a waiver in writing must be followed within five (5) business days after oral permission has been granted. If the Director determines that any requirements of this Code have been waived by an Accounting Officer without adhering to the procedures outlined in paragraphs 6.1, 6.2 and 6.3, then it will be considered a breach of this Code, and a report will be made to the Secretary to the Cabinet who must decide whether disciplinary action or report to another agency may be appropriate.
- 6.4 OPMP must maintain a record of waivers granted under this section and must submit quarterly reports of the record to the Cabinet.

## **PRE-PROCUREMENT PROCEDURES**

### **7 Pre-Procurement Procedures**

- 7.1 The Authorised Officer responsible for procuring goods or services for the Government must identify the need for the procurement and fully assess a range of options for meeting that need before the procurement process begins.
- 7.2 Contracting opportunities must be easily accessible to specified businesses to improve contractor diversity relative to disability, gender and race; to help achieve the best value for money; to benefit from innovative solutions; and to deliver better quality goods or services.

- 7.3 To increase accessibility to the Government’s contracting opportunities, the Authorised Officer should consider whether it is possible to divide contracts or frameworks into lots or categories to achieve value for money. The use of lots or categories can help to ensure that any specific capabilities that are required are delivered by experts in those areas. This technique is not allowable if it is carried out as a mechanism for avoiding procurement Rules.
- 7.4 The Authorised Officer must accept bids from consortia (i.e., a group of contractors that come together to bid for a contract) to give specified businesses access to Intermediate and High Value Procurements. A consortium can be assessed based on the capabilities of each of its participants. The Solicitation documents must clearly state whether the consortium will have to take a particular legal form if awarded the contract.
- 7.5 Unless approval has been granted previously as part of a larger project, or the procurement is covered by an existing Framework Agreement, the Authorised Officer must complete the following actions before engaging in a High Value Procurement:
- (a) Establish a business case, including a risk assessment, an Options Appraisal and assessment of financial resources for the procurement; and decide on the procurement route to be taken (see section 13);
  - (b) Notify OPMP in writing of the Authorised Officer’s intention to engage in the procurement;
  - (c) Consult OPMP to ascertain whether there is a Framework Agreement or Approved Contractor List that must be used;
  - (d) Consider the design of the Solicitation and contractual documentation in consultation with OPMP;
  - (e) Consult as appropriate with end users of the services to be procured;
  - (f) Establish a written specification for the procurement requirement; and
  - (g) Ensure that the Solicitation documents are available in printed and electronic format.

## **8 Estimating Contract Value**

- 8.1 The Authorised Officer must obtain an estimate of the value of the goods or services to be procured before a contract is executed on behalf of the Government. The estimate should include insurance coverage, where applicable, and will determine the appropriate procurement procedure to be followed under this Code.
- 8.2 Estimates of value and methods of valuation must be genuine and not designed to avoid exceeding any threshold in this Code. Estimates must be kept confidential. Public officers must not split particular goods or services by reducing the contract term or dividing the contract into smaller portions in an attempt to avoid the applicability of any section of this Code. Public officers must make the best use of the Government’s purchasing power by aggregating purchases wherever possible.
- 8.3 In this Code, the value of a contract is the expected amount of funds (or something of equal value) that will be received by the contractor, including any sub-contractor that carries out the work or provides the goods or services, over the expected lifetime of the contract.
- 8.4 For “one-off” orders, the estimated value will be the order value.
- 8.5 For recurrent purchases of the same type of goods or services, the estimated value will be based on the Total Value spent within the prior year or over the term of the contract, if applicable.
- 8.6 The Authorised Officer should establish whether the Government requirement can be met through any existing contract, and ensure that the estimated value can be met from the appropriate budget (capital and/or revenue) before undertaking a new procurement or awarding a new contract.

## **9 Use of Specifications**

- 9.1 Every procurement process must specify the Government requirement in a clear, precise manner, using appropriate outcome performance measures. The specification must be fully prepared before the procurement opportunity is advertised.
- 9.2 Specifications should not include requirements that are discriminatory or may distort competition, i.e. include manufacturers' names or model numbers, unless required to repair or replace existing equipment for which no suitable alternatives exist.
- 9.3 The description of products, sources or processes must be objective, functional and generic unless it is essential to refer to a particular trademark or trade name, patent, design or type, origin or manufacturer to meet the Government's requirement and the specification permits the use or provision of an equivalent product, source or process. Where appropriate, a non-discriminatory quality standard should be specified.
- 9.4 Specifications must not tie into certain contractors or favour an approach exclusively offered by a large contractor. Output or outcome-based specifications, which define what is required rather than the detail of how it should be provided should be used wherever feasible, to give all contractors the opportunity to provide innovative solutions.
- 9.5 Specifications (and subsequent contracts) must incorporate any approved contract conditions reflecting legal requirements or the policies of the Government.

## **10 Unsolicited Proposals**

- 10.1 As an exception to the requirement that public officers follow a competitive tendering process to satisfy the Government's requirement for goods or services, the Authorised Officer of the relevant public authority may refer unsolicited proposals to the Director for consideration according to the procedures set forth in this section 10, provided that such proposals do not relate to a project or procurement opportunity for which procurement procedures have been initiated or announced.
- 10.2 Following receipt and preliminary examination of an unsolicited proposal, the Authorised Officer must, in consultation with the Director, promptly inform the proponent whether or not the subject of the proposal is considered to be potentially in the public interest.
- 10.3 If the proposal is considered to be potentially in the public interest, then the Authorised Officer, in consultation with the Director, must invite the proponent to submit as much information on the proposed project or procurement opportunity as is feasible at this stage to allow the Authorised Officer in consultation with the Director to make a proper evaluation of the proponent's background, shareholders or partners (if applicable), qualifications and performance history in the execution of similar projects, and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Director.
- 10.4 In considering an unsolicited proposal, the Authorised Officer must respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. Therefore, the Authorised Officer must not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the Authorised Officer must, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.
- 10.5 Except in the circumstances that warrant the use of the single source procurement procedure, the Authorised Officer must, if he decides to implement the project or take advantage of the procurement opportunity, initiate a competitive procurement procedure if the Authorised Officer considers that:
  - (a) The envisaged output of the project can be achieved without the use of intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and

- (b) The proposed concept or technology is not truly unique or new.
- 10.6 The proponent must be invited to participate in the selection proceedings initiated by the Authorised Officer according to paragraph 10.5 and may be given an incentive or a similar benefit in a manner described in the request for proposals in consideration for the development and submission of the proposal. The Authorised Officer must seek guidance from the Office of Project Management and Procurement on any potential incentives or similar benefits that may be described in the request for proposals and given to the proponent.
- 10.7 If the Authorised Officer, in consultation with the Director, determines that the conditions of paragraph 10.5 (a) and (b) are not met, he will not be required to carry out a competitive procurement procedure. However, the Authorised Officer may still seek to obtain elements of comparison for the unsolicited proposal in accordance with the provisions set out in paragraphs 10.8 to 10.10.
- 10.8 Where the Authorised Officer intends to obtain elements of comparison for the unsolicited proposal, the Authorised Officer must publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit proposals within a reasonable period.
- 10.9 If no proposals in response to an invitation issued according to paragraph 10.8 are received within a reasonable period, the Authorised Officer may engage in negotiations with the original proponent.
- 10.10 If the Authorised Officer receives proposals in response to an invitation issued according to paragraph 10.8, the Authorised Officer must invite the proponents to engage in negotiations. In the event that the Authorised Officer receives a sufficiently large number of proposals, which appear to meet the Government's requirements, the Authorised Officer must request the submission of proposals according to a competitive procurement procedure, subject to any incentive or other benefit that may be given to the person who submitted the unsolicited proposal in accordance with paragraph 10.6.
- 10.11 The Authorised Officer must treat proposals in such a manner as to avoid the disclosure of their content to competing bidders. Any discussions, communications and negotiations between the Authorised Officer and a bidder must be confidential. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations is permitted to disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations without the consent of the other party.

## **THRESHOLD VALUES AND PROCUREMENT METHODS**

### **11 Low Value Procurement**

- 11.1 If a Framework Agreement or Approved Contractor List is in place, then it must be used as an alternative to the Rules set out in this section unless, in relation to a Framework Agreement only, the Authorised Officer in consultation with the Director determines that the best value for money may be achieved by conducting a separate procurement.
- 11.2 An oral or written request for quotation may be used for low dollar value purchases and well defined products and services. A public officer may obtain goods or services with an estimated value of less than \$1,000 on the basis of a single request for quotation made by telephone or in writing without being required to comply with the requirements of section 24 of this Code. The Total Value of the purchase must be considered before the goods and services are procured. The basis of the award is normally to the lowest priced, most responsive bid. Full details must be retained on file, including the contractor's name, contact information and quotation details.
- 11.3 For contracts or orders with an estimated value between \$1,000 and \$4,999, a public officer must obtain at least three (3) quotations by telephone or in writing and will not be required to comply with paragraphs 15.5, 15.6, 15.8 and 16.2 and sections 25-29 of this Code. Full details must be retained on file, including the contractor's name, contact information and quotation details.
- 11.4 A system generated Purchase Order must be issued for all procurements. The Purchase Order must include a

detailed description of the goods or services and the price.

- 11.5 If three (3) quotations are not obtainable despite good faith attempts to acquire them, the Accounting Officer or Authorised Officer must document the efforts made and the results in the procurement file.

## **12 Intermediate Value Procurement**

- 12.1 If a Framework Agreement or Approved Contractor List is in place, then it must be used as an alternative to the Rules set out in this section unless, in relation to a Framework Agreement only, the Authorised Officer in consultation with the Director determines that the best value for money may be achieved by conducting a separate procurement.
- 12.2 Subject to paragraphs 12.5 and 12.6, for contracts or orders with an estimated value of between \$5,000 and \$99,999, a public officer must obtain at least three (3) written quotations and will not be required to comply with paragraphs 15.5, 15.6, 15.8 and 16.2, and sections 25-29 of this Code. Where it is feasible to do so, quotes must be obtained from a specified businesses. All quotations must be retained on the procurement file. When evaluating quotations from foreign contractors, public officers must compare the total landed cost of the goods or services with quotations submitted by local contractors. The landed cost must include the purchase price, exchange, freight, duty and all handling costs.
- 12.3 The Authorised Officer must determine whether the goods or services will be procured using the Open Procedure or the Restricted Procedure, as described in sections 15 and 16, respectively.
- 12.4 Purchase Orders must specify the goods or services to be provided and set out the price and terms of payment.
- 12.5 If three (3) quotations are not obtainable despite good faith attempts to acquire them, the Authorised Officer must document the efforts undertaken and the results in the procurement file.
- 12.6 The Authorised Officer must follow the procedure for obtaining a waiver under section 6 if it is not reasonably practicable to obtain competitive or sufficient competitive quotations as required under paragraph 12.2.

## **13 High Value Procurement**

- 13.1 All contracts for purchase of goods or services that have a Total Value of at least \$100,000 will be subject to a competitive procurement process, unless a waiver of the relevant requirements of this Code has been granted in accordance with section 6. All High Value Procurements must be approved by Cabinet before the contract is executed.
- 13.2 Every High Risk Procurement must be treated as a High Value Procurement regardless of the value of the contract.
- 13.3 A procurement that involves a transfer of staff or assets (e.g. a private/public partnership) must be treated as a High Value Procurement.
- 13.4 The Authorised Officer must determine whether the goods or services will be procured using the Open Procedure or the Restricted Procedure, as described in sections 15 and 16, respectively.
- 13.5 High Value Procurements must be reported to OPMP prior to any advertisement. OPMP must assign a file reference number to each High Value Procurement. This number must be quoted on all documentation relating to the procurement process and the subsequent contract.

## **14 Procurement Methods and Techniques**

14.1 Public officers may conduct procurement by means of:

- (a) Open Procedure;
- (b) Restricted Procedure;
- (c) Request for Quotations;
- (d) Request for Proposals without Negotiation;
- (e) Two-Stage Tendering;
- (f) Request for Proposals with Dialogue;
- (g) Request for Proposals with Consecutive Negotiations;
- (h) Competitive Negotiations; and
- (i) Single-Source Procurement.

14.2 Competitive bids in connection with procurement actions must be invited by distribution of formal invitations to tender or requests for proposals through advertisement and direct solicitation to contractors, except where the Director determines that a departure from this requirement is in the best interest of the Government.

14.3 The Authorised Officer must ensure that the procedure followed is appropriate to the size, risk and complexity of the Government's requirement.

## **15 Open Procedure**

15.1 Except as otherwise provided for in sections 16 to 24 of this Code, a public officer must conduct procurement by means of the Open Procedure.

15.2 Where section 15.4 does not apply, a public officer (i) may use a method of procurement other than the Open Procedure only in accordance with sections 16 to 24 of this Code, (ii) must select the other method of procurement to accommodate the circumstances of the procurement concerned, and (iii) must seek to maximise competition to the extent practicable.

15.3 If a public officer uses a method of procurement other than the Open Procedure, then it must record a statement of the reasons and circumstances upon which it relied to justify the use of that method.

15.4 The Open Procedure must be followed where:

- (a) It is known or believed that only a limited number of potential contractors in Bermuda are likely to respond, or
- (b) There is no current Approved Contractor List or Framework Agreement in place, or
- (c) The Government is procuring the goods or services for the first time.

15.5 The Government must advertise the procurement opportunity using the designated medium informing potential contractors of the procurement route being followed. This requirement does not apply to a Low Value Procurement. The procurement opportunity may also be advertised outside of Bermuda.

15.6 The advertisement must contain details of the procurement requirements and specify a time limit within which interested parties may submit a tender.

- 15.7 A minimum of three (3) contractors must be invited to tender. All unsuccessful contractors must be informed of their elimination from the process.
- 15.8 The responses to the solicitation submitted by potential contractors will be evaluated in accordance with section 28.
- 15.9 If a local advertisement fails to attract any potential contractors, or there is a single response to the solicitation which does not represent Value for Money for the Government, public officers may advertise the opportunity outside of Bermuda.
- 15.10 Public officers must not enter into negotiations with a contractor with respect to a tender presented by the contractor under the Open Procedure.

## **16 Restricted Procedure**

- 16.1 The Restricted Procedure will only be used under the following circumstances:
  - (a) It is known, and recorded, that a high number of potential contractors in Bermuda are likely to respond which would make the Open Procedure impractical to administer, or
  - (b) It is possible to select potential contractors for inclusion on a shortlist, using the pre-qualification criteria set out in section 17, without prejudicing or disadvantaging other potential contractors, or loss of transparency of process, or
  - (c) The procurement is being conducted to facilitate development of a Framework Agreement or an Approved Contractor List.
- 16.2 The Government must advertise the opportunity using the designated medium informing potential contractors of the procurement route being followed. The advertisement must include the pre-qualification criteria to be used to select contractors for inclusion on a shortlist (see section 17) and a timetable for completion of the procurement process.
- 16.3 A minimum of three (3) contractors must be invited to tender. All unsuccessful contractors must be informed of their elimination from the process.
- 16.4 If less than three (3) contractors meet the pre-qualification criteria, then, a lesser number of contractors can be invited to tender with the approval of the Authorised Officer, provided that Value for Money can still be obtained through that tendering exercise and the Approved Contractor List has been updated according to paragraph 34.2. The Authorised Officer should seek the advice of the Director in these circumstances.
- 16.5 Public officers must not enter into negotiations with a contractor with respect to a tender presented by the contractor under the Restricted Procedure.

## **17 Pre-Qualification Procedure**

- 17.1 The pre-qualification procedure may be used to identify contractors that are qualified to supply goods or services to the Government before solicitation of bids. The Authorised Officer must evaluate the qualifications of contractors with objective criteria set out in the pre-qualification documents. Criteria should be proportionate to the requirements of the procurement. A public officer may, in consultation with the Director, provide special instructions or advice to specified businesses that may be eligible to submit a bid. The simplified pre-qualification questionnaire must be used for an Intermediate Value Procurement. The evaluation criteria must be weighted and fall under the following three (3) headings:
  - (a) Eligibility;
  - (b) Financial standing; and
  - (c) Technical capacity.

Eligibility should include economic, social and environmental criteria, e.g. the percentage of Bermudian ownership; and the number of young Bermudians employed as trainees.

- 17.2 Public officers must evaluate the eligibility of contractors by reviewing required licenses, certifications and other authorisation documents, and assessing the contractor's ability to meet other threshold requirements to qualify to supply goods or services to the Government. Contractors must be financially sound and capable of delivering the Government's requirement. This does not necessarily mean that the largest contractors with the most extensive track record should be awarded the contract. The public officer may, in consultation with the Director, consider whether specified businesses may be invited to submit a bid on a portion or aspect of the solicitation for goods or services and may conduct special instruction sessions for specified businesses.
- 17.3 The evaluation of an overseas contractor's financial standing must include a review of the contractor's bank references. Public officers must use the form prescribed by OPMP to request that the Office of the Tax Commissioner, the Department of Social Insurance, and the Accountant General's Department perform financial checks to determine if any local contractor has any outstanding debt with the Government. Public officers must not enter into a contract on behalf of the Government with a contractor when the contractor owes money to the Government unless the contractor executes an agreement to participate in a repayment plan.
- 17.4 Public officers must evaluate a contractor's technical capacity by assessing the contractor's ability to meet the requirements of the specifications, including the use of quality management systems, human resources, health and safety and environmental management systems where relevant and appropriate to the performance of the contract.
- 17.5 The Authorised Officer must disqualify a contractor if he finds that the information submitted concerning the qualifications of the contractor was false, a misrepresentation, materially inaccurate or incomplete.
- 17.6 The Authorised Officer may require a contractor that was pre-qualified to demonstrate its qualifications again with the same criteria used to pre-qualify the contractor. Any contractor that fails to demonstrate its qualifications must be disqualified.

## **18 Request for Quotations**

- 18.1 A public officer may engage in a Low or Intermediate Value Procurement by means of a request for quotations for the procurement of readily available goods or services that are not specifically produced or provided to the particular description of the public authority and for which there is an established market.
- 18.2 Where a public officer engages in procurement by means of a request for quotations under paragraph 18.1, he must request quotations from as many contractors as practicable, but from at least three (3). Each contractor from which a quotation is requested must be informed whether any elements other than the charges for the subject matter of the procurement itself are to be included in the price.
- 18.3 Each contractor is permitted to give only one price quotation and is not permitted to change its quotation. The public officer must not enter into negotiations with any contractor with respect to a quotation presented by the contractor in response to a request for quotations.
- 18.4 The successful quotation must be the lowest-priced, most responsive quotation that represents the best value for money and meets the needs of the public authority as set out in the request for quotations. The lowest price must be accepted or reasons for not accepting the lowest price must be documented.

## **19 Request for Proposals without Negotiation**

- 19.1 A request for proposals is used when the Bidder selection is based on best value rather than price alone. Public officers invite contractors to propose a solution to a problem, requirement or objective, and the selection of the contractor is based on the effectiveness of the proposed solution.
- 19.2 Bids must be evaluated and the successful contractor must be selected according to specific criteria and procedures as set out in the request for proposals.

- 19.3 A request for proposals may be used to solicit bids through public advertisement, through direct invitation of selected contractors by means of an Approved Contractor List, or by invitation of one source only if conditions for a non-competitive process have been met.
- 19.4 A request for proposals must include instructions to contractors to present simultaneously to the public authority proposals in two envelopes: one envelope containing the technical, quality and performance characteristics of the proposal, and the other envelope containing the financial aspects of the proposal.
- 19.5 If contractors are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be presented.
- 19.6 Before opening the envelopes containing the financial aspects of the proposals, the members of the evaluation panel must examine and evaluate the technical, quality and performance characteristics of proposals according to the criteria and procedures specified in the request for proposals.
- 19.7 The proposals whose technical, quality and performance characteristics fail to meet the relevant minimum requirements must be considered to be non-responsive and must be rejected on that ground. A notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, must promptly be dispatched to each respective contractor whose proposal was rejected.
- 19.8 The proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements must be considered to be responsive.
- 19.9 The members of the evaluation panel must compare the financial aspects of the responsive proposals and on that basis identify the successful proposal in accordance with the criteria and the procedure set out in the request for proposals. The successful proposal must be the most responsive proposal with the best combined evaluation in terms of:
  - (a) the criteria other than price (such as the percentage of Bermudian ownership) that are specified in the request for proposals; and
  - (b) the price.

## **20 Two-Stage Tendering**

- 20.1 In the first stage of two-stage tendering proceedings, the solicitation documents must call upon contractors to present initial tenders containing their proposals without a tender price. The solicitation documents may solicit proposals relating to the technical, quality or performance characteristics of the subject matter of the procurement, as well as to contractual terms and conditions of supply and, where relevant, the professional and technical competence and qualifications of the contractors.
- 20.2 In the first stage, public officers may engage in discussions with contractors whose initial tenders have not been rejected concerning any aspect of their initial tenders. When public officers engage in discussions with any contractor, they must extend an equal opportunity to participate in discussions to all contractors.
- 20.3 In the second stage of the proceedings, public officers must invite all contractors whose initial tenders were not rejected in the first stage to present final tenders with prices in response to a revised set of terms and conditions of the procurement.
- 20.4 In revising the relevant terms and conditions of the procurement, the public officers may not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by:
  - (a) Deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of this Code; or
  - (b) Deleting or modifying any criterion for examining or evaluating tenders initially provided and adding any new criterion that conforms to the requirements of this Code, only to the extent that the deletion, modification or addition is required as a result of changes made in the technical, quality or performance

characteristics of the subject matter of the procurement.

- 20.5 Any deletion, modification or addition made under paragraph 20.4 must be communicated to contractors in the invitation to present final tenders.
- 20.6 A contractor not wishing to present a final tender may by written notice withdraw from the tendering proceedings without forfeiting any tender security that the contractor may have been required to provide.
- 20.7 The final tenders must be evaluated in order to ascertain the successful tender.

## **21 Request for Proposals with Dialogue**

- 21.1 Public officers may engage in procurement by means of request for proposals with dialogue where:
  - (a) It is not feasible for public officers to formulate a detailed description of the subject matter of the procurement that they will use in the examination of submissions, including the minimum requirements that submissions must meet in order to be considered responsive, and the public officers assess that dialogue with contractors is needed to obtain the most satisfactory solution to the public authority's procurement needs;
  - (b) The public authority seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
  - (c) The Authorised Officer determines that the selected method is the most appropriate method of procurement for the protection of essential security interests of Bermuda; or
  - (d) Open tendering was engaged in but no tenders were presented or the procurement was cancelled by the Authorised Officer and where, in the judgment of the Authorised Officer, engaging in new open procedure, restricted procedure, request for quotations or request for proposals without negotiation would be unlikely to result in a procurement contract.
- 21.2 Public officers may engage in pre-selection to limit the number of contractors from which to request proposals. The minimum number of contractors must not be lower than three (3).
- 21.3 Public officers must examine all responses to a request for proposals and reject each proposal that fails to meet the established minimum requirements on the ground that it is non-responsive.
- 21.4 Where a maximum limit on the number of contractors that can be invited to participate in the dialogue has been established and the number of responsive proposals exceeds that limit, public officers must select the maximum number of responsive proposals according to the criteria and procedure specified in the request for proposals.
- 21.5 Public officers must invite each contractor that presented a responsive proposal, within the applicable maximum, to participate in the dialogue. The public officers must ensure that the number of contractors invited to participate in the dialogue, which must be at least three (3), is sufficient to ensure effective competition.
- 21.6 The dialogue must be conducted by the same representatives of the public authority on a concurrent basis. A written record of the dialogue must be kept by the representatives.
- 21.7 During the course of the dialogue, public officers must not modify the subject matter of the procurement, any qualification or evaluation criterion, any minimum requirements, any element of the description of the subject matter of the procurement or any term or condition of the procurement contract that is not subject to the dialogue as specified in the request for proposals.
- 21.8 Any requirements, guidelines, documents, clarifications or other information generated during the dialogue that is communicated by public officers to a contractor must be communicated at the same time and on an equal basis to all other participating contractors, unless the information is specific or exclusive to that

contractor or the communication would be in breach of confidentiality requirements.

- 21.9 Following the dialogue, the public officer must request all contractors remaining in the proceedings to present a best and final offer with respect to all aspects of their proposals. The request must be in writing and must specify the manner, place and deadline for presenting best and final offers.
- 21.10 Public officers must not enter into negotiations with any contractor with respect to their best and final offers.
- 21.11 The successful offer must be the offer that best meets the needs of the public authority as determined according to the criteria and procedure for evaluating the proposals set out in the request for proposals.

## **22 Request for Proposals with Consecutive Negotiations**

- 22.1 A public officer may engage in procurement by means of request for proposals with consecutive negotiations where: (i) the public officer needs to consider the financial aspects of proposals separately; (ii) only after completion of examination and evaluation of the technical, quality and performance characteristics of the proposals; and (iii) he assesses that consecutive negotiations with contractors are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the public authority.
- 22.2 Responses to a request for proposals may result in negotiations before contract award when the request for proposals states that negotiations may take place between public officers and the contractors.
- 22.3 When two or more responsive bids are received in response to a competitive bid solicitation and if no responsive bid represents fair value, public officers should examine the solicitation to determine possible causes. Subsequently, the public officers may consider negotiating with all responsive Bidders or cancelling and reissuing the bid solicitation.
- 22.4 When negotiating with more than one Bidder care must be taken to ensure that all are treated fairly and impartially. The negotiations must not become an auction of the contract. The confidentiality of each Bidder's submission must be assured.
- 22.5 Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements must be considered to be responsive. The public officers must rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals and must:
  - (a) Invite the contractor that has attained the best ranking, in accordance with those criteria and procedure, to negotiate the financial aspects of its proposal; and
  - (b) Inform other contractors that presented responsive proposals that their proposals may be considered for negotiation if negotiations with the contractor (or contractors) with a better ranking do not result in a procurement contract.
- 22.6 If it becomes apparent to the public officers that negotiations with the contractor that has attained the best ranking will not result in a procurement contract, the public officers must inform that contractor that they are terminating the negotiations.
- 22.7 The public officers must then invite for negotiations the contractor that attained the second-best ranking. If the negotiations with that contractor do not result in a procurement contract, the public officers must invite the other contractors still participating in the procurement proceedings for negotiations on the basis of their ranking until they arrive at a procurement contract or reject all remaining proposals.
- 22.8 During the course of the negotiations, public officers must not modify the subject matter of the procurement, which includes any qualification, examination or evaluation criterion, including any established minimum requirements; any element of the description of the subject matter of the procurement; or term or condition of the procurement contract other than financial aspects of proposals that are subject to the negotiations as specified in the request for proposals.
- 22.9 Public officers may not reopen negotiations with any contractor with which they have terminated negotiations.

## **23 Competitive Negotiations (Direct Contracting)**

- 23.1 Public officers may engage in competitive negotiations in the following circumstances where the Director determines that:
- (a) There is an urgent need for the subject matter of the procurement, and engaging in open-tendering proceedings or any other competitive method of procurement, because of the time involved in using those methods, would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the public officers nor the result of dilatory conduct on their part;
  - (b) Owing to a catastrophic event, there is an urgent need for the subject matter of the procurement, making it impractical to use open-tendering proceedings or any other competitive method of procurement because of the time involved in using those methods; or
  - (c) The use of any other competitive method of procurement is not appropriate for the protection of essential security interests of Bermuda.
- 23.2 Where public officers engage in procurement by means of competitive negotiations, they must engage in negotiations with a sufficient number of contractors to ensure effective competition.
- 23.3 Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that is communicated by public officers to a contractor before or during the negotiations must be communicated at the same time and on an equal basis to all other contractors engaging in negotiations with the public officers relative to the procurement, unless the information is specific or exclusive to that contractor or the communication would be in breach of confidentiality requirements.
- 23.4 Following completion of negotiations, public officers must request all contractors remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals.
- 23.5 Public officers and contractors must not enter into negotiations with respect to their best and final offers. The successful offer must be the offer that best meets the needs of the public authority.

## **24 Single-Source Procurement (Non-Competitive Procurement)**

- 24.1 Where public officers seek to engage in single-source procurement, they must obtain the prior written approval of the Director. All requests to engage in a single-source procurement must be made in writing on the prescribed form or in such other manner as prescribed by the Director. The Director may consult with the Accountant General or the Financial Secretary before granting any approval.
- 24.2 Approval to engage in a single-source procurement must not be granted retroactively.
- 24.3 Where public officers engage in single-source procurement, they must solicit a proposal or price quotation from a single contractor. The public officers must engage in negotiations with the contractor from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.
- 24.4 Public officers may engage in single-source procurement in the following exceptional circumstances where the Director determines that:
- (a) The subject matter of the procurement is available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;
  - (b) Owing 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;

- (c) Public officers have procured goods, equipment, technology or services from a contractor, and that additional supplies must be procured from that contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the public authority, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question; or
- (d) The use of any other method of procurement is not appropriate for the protection of essential security interests of Bermuda.

## SOLICITATION DOCUMENTS

### 25 Solicitation Documents

- 25.1 Public officers must use Solicitation documents and forms prescribed by OPMP. The Solicitation documents must include details of the Government's requirements including, as applicable and appropriate:
  - (a) A description of the goods or services being procured;
  - (b) The procurement timetable, return date and time which must allow a reasonable period for the contractors to prepare their tenders;
  - (c) Specifications and instructions on whether any variants are permissible;
  - (d) A copy of the draft contract, and instructions for the contractors on how to highlight any clauses they do not accept;
  - (e) The evaluation criteria and weightings;
  - (f) Pricing mechanism and instructions for completion;
  - (g) Form and content of method statements to be provided;
  - (h) Rules for submitting tenders or other required documents including all required information;
  - (i) The Certificate of Confirmation of Non-Collusion;
  - (j) The Conflict of Interest Declaration; and
  - (k) Any further information which will inform or assist tenderers in preparing tenders.
- 25.2 During the Solicitation period, public officers must not communicate with the recipients of the Solicitation documents regarding the contents of the Solicitation documents or the offers, except through the methods of handling queries described in paragraph 25.3.
- 25.3 Queries from contractors must be handled by written correspondence or by a pre-tender conference. Any contractor that requires clarifications to the Solicitation documents must submit their queries in writing. Public officers must prepare and distribute written replies to the queries, and make all replies known, together with the text of the queries, to all contractors, without disclosing the source of the queries.
- 25.4 For technical or complex procurements, a pre-tender conference between public officers and the contractors may be held in addition to, or instead of, issuance of written clarifications. The conference may be in the form of a meeting, a site survey or an inspection. The following guidelines apply when a pre-tender conference is being conducted:
  - (a) The Solicitation documents must inform bidders if participation in the pre-tender conference is mandatory.

- (b) A time for the conference must be set, allowing sufficient time for all bidders to plan to attend the conference.
  - (c) Minutes must be recorded for the conference and distributed to the bidders.
  - (d) If the clarifications given in the meeting alter the requirements, public officers must consider extending the deadline for submission.
- 25.5 Solicitation documents must contain a provision reserving the Government's right to cancel the procurement at any time prior to execution of a contract without obligation to any Bidder.

## **RECEIPT, OPENING AND ACCEPTANCE OF SUBMISSIONS**

### **26 Receipt and Opening of Submissions**

- 26.1 All responses to Solicitations, regardless of value, must be opened in a secure environment, in the presence of only those public officers identified in paragraphs 26.5 and 26.6. Unless otherwise specified in the solicitation documents, no Bidder is permitted to view the opening of tenders. Each Bidder must be notified as to whether their submission was successful when the tender evaluation is complete and a contract has been negotiated. Tender submissions are only acceptable in electronic format where a robust system approved by OPMP is in place to ensure that the responses remain secure until the closing date and time has passed and cannot be opened in advance.
- 26.2 The contents of the tender submissions must be kept strictly confidential and must only be disclosed to the members of the evaluation panel until a decision is reached to award the contract to a particular contractor. Authorised Officers must immediately inform the Director if they are subjected to undue pressure to disclose the contents of submissions before the contract has been awarded. The Director will determine an appropriate course of action, which may include excluding a contractor from the procurement process, reporting the matter to the Department of Internal Audit, the Accountant General or the Secretary to the Cabinet, and for serious breaches, to the Auditor General.
- 26.3 Unless submitted electronically, all responses for procurements with a value of at least \$1,000,000 must be addressed to the appropriate Accounting Officer. All responses, other than those submitted electronically, must be enclosed in a sealed plain envelope endorsed with the word "Tender" followed by the tender reference number to which it relates and the date and time of the tender closing. Public officers must inform contractors that to the extent practicable tender responses must not bear any name or mark indicating the Bidder's identity.
- 26.4 Tenders must be kept in a locked, safe place and remain unopened until the time and date specified for their opening. Public officers must not accept or consider tenders received after the specified date and time for receipt of tenders under any circumstances.
- 26.5 Tenders for procurements with an estimated value between \$100,000 and \$999,999 must be opened by the Authorised Officer and at least one other public officer. All tenders must be recorded on the tender opening form and retained on the project file as provided in section 42.
- 26.6 Tenders for procurements with an estimated value of at least \$1,000,000 must be opened by the Director or a designee, the Authorised Officer and at least one other public officer nominated by the Director or Accounting Officer. Tenders must be recorded on the tender opening form and retained on the project file as provided in section 42.
- 26.7 Each Accounting Officer or a designee must set up a secure system for receipt and opening of tender submissions.

## **27 Modifications to Tenders**

- 27.1 Public officers must not accept requests by any contractor to modify or make corrections to a tender unless it is received by the public officers in writing prior to the deadline specified for submission of tenders. The original tender thus modified or corrected would then be considered as the official tender.
- 27.2 If arithmetical errors or other similar discrepancies are found in an otherwise successful tender, the contractor must be informed of the errors. A tender price submitted as a lump sum bid without any breakout of costs must not be altered.

## **28 Evaluation**

- 28.1 Procedures for the evaluation and scoring of tender submissions are set out in this section. A written evaluation must be recorded on an evaluation matrix which includes objective criteria that are relevant to the procurement and divided among the following sections when the value of a contract is at least \$50,000 or a request for proposal is issued:
- (a) Experience and Technical Capacity;
  - (b) Financial Assessment; and
  - (c) Social, Economic and Environmental.

The Cabinet may from time to time approve amendments to the criteria specified in the Government's standard evaluation matrix.

- 28.2 The evaluation criteria must be included in the tender documentation. The evaluation approach, criteria and methodology must reflect the overall objectives of the procurement, so that they do not discriminate against specified businesses.
- 28.3 The Authorised Officer must approve the sub-criteria used for evaluating each Bidder's experience and technical capacity. The criteria must be strictly observed (and remain unchanged) during the contract award process.
- 28.4 The Authorised Officer must form and preside over an evaluation panel of no less than three (3) members for procurements with an estimated value of \$50,000 to \$999,999. One of the members must be a comptroller or other financial officer.
- 28.5 The Authorised Officer must form and preside over an evaluation panel for procurements with an estimated value of at least \$1,000,000. The evaluation panel must consist of no less than four (4) members and include the Permanent Secretary responsible for the public authority or a designee and the Ministry Comptroller (or other financial officer).
- 28.6 Each panel member must evaluate the tender responses. The Chairperson of the evaluation panel must collate the scores of each member of the panel. A moderation meeting must be held to address any major discrepancies in scoring. Changes made to any scores based on the moderation meeting must be recorded and include the reason for the change. Once all scores have been finalized, the evaluation panel must prepare an evaluation report which includes a final evaluation sheet and reflects the compiled scores. The evaluation report must be used as the basis for the recommendation made to Cabinet to award a contract to a particular contractor, and must be attached to the memorandum submitted to Cabinet for approval of a contract award recommendation.

## **29 Awarding Contracts**

- 29.1 Every contract and procurement action the Government enters into must comply with:
- (a) All applicable laws and regulations;

- (b) All applicable Government rules, policies and procedures including, but not limited to this Code, the Conditions of Employment and Code of Conduct and the Financial Instructions; and
- (c) The Government's strategic objectives and policies including any applicable procurement strategies such as the adoption of sustainable procurement requirements.

- 29.2 Public officers must use objective criteria set out in the tender documents to make an award recommendation. The Government must only award a contract to a Bidder if the tender represents Best Value. Award criteria must be relevant and proportionate to the requirements of the procurement. The criteria must not be discriminatory and must be designed to enable bids to be evaluated for best value for money reflecting the requirements and specification.
- 29.3 The Accounting Officer must make a contract award recommendation to Cabinet for a procurement with a value of at least \$100,000 on receipt of a report from the Authorised Officer or an evaluation panel.
- 29.4 The contract award recommendation must include an evaluation report and accompany the memorandum that is submitted to Cabinet for approval.
- 29.5 A contractor that has submitted a bid in response to a Solicitation must not solicit Cabinet or any appointed or elected official to influence the awarding of a contract.
- 29.6 Contract awards of at least \$100,000 must be reported to OPMP for publication using the designated medium.
- 29.7 If the contractor whose submission has been accepted fails to sign any written contract, the Authorised Officer may either cancel the procurement or decide to select the second lowest, most responsive submission from among those remaining in effect.
- 29.8 Each contract must include the rights and duties of the parties, including the scope of work and other terms and conditions of performance. Public officers must use standard forms of contract, except where a custom contract has been reviewed and approved by the Attorney General.
- 29.9 Where sub-contractors will play a key part in the successful delivery of the procurement, their technical capability, and the general contractor's ability to effectively manage the supply chain may be used as an evaluation criterion in the procurement process. Public authorities must encourage general contractors to consider specified businesses for inclusion in their supply chains. General contractors should also be encouraged to have due regard for sustainable procurement.

### **30 Letters of Intent**

- 30.1 Letters of intent must only be used in exceptional circumstances. Public officers must obtain the prior written approval of the Director before a letter of intent is used. The Director will liaise with the Attorney General to determine whether use of a letter of intent is appropriate in the circumstances.
- 30.2 Public officers must not use letters of intent to legally bind the Government to any contract award or otherwise.

### **31 Debriefing Bidders**

- 31.1 The Authorised Officer responsible for each procurement must notify unsuccessful Bidders that their submission was not successful.
- 31.2 If an unsuccessful Bidder requests additional information, the Authorised Officer is permitted to share the following details regarding the procurement process:
  - (a) The specific criteria upon which the award was based;
  - (b) The value of the successful bid;
  - (c) The name of the successful Bidder; and

(d) Any deficiencies in the bid submitted by the unsuccessful Bidder.

Specified businesses that are not familiar with the public sector may not know they are entitled to feedback, so the Authorised Officer should inform them of the option to be debriefed.

31.3 The Director must be consulted before any information is released if any Bidder requests information other than that disclosed under paragraph 31.2. As certain information received during the procurement process must be treated as confidential information, the Director must make the final decision as to whether the requested information may be released.

## CONTRACTS

### 32 Contract Terms and Conditions

32.1 All procurements with a value of at least \$100,000 must be approved by Cabinet and recorded in a written contract that is vetted by the Attorney General prior to being executed on behalf of the Government. Contracts of any value for goods or services performed as part of a Capital Project must be in writing. Government's obligation is to ensure that it obtains value for money and manages its risk and exposure to claims. Contractual requirements must be proportionate to the size, risk and complexity of the procurement so that specified businesses have a fair opportunity to provide goods or services to the Government.

32.2 All contracts must include a clause that requires the contractor to give an audit officer a detailed account of the use of any funds or expenses provided out of money paid by the Government. The clause must also require the contractor to provide information, records and documents to support the funds spent. In this section, "audit officer" means the Director, the Financial Secretary, the Director of Internal Audit, and the Auditor General or their designees.

32.3 Except where the Attorney General approves an exception in writing:

(a) Contracts with a value less than \$50,000 may be made using the Government's standard terms and conditions of contract;

(b) Contracts with a value of at least \$50,000 must be made using the Government's standard terms and conditions of contract in consultation with OPMP; and

(c) Contracts must be reviewed by the Attorney General before they are executed by any public officer.

32.4 Section 33B of the Act creates an offence of collusion relating to government contracts. Each Bidder must use a Certificate of Confirmation of Non-Collusion to provide a written assurance that the Bidder has not engaged in collusion or corrupt procurement practices.

32.5 Public officers must include provisions in every tender document and written contract that empower the Government to reject any tender or terminate a contract and impose sanctions against the contractor or any person on his behalf, including but not limited to his subcontractor or agent, whether employed by the contractor or not (and with or without the contractor's knowledge), who:

(a) Makes any arrangement or agreement with any third party which requires either party to fix or adjust his tender price, or refrain from tendering (except to the extent of any agreed general contractor/subcontractor arrangement with respect to the services to be provided);

(b) Communicates to any person, except the Government, the amount or approximate amount of his tender (except as communicated in confidence to an insurer or other surety to obtain premium quotations for insurances or a bond);

(c) Gives, agrees to give, offers to give or promises any person (directly or indirectly for the benefit of that person or any other) any gift, loan, fee, reward or other consideration or confers any advantage to induce or

reward the person for agreeing to do or refrain from doing anything in relation to any other tender or proposed tender for any contract;

- (d) Directly or indirectly canvasses any minister or public officer in order to obtain or attempt to obtain:
  - (i) Entry to any lists of persons approved by the Government to carry out services on its behalf;
  - (ii) Information concerning any other tenderer or any tender submitted by any other tenderer; or
  - (iii) Any advantage or benefit to the disadvantage of other tenderers;
- (e) Shows favour or disfavour to any person in relation to any contract with the Government; or
- (f) Has failed to disclose a Conflict of Interest.

32.6 Public officers must not make substantial amendments to the Government's standard terms and conditions of contract without the approval of the Attorney General.

32.7 A Purchase Order must be produced to make payments under a contract. The contract must be signed by a duly authorised individual on behalf of the Government and by the contractor, and used to support the Purchase Order. The Purchase Order must include the contract name and reference number and the Cabinet Conclusion reference (for those with a value of at least \$100,000) from the approval granted in the pre-procurement stage (see section 7).

32.8 Contracts valued between \$100,000 and \$999,999 must be signed by the Accounting Officer and the contractor, except where paragraph 32.10 or 32.11 applies.

32.9 Contracts with a value of at least \$1,000,000 must be signed by the Accounting Officer and the contractor.

32.10 If one Government department acts as an agent for another Government department, the contract must be signed by the Client Department and the contractor.

32.11 If a contract affects property owned or leased by the Government, the contract must be countersigned by the Permanent Secretary for the Ministry responsible for oversight of Government property and leases. If the Permanent Secretary decides not to sign the contract, then the decision and the reasons to support it must be given to the Accounting Officer of the public authority in writing and maintained on the procurement file.

32.12 Supporting documentation is required for all invoices or other requests for payment in accordance with the Financial Instructions.

32.13 Consideration should be given to whether stage or interim payments linked to work performed are appropriate, and whether advance payments could be used to avoid excluding specified businesses from procurement opportunities.

### **33 Contracts Register**

33.1 OPMP must maintain a register of all contracts awarded with a value of at least \$50,000. Authorised Officers must ensure that OPMP is informed of the contracts and receives a copy of the fully executed contract.

33.2 The contract register must include the following information for each contract with a value of at least \$50,000:

- (a) parties to the contract;
- (b) the public authority for the contract;
- (c) a brief description of the nature of the contract;
- (d) the effective date and termination date of the contract;
- (e) the contract value;

- (f) details of any amendment to the contract including any change in value, scope or nature of the goods, services or property which is the subject of the contract; and
- (g) anything else prescribed by OPMP.

33.3 Public officers must give OPMP details required to make entries in the register and a copy of the fully executed contract not later than ten (10) days after the contract is executed or amended.

33.4 The Authorised Officer of each public authority must also maintain a register of all contracts entered into by that public authority regardless of value.

## **34 Approved Contractor Lists**

34.1 Contractor lists or lists of pre-qualified contractors must be approved in writing by OPMP prior to being used to invite contractors to submit tenders.

34.2 All Approved Contractor Lists must be updated annually to allow for new businesses to become eligible for inclusion on or removal from the lists.

34.3 The use of an Approved Contractor List is only permissible where the total amount spent on the goods or services is less than \$100,000 per annum.

## **35 Framework Agreements**

35.1 Framework Agreements are used where the Government wishes to contract for the provision of goods or services without conducting a full procurement exercise for each purchase. Framework Agreements must be tendered for in accordance with this Code.

35.2 Contracts based on Framework Agreements must be awarded by either:

- (a) applying the terms prescribed in the Framework Agreement (where such terms are sufficiently precise to cover the particular call off) without reopening competition; or
- (b) where the terms prescribed in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition according to the following procedure:
  - (i) inviting all contractors within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders; and
  - (ii) fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract; and
  - (iii) awarding each contract to the tenderer that has submitted the tender that represents the best value for money on the basis of the award criteria prescribed in the Framework Agreement.

35.3 The Authorised Officer must ensure that (a) the procurement opportunity is advertised widely to maximize the number of potential Bidders; (b) the specification of the Government's requirement is clear; (c) a pre-qualification questionnaire is used to minimise the initial work load of contractors and clarify future document requirements; (d) all potential contractors are treated equally irrespective of their size; (e) the optimum number of contractors necessary to deliver the benefits of aggregation without eliminating choice and competition is determined; and (f) the optimum duration for the term of the agreement to provide the best combination of price and goods or services to meet the Government's requirement is established.

35.4 Before ordering from a Framework Agreement, the Authorised Officer should consider whether the best value for money may be achieved by conducting a separate procurement as there may be clear advantages

to using specified businesses, or new innovative solutions and contractors may not be represented on existing Framework Agreements.

- 35.5 If the Government has entered into a Framework Agreement for specified goods or services then the Framework Agreement must be used to purchase the goods or services unless the Authorised Officer in consultation with the Director determines that the best value for money may be achieved by conducting a separate procurement.
- 35.6 Framework Agreements must be approved by OPMP before they are executed by any public officer.

## **36 Consultants**

- 36.1 Consultants must be engaged to act on behalf of the Government in accordance with the Financial Instructions and this Code. In the event of a conflict between requirements of the Financial Instructions and this Code relative to consultants, the requirements of the Financial Instructions must prevail.
- 36.2 The Authorised Officer must ensure that Consultants comply with the Financial Instructions and use the Government's standard terms and conditions of contract to engage consultants.
- 36.3 Consultants are not authorised to award a contract to any contractor. The Consultant's performance must be monitored by the Authorised Officer.

## **POST CONTRACT ARRANGEMENTS**

### **37 Monitoring of Contracts**

- 37.1 The Accounting Officer must ensure that all contracts are monitored during the term of the contract, and the performance of contractors is regularly reviewed and recorded in writing.
- 37.2 Incidences of non-performance or substandard performance must be recorded and reported to the Accounting Officer.

### **38 Contract Variation and Extension**

- 38.1 The term of a contract must not be extended beyond the period for which the contract was awarded unless the original contract provides for an extension of the contract term, or the contract term is extended by a written amendment to the contract.

An extension of the term of a contract with a value of less than \$100,000 must be authorised in writing by the Accounting Officer. The Accounting Officer may only approve an extension if the Accounting Officer determines that the extension will achieve Best Value for the Government and complies with all legal requirements. An extension of the term of a contract with a value of at least \$100,000 must be approved by Cabinet. Sufficient funds must be available to support the extension. Extensions of the term of any contract must not be approved retroactively.

- 38.2 The term of a contract cannot be extended after the contract has expired.
- 38.3 All variations to a contract must be authorised in writing by the appropriate public officer and made in accordance with the provisions of the contract.
- 38.4 If the Authorised Officer has reason to believe that the estimated final cost of any contract will exceed the authorised amount, then the Authorised Officer must submit a written report to the Accounting Officer including the reason for the additional cost and the budgetary impact before the cost of the contract exceeds the authorised amount. If the contract has a value of at least \$100,000, then Cabinet must approve additional costs associated with the contract before the contract value exceeds the authorised amount.

## **39 Claims Arising From Contracts**

- 39.1 Claims arising from contracts that involve matters not clearly within the terms of any existing contract must be determined by the Accounting Officer in consultation with the Director and the Attorney General.
- 39.2 The Accounting Officer must inform OPMP and the Financial Secretary of the action taken or proposed where a contractor may make substantial Claims under the contract because it is likely that completion of the contract will be delayed.

## **40 Termination of Contracts**

- 40.1 All contracts must include specific terms and conditions relating to termination.
- 40.2 Termination of a contract with a value of at least \$1,000,000 before the stated expiry date or contrary to the termination provisions set out in the contract must be approved by the Accounting Officer. The Accounting Officer must consult the Director and the Attorney General before deciding whether to approve the termination. A contract of a lesser value may be terminated early by agreement before the expiry date or under its termination provisions. Legal advice must be sought as appropriate.
- 40.3 Public officers must take care not to incur early termination fees.

## **41 Complaints and Disputes**

- 41.1 Complaints, including protected disclosures, regarding any aspect of the procurement process must be reported to the Director.
- 41.2 Whistleblowers are protected under section 3 of the Good Governance Act 2012 (“Governance Act”). That section makes it an offence to terminate a contract with, or withhold payment from, a whistleblower as a result of a protected disclosure.
- 41.3 Section 3(3)(k) of the Governance Act identifies the Director as one of the listed persons to whom a complaint can be made. Protection against unfair dismissal is also provided to employees under sections 28(1) and 29A of the Employment Act 2000.
- 41.4 Upon receipt of a complaint, the Director must take any or all of the following actions:
  - (a) Inform the Secretary to the Cabinet, Attorney General, Director of Internal Audit, the Accountant General or the Auditor General under the Governance Act;
  - (b) Conduct an audit of the procurement process and prepare a written report with recommendations for follow up action(s); and
  - (c) Meet individually with the complainant and the party against whom the complaint has been made to ascertain the relevant facts, and follow up with a written report.

In the event that the Director advises a complainant that a complaint will not be escalated because the Director is of the view that the complaint is without merit, the Director must advise the complainant of the complainant’s right to have the matter adjudicated by the Supreme Court of Bermuda according to section 6(8) of the Constitution of Bermuda.

- 41.5 All complaints must receive a written response within not less than 60 days of the receipt of a complaint. Responses must be held on the project files unless it is necessary to maintain a confidential record. In that case, the Director must ensure that confidential records are maintained.

- 41.6 If a complainant is not fully satisfied with the response to the complaint, the matter must be escalated to the Permanent Secretary responsible for OPMP or such other public officer as the Secretary to the Cabinet may determine.
- 41.7 If a contractual dispute arises between a contractor and the Government, the terms and conditions of the contract regarding escalation and resolution of disputes must be applied.

## **42 Records Retention and Inspection**

- 42.1 Public authorities must retain all records pertinent to purchases and contracts. The records must include Solicitation documents, written communications regarding negotiations between the parties, executed agreements and other records which sufficiently and properly reflect all expenditures of Government funds, including all receipts, invoices, payroll records and other documentation used to substantiate requests for payment.
- 42.2 Records must be maintained in electronic format for at least five (5) years following completion of the relevant purchase or expiry or termination of any contract, or for a longer term and in the format as may be required by the Financial Instructions.
- 42.3 Duly authorized public officers, including the Director, the Accountant General and the Director of Internal Audit, must have full access to and the right to examine any of the records pertinent to purchases and contracts at all reasonable times for as long as the records must be retained.

## **APPENDIX**

- (a) Conditions of Employment and Code of Conduct;
- (b) Ministerial Code of Conduct;
- (c) Public Treasury (Administration and Payments) Act 1969; and
- (d) Good Governance Acts of 2011 and 2012.