AFRICAN UNION PROCUREMENT MANUAL

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Definitions

The terms used in this Manual have the following meanings assigned to them:

WORD OR TERM	DEFINITION/DESCRIPTION
Accounting Officer	An officer of the Union with ultimate accounting authority for all resources of the Union and who is also the Chairperson of the African Union Commission (AUC).
AU structures	AU Organs, Institution, Peace Support Missions, Regional, Representative Offices, Specialized and Technical Agencies and Liaison Offices.
Best Evaluated Bid/Tender	The bid/tender determined to be (i) substantially responsive (compliant) to the requirements of the solicitation documents and, (ii) the most competitive cost after consideration of all the criteria stated in the solicitation documents.
Bid	An offer submitted by a bidder for consideration for award of a contract.
Bid Opening Committee	A committee responsible for opening bids received following a formal solicitation.
Bid Evaluation Committee	A committee established to undertake evaluation and ranking of bids and quotations for procurement.
Bid Security	A financial security provided by a bidder to guarantee that the bidder will not withdraw its bid prior to award of contract.
Business Unit	A Unit, Division, Directorate, Department, Project, Bureaus or Program with responsibility to initiate procurement.
Code of Ethics	A statement of the standards of practice and conduct to be followed by all officials and staff members of the AU, bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, consultants, sub-consultants, service providers or suppliers, and any personnel thereof.
Chief Controlling Officer	The Deputy Chairperson of the Commission and who shall be responsible for administration and finance of the Commission and overall coordinator of all Controlling Officers of the Union.
Controlling Officer	Heads of other Organs and institutions, who are based full time in the duty station or Heads of Secretariat of Organs and Institutions of the Union, who are full time salaried employees, as applicable, with delegated authority to handle administration and finance of their respective Organs and Institutions, and who shall be accountable to the Accounting Officer.
Consulting Services	Professional advisory services and of /Intellectual in nature provided by Consultants. The timeline for the services depends on the assignment (Programme or project) in question.
Consultant	Provider of Consulting Services
Contractor	Provider of construction services with completed physical assets (e.g. buildings, plants or similar infrastructures).
Development Partner	An entity or country that has availed resources, either in the form of cash or in kind to the Union for purposes of assisting the Union in its programs and operations;
Entity	Any organization that has been given operational authority, financial management and reporting responsibility
INCOTERMS	A set of internationally accepted definitions of commercial trade terms used in international sales contracts developed in 1936 by the International Chamber

WORD OR TERM	DEFINITION/DESCRIPTION
	of Commerce (ICC) in Paris and adopted worldwide to be applied in International Trade.
Internal Procurement Committee (IPC)	A Committee constituted by each Organ and Institution to execute, consider and approve procurements within its respective threshold.
Institution	A Legal Entity of the Union established by a decision of the Assembly of Member States.
Local Internal Procurement Committee (LIPC)	A Committee constituted by a regional, representational, technical or liaison offices and Peace Support missions to execute, consider and approve procurements within its respective thresholds.
Non-Consulting Services	Non-intellectual Services in which the physical component of the activity leading to the services is crucial (e.g. transportation services; courier services; accommodation services, catering etc.)
Organs	"Organs" means the Organs of the Union established under Article 5 of the Constitutive Act or as established by the Assembly of the Union
Performance Guarantee	A financial security provided by a supplier or contractor to guarantee his performance under the terms of the contract.
Proposal	Is an offer, in response to request for proposals submitted by a Party to provide goods, works, non- consulting services or consulting services for consideration for award of a contract.
Procurement	The legal formal process of acquisition of goods, works or services.
Procurement Unit	An established section or department bearing responsibility for managing the procurement process.
Request for Bids	A set of solicitation documents used in the procurement of goods, services and works.
Request for Proposals	A set of solicitation documents used in the procurement of Services.
Request for Quotations	A simple solicitation document for the purchase of low value goods, works and simple non-consulting services.
Retention	A percentage sum that may be deducted from each payment certificate under a works contract to guarantee performance.
Service Provider	Provider of Non-Consulting Services
Supplier	Provider of physical goods (manufactured items or any types of physical merchandise)
Tender	Generic term for any competitive process organized for the procurement of Works, Goods/Consultant and/or Non-Consultant Services;
Value for Money	Optimal combination of cost, quality, time and sustainability to meet the requirements of the AU
Vendor	Generic term which designates a seller who is under contract with the AU. A vendor is either a supplier of goods, a works contractor, a provider of Non-consulting services or a consultant.

Acronyms

AU	African Union
AUC	African Union Commission
BOQ	Bill of Quantities
EOI	Expression of Interest
FR	Financial Rules
GCC	General Conditions of Contract
HQ	Headquarters
IPC	Internal Procurement Committee
ISO	International Standards Organization
LC or L/C	Letter of Credit
LCS	Least Cost Selection
LIPC	Local Internal Procurement Committee
PRMR	Procurement Risks Management Register
OIO	Office of Internal Oversight
PSI	Pre-Shipment Inspection
PSO	Peace Support Operations
QBS	Quality Based Selection
QCBS	Quality and Cost-Based Selection
RFB	Request for Bids
RFP	Request for Proposals
RFQ	Request for Quotations
SRFB	Standard Request for Bids Documents
SCC	Special Conditions of Contract
SOW	Statement of Works
TOR	Terms of Reference

CHAPTER 1 – PREAMBLE

1.1. LEGAL AUTHORITY

(a) This Manual (Version 3) is issued under the authority of the Accounting Officer of the AU. The Manual supersedes all previous versions.

(b) The procurement regulatory framework for the AU is set out in the Constitutive Act of the AU and its Financial Rules (FR). The Procurement Manual establishes the procurement policies and provides further guidance for effectively undertaking procurement activities in compliance with the FR and other applicable legal and regulatory instruments.

(c) Interpretation authority for any provisions of this manual is vested with the Accounting Officer on the advice of the Legal Counsel.

1.1.1. Constitutive Act of the Union

(a) The Constitutive Act of the Union Article 4 (m), promotes "Good Governance and the Rule of Law", thus mandating that all AU operations shall be carried out in accordance with this overarching principle.

(b) In furtherance of this mandate, procurement policies and procedures contained in this manual is rooted in the principles of good governance and rule of law.

1.1.2. AU Financial Rules (FR)

(a) The FR define the general principles that shall be given due consideration when exercising the procurement functions of the Union, namely,

i) Value for money;
ii) Fairness, integrity and transparency;
iii) Effective competition;
iv) Efficiency and Economy;
v) The interests of the African Union.

(b) The FR also stipulates that all Procurement processes shall be conducted in accordance with the AU Procurement Manual.

1.2. PURPOSE OF THE MANUAL

(a) The purpose of this Manual is to inform all concerned stakeholders about the standards, policies and procedures governing the implementation of Procurement activities in the AU. These standards, policies and procedures are designed to:

(i) Raise awareness and provide guidance on procurement policies;

(ii) Provide uniform procedures and detailed guidance on the procedural requirement for the procurement and management of contracts for goods, works and services;

(iii) Ensure consistency in decision making for comparable situations;

(iv) Ensure transparency and accountability in all procurement operations, and consistency with the guidelines of donors where necessary;

(v) Improve the efficiency and effectiveness of operations;

(vi) Promote the consistent application of international best practice and standards in procurement.

(vii) Take into account the emergence of new and innovative procurement methods and forms of contracts such as e-procurement, framework agreements and Inter-organ procurements.

(viii) Provide a reference point against which principles and practices can be evaluated; and

(ix) Serve as a training manual for AU officials and staff members.

(b) Consistent application of the provisions and procedures of the Manual throughout the AU is essential in achieving the principles spelt in the Constitutive Act and the FR.

1.3. SCOPE AND APPLICATIONS

(a) The Manual applies to all procurement of goods, works, and services. It covers the standard procurement cycle from identification of needs to contract closure.
(b) The use and fulfillment of the Manual are mandatory for all AU structures, officials and staff involved in the implementation of the AU procurement activities.

1.4. EXCEPTIONS TO PROCUREMENT PROCEDURES

Notwithstanding the above sub-para 1.3. (a) and (b) above, some procurements will be carried out pursuant to the AU Emergency Procurement Guidelines

(a) the manual does not apply to transactions involving services that are normally published or established non-negotiable rates such as:
   (i) Postal, courier services and other public services.
   (ii) Honorarium fees and Workshop/Training/Meeting Facilitators' fees where the African Union has a fixed approved rate.
   (iii) Journal, websites and social media and communication subscriptions
   (iv) All subscriptions of services
   (v) Memberships for professional bodies or institutions
   (vi) Fund transfers as a result of an agreement between the AU and another Institution.
   (vii) Design and arts competitions
   (viii) All Advertisements including invitation to tenders and bids
   (ix) Payment for Utilities (water, electricity, telephone, mobile units)
   (x) Airline tickets and miscellaneous travel expenses etc, which are currently guided by the AU Administrative Policy on Travel and Mission.
   (xi) Rental of residential and official accommodation including offices
   (xii) The list of these administrative policies must be updated from time to time as procurement involves

(b) Such "non-procurement" transactions can be processed directly by the concerned departments/units without involving the Procurement Unit and without using procurement procedures described in the manual, subject to their being duly approved and fully funded under the relevant line item of the annual budget.

1.5. ENTRY INTO FORCE

(a) The Manual is effective as of the date of its approval by the Accounting Officer ("the Effective Date") and shall apply to all procurement proceedings initiated on or after the Effective date; effective date shall be communicated by a circular.

(b) Any subsequent amendments to sections of the manual will be effective as of the date of approval thereof by the Accounting Officer and will apply to procurement proceedings initiated after such date.

1.6. DISSEMINATION

This Manual and any subsequent amendments, upon approval by the Accounting Officer shall be disseminated internally.

1.7. REVISIONS TO THE MANUAL

(a) A number of factors may trigger a need for revision of this Procurement Manual including but not limited to:

(i) Revisions to the FR;
(ii) Introduction of improved practices, policies or procedures and innovation;
(iii) Removal of outdated practices, policies or procedures;
(iv) Lessons learned from practical experience.

(b) Any proposed amendments to the Procurement Manual, shall be coordinated or processed through the office in charge of the procurement function at the AUC, for onward submission for approval by the Accounting Officer.

CHAPTER 2 – PROCUREMENT PRINCIPLES

2.1. CORE PRINCIPLES

(a) AU is a steward of public funds and therefore both AU officials and staff members, its vendors and their affiliates, must adhere to the highest ethical standards, both during the tendering process and contract execution.

(b) All AU officials and staff members who discharge the procurement function of the Union, are required to exercise professional judgment and the highest standards of ethics, and give due consideration to the following core principles:

i) Value for money;
ii) Fairness, integrity and transparency;
iii) Effective competition;
iv) Efficiency and Economy;
v) The interest of the African Union.

2.2 VALUE FOR MONEY

(a) Value for money (VFM)can be defined as the optimal combination of cost, quality, time and sustainability to meet the requirements of the AU. In this context:

i) Cost shall take into consideration the whole life cycle cost (including. acquisition cost, maintenance and operating costs, disposal cost etc.)

ii) Quality means meeting a specification which is fit for purpose and sufficient to satisfy the requirements as defined by the AU.

iii) Time means the period within which goods and services are delivered. Delivery must be within the agreed timeline to enable the Union to implement its programmes as scheduled.

iv) Sustainability means economic, social and environmental benefits, considered in the business case, in support of the mission or a specific activity of the Union.

(b) As much as possible and applicable, evaluation criteria used in procurement shall integrate all of the aforementioned three dimensions of VfM.

2.3 FAIRNESS, INTEGRITY AND TRANSPARENCY

2.3.1 Fairness

(a) Fairness can be defined as treating all bidders equally before and during the selection and contract management process i.e.:

(b) Decision–making and actions must be unbiased, and based on criteria that are applied indiscriminately to all competing bidder.

(c) All offers must be considered on the basis of their compliance with the stipulations of the solicitation documents,

(d) Offers should not be rejected for reasons other than those specifically stated in the solicitation documents and the procurement rules.

(e) Bidders should have the right to challenge the procurement process whenever they feel they were unfairly treated or that the procuring entity failed to carry out the procurement process in accordance with these rules.

(f) There shall be no preferential treatment to individuals or firms, except under the specific circumstances where the application of Margin of Preference is allowed as per AU policies and procedures.

(g) Contract provisions shall protect the interests of both parties in a balanced way.

2.3.1.1 Margin of Preference (MOP)

(a) While fostering the fundamental principle of fairness/equal treatment among individuals and firms competing for AU contracts, the AU also seeks to encourage increased participation of African-led public and private sector as well as firms organisations led by women or youths in the development of the continent.

(b) The FR in Rule 64 (8) suggests the need for a positive discrimination that aims at providing a competitive edge in favor of African Suppliers to facilitate their access to contracting opportunities offered by the AU.

(c) In all procurement processes due consideration shall be given to preferential treatment African suppliers unless an express stipulation by a donor imposing a restriction".

(d) For the purpose of this Manual, African Supplier is defined to mean either:

i) an established Legal Entity registered under the Laws of any AU Member State and operating in an AU Member state, and as to be defined in the Margin of Preference guidelines/or

ii) an Individual who is a citizen of an-AU Member State.

(e) Accordingly, Guidelines for the Application of Margin of Preference (MOP), shall be developed to provide detailed procedural guidance for the application of a preferential treatment in favor of African suppliers as well as suppliers led by women youths when competing against non-African bidders.

(f) Where merit points are used for evaluation, selection criteria shall include additional marks for

(i) participation of African citizens, women and youths as consultants

(ii) firms owned by women and youths.

2.3.2 Integrity

(a) Integrity is a major principle that guarantees the use of public funds for their intended purposes and reduces the risk of reputational damage (preservation of the public image) of the AU.

(b) Procurement integrity is twofold, namely

i) The integrity of the process itself i.e., the degree of reliability and confidence in the process, and

ii) The integrity of stakeholders involved in the process, which is essentially their degree of professionalism and honesty.

(c) However, to mitigates the risks of errors and/or unethical/unprofessional behavior of stakeholders involved in the Process there shall be adequate internal control mechanisms e.g. adequate segregation of duties.

2.3.2.1. Integrity of the process

(a) The reliability and confidence in the tender process are ensured by transparent procedures and equitable treatment of prospective bidders, including inter alia,

i) The information contained in solicitation must be dependable and free of ambiguities or bias.

ii) Prospective bidders should be able to determine if they are qualified to undertake the assignment and to assess the need for association with other bidders and the type of association, they would need to form.

iii) Bidders should have a clear understanding of the requirement, and know how they will be evaluated.

iv) Evaluation and award criteria must be clearly stated in the solicitation documents and remain unchanged unless there is need to modify them.

v) If modification is required, the solicitation documents should be amended, published and made available to all prospective bidders.

vi) Any changes in the bid submission date, should allow bidders sufficient time to adjust their offers accordingly to meet the new submission deadline.

(b) The confidentiality of information relating to the examination and evaluation of bids and recommendations concerning awards shall be preserved until the approval and notification of contract award.

(c) Also, there shall be accurate and well managed written procurement records which can serve as deterrent to or evidence of actions that undermine the integrity of the process.

2.3.2.2. Integrity of stakeholders

(a) AU officials and staff members involved in the procurement/contract management process, must display personal and professional integrity throughout the process.

(b) Officials and Staff Members of the AU involved in the public procurement process should, at all times, be perceived as honest, trustworthy, responsible and reliable.

(c) They must always keep the purpose of the procurement requirement in mind, and strive to ensure that they responsibly manage public procurement as mandated by the public procurement rules.

(d) Similarly, bidders shall abide by the rules set forth in the solicitation documents and refrain from any prohibited activity, including any undue attempts to influence the process.

2.3.2.3. Segregation of Duties (SOD)

(a) To ensure greater integrity of procurement/contract management activities, there shall be effective checks and balances through adequate segregation of duties.

(b) SOD is an internal control mechanism, which is based on optimum dispersion of the critical functions of the procurement and contract management processes among more than one person or department.

(c) The main purpose is to prevent errors, and is also a deterrent to fraud because it requires collusion with another person to perpetrate a fraudulent act.

(d) Ideally, Segregation of duties shall ensure that the following four main duties in the acquisition cycle are adequately dispersed among more than one person or department/units;

(i) Determining the need (e.g. requisition or equivalent, specification, budget holder approval)
(ii) Undertaking the procurement (e.g. sourcing and commitment)
(iii) Managing the contract (Supervision and Acceptance of works, goods and services)
(iv) Handling the financial aspects. Often, the accounts payable function in finance matches three documents (the contract or purchase order, the receiving report, and the approved invoice), issued by three different departments/units.

(e) However, in some situations an adequate level of segregation of duties may not be possible due to lack of sufficient staff or the structure does not permit. In such situations detailed exception authority must be granted by the Controlling Officer or Head of organs (audit reviews) of related activities is required as a compensating control activity.

2.4 TRANSPARENCY

(a) As a holder of public funds, the AU is subjected to public accountability in the use of its resources. It is therefore AU's policy to promote transparency in all procurement activities by;

i) Emphasizing on the "pillars" of Open Competitive Bidding, i.e.,
   a Wide geographical advertising of procurement opportunities
   b Pre-disclosure of evaluation criteria and procedures
   c Public opening of bids
   d. Notification and Publication of contract award
ii) Defining all other procurement methods as exceptions to open competition;
iii) Encouraging fair treatment of complaints by bidders and other stakeholders;
iv) Documenting all transactions in writing and safekeeping of all procurement records.

2.4.1 Exceptions to Transparency

(a) The principle of transparency (openness and access to procurement information) is not absolute and there are several exceptions for legitimate reasons as explained below.

i) Confidential and proprietary information belonging to firms and individuals participating in process should not be available publicly, and the extent of their disclosure should be detailed in the contracts.

ii) In line with the AU's obligation to ensure the implementation of protection of personal data policies, disclosure of personal data will be limited.

iii) The evaluation of bids is always kept confidential until after the contract award is cleared by a relevant approving authority.

iv) There are procurement methods, such as limited competition, which make solicitation documents available to only those firms meeting certain qualifications, or the direct contracting (sole sourcing), in which an offer is sought from a particular firm or individual.

v) Most defense or security-related procurements are confidential, restricting relevant information to a "need-to-know" basis only.

2.5 EFFECTIVE COMPETITION

Effective competition is achieved under the following conditions: (i) Sufficient number of prospective suppliers (ii) Prospective suppliers are independent of each other (iii) Competition for the same business opportunity under the same conditions (iv) Response to the procurement opportunity by a sufficient number of offers.

(a) Given that AU procurement activities are funded with public funds, all eligible firms and individuals should be allowed to participate by submitting offers in response to a specific requirement for which they are qualified.

(b) Public procurement requirements should be widely advertised to increase the chances of a good market response, leading to the award of competitively-priced contracts.

(c) The Value for Money proposition is more likely to be attained through policies and procedures that promote effective competition. i.e., the participation of sufficient number of qualified bidders being attracted to tender solicitations issued by the AU.

(d) Less than optimal number of qualified bidders is likely to bring about a rise of the execution price as an outcome of the procurement process.

(e) There are two main drivers of Effective Competition

i) Non-discriminatory Eligibility requirements for participation in the competition for AU contracts.
ii) An environment conducive to effective participation

2.5.1Enabling Environment

(a) In order to elicit effective participation of sufficient number of eligible bidders, AU Procurement Units shall endeavor to ensure that solicitation requirements and procedures are designed to ensure that:

i) Adequate and timely information on contracting opportunities is provided to prospective bidders to enable them to bid;
ii) Selected procurement methods take account of market circumstances (number and capacity of potential suppliers)
iii) Specific requirements are not unnecessarily stringent;
iv) The costs of participation in bidding opportunities do not deter competition;
v) Competing bidders are independent of each other (no collusions); and
vi) Bias and favoritism are eliminated in the selection process

2.5.2 Eligibility

(a) Subject to mandatory exclusions spelled-out under sub-section 2.9 below, it is AU's policy to permit firms and individuals from all countries, including non-AU Member States, to bid for goods, works, consulting and non-consulting services contracts.

(b) Subject to mandatory exclusions spelled-out under sub-section 2.9 below, it is AU's policy to permit goods from all countries, including non-AU Member States.

(c) Any conditions for participation in competition for contracts shall be limited to those that are essential to ensure the capability of the firm or individual to successfully execute the contract in question.

(d) Similarly, the AU may procure from any legal sources, provided that the procured works, goods, and services are fit for the purposes for which they are procured.

2.6 EFFICIENCY AND ECONOMY

2.6.1 Efficiency

(a) Efficiency is a standard of performance which measures whether the process is using the best practices and making the most of available resources.
(b) AU officials and staff members must demonstrate efficiency throughout all procurement processes in order to avoid undue implementation delays and achieve value for money.
(c) Procurement processes must be well organized, and carried out in a timely manner, at the optimum prices in accordance with the policies and procedures of the AU.
(d) The processes applied must be proportionate to the value and complexity of the requirement, to ensure that the associated costs are minimized and in line with the budget for the activity.

2.6.2 Economy

(a) The principle of economy emphasizes the need to manage AU funds with care and due diligence so that prices paid for goods, services and works are reasonable and represent good value for the AU funds expended on them.

(b) AU officials and staff members associated with or directly responsible for managing the procurement and/or contract management processes should strive to avoid waste and/or abuse of AU resources; whether it is the result of

i) over specifications of required goods, works or services,
ii) paying unreasonably high prices for substandard goods,
iii) collusion or other forms of unethical practices.

2.7 BEST INTEREST OF THE AFRICAN UNION

(a) The ultimate objective of procurement procedures set forth in this Manual is to add value to the AU and to help the Union fulfil its mission as stated in the Constitutive Act.
(b) In line with the above proposition, officials and staff members of the AU are expected to exercise professional judgment to choose fit for purpose solutions rather than just relying on prescribed, categorical, "one-size-fits all" approaches.
(c) In all its procurement activities, AU shall endeavor to be inclusive by ensuring and facilitating participation of women and youths. Inclusive criteria shall be used in the evaluation of proposals / bid.

2.8 ACCOUNTABILITY

(a) Accountability means that AU officials or staff members are responsible and answerable for the consequences of their actions and decisions, but also their inaction in front of reprehensible/unethical practices by any stakeholder of the procurement and/or contract management process.
(b) It also entails exposure to sanctions as a remedy for any behavior that contravenes applicable procurement policies/rules and, an obligation to report and/or answer to a designated oversight authority, on the consequences of such actions/inaction, decisions.
(c) Procurement policies and procedures described in this manual are designed to achieve greater accountability of all stakeholders through:

i) the promotion and enforcement of transparent procurement procedures;
ii) adequate monitoring and Internal control mechanisms (e.g. segregation of duties) for improved integrity of procurement and contract management processes;
iii) efficient complaint and recourse mechanisms that allow bidders and other stakeholders the possibility to challenge procurement decisions;
iv) mandating the safekeeping and maintenance of accurate records (audit trail) of all procurement and contract management transactions;
v) independent reviews of procurement transactions by the OIO or external auditors;
vi) a Code of Ethics applicable to all stakeholders of the procurement and contract management activities;

2.9 EXCLUSIONS TO PARTICIPATE IN PROCUREMENT

Mandatory Exclusions

(a) Bidders offering goods manufactured in any country, or particular goods or firms shall be excluded if,

(i) pursuant to the AU's Constitutive Act, or Resolution of the General Assembly of the Union, the AU prohibits commercial relations with a country, or by an act of compliance with a decision of the United Nations Security Council taken under appropriate Chapter of the Charter of the United Nations,

a) import of goods from, or payments to, a particular country, person, or entity are prohibited, or;
b) payments to a particular firm or for particular goods are prohibited by such an act of compliance.

ii. if the bidder or a person having powers of representation, decision-making or control over the bidder or a member of their administrative, management or supervisory body has been the subject of a final judgment or a final administrative decision or there is judgment or pending legal action against them that could impair their operations in the foreseeable future including but not limited to the following irregularities:

a) bankruptcy, insolvency or winding-up procedures;
b) breach of obligations relating to the payment of taxes or social security contributions;
c) grave professional misconduct, including mis-representation
d) fraud;
e) Coercion
f) corruption;
g) collusion
h) obstruction
i) conduct related to a criminal organisation;
j) money laundering or terrorist financing;
k) terrorist offences or offences linked to terrorist activities;
l) use of child labour and other trafficking in human beings;
m) creating a shell company;
n) being a shell company

iii. any other forms of irregularity as defined in the Financial Rules;
iv. if the bidders employ any person(s) who is, or has been an official or staff member of the AU within the last three years, if the said official or staff member is in a conflict of interest situation in relation to the particular procurement.
v. If an individual
vi. The bid document specifies participation from a particular region or country

(b) In addition, Bidders will be excluded from participation in all AU procurement procedures if:

(i) They have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which they are established or those of the country where the contract is to be performed; and where applicable social security contributions;

(ii) They have been removed from the AU Supplier Register or are under suspension, debarment or has been blacklisted from AU procurement activities.

(iii) There is a conflict of interest between consulting activities and procurement of goods, works or services: A firm that has been engaged to provide consulting service that resulted in development of ToR, Specifications, SoW, or BoQ for a given project, and each of its affiliates, shall be disqualified from participating in the bidding process for provision of goods, works or services;

(iv) There is a relationship with AU official and or staff member: Consultants, Service Providers and Suppliers and vendors (including their personnel and sub-consultants or subcontractors) that have a business or family relationship with an AU official and or staff member (or of the client staff, or of a beneficiary of the assignment) who are directly or indirectly involved in any part of: (a) the preparation of the TOR or statement of work or specifications of the contract, (b) the selection process for such contract, or (c) supervision of such contract may not be awarded a contract without declaration as required in the Code of Ethics;

(v) As exception to the exclusions above, the AU may consider overriding reasons to include a bidder based on justified grounds, such as:

a) Overriding reasons of public interest and other emergencies

b) Assessment of remedial measures put in place by the Contractor / services provide to demonstrate its reliability.

c) Interests of the African Union

d) In certain instances, bidders may be invited to defend themselves before a decision is made on exclusion from a procurement process.

CHAPTER 3 –ETHICS

3.1. CODE OF ETHICS

3.1.1 Ethical Principles

The procurement code of ethics shall be in line with the AU Code of Ethics and Conduct.

(a) Ethical principles help minimize three major risks such as:

(i) Performance Risk; i.e., the risk that the completed works, the procured goods or services, fail to meet business requirements that justified it.

(ii) Fiduciary risk, i.e., the risk that funds entrusted to the AU are not used for the intended purposes; do not achieve value for money; and/or are not properly accounted for; and

(iii) Reputation risk, which is the risks of unfavorable public perception the AU.

(b) It is therefore essential that all procurement activities are carried out by AU staff in a manner above reproach and in accordance with applicable policies and procedures.

3.1.2 Accountability and Responsibilities of Heads of AU Structures

(a) Accountability means that AU officials or staff members are responsible and answerable for the consequences of their actions and decisions, but also their inaction in front of reprehensible/unethical practices by any stakeholder of the procurement and/or contract management process.

(b) Heads of AU Organs and Institutions, Senior Officials are accountable and responsible for promoting an environment conducive to ethical behavior by:

i) Encouraging professionalism and ethical behavior
ii) Providing training opportunities, instructions and guidance to staff;
iii) Ensuring that all staff comply with instructions and guidelines, including the maintenance of documented records;
iv) Setting adequate levels of oversight and controls and ensuring a proper segregation and rotation of duties especially in business areas exposed to opportunities for unethical practices.

3.1.3 Obligations of AU Officials and Staff Members

(a) Officials and Staff members of the AU shall not use their authority or office for direct or indirect personal gain, i.e., accepting or requesting anything of value, material or otherwise including gifts money, property or other assets; transactional favors or 'quid pro quo' arrangements, from bidders, vendors, prospective bidders, for themselves, or close relatives;

(b) AU Officials and staff members shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair advantage of any bidder or vendor, or to impact the positions of those they favor or do not favor.

(c) AU Officials and staff members shall not intentionally misrepresent their functions, official title or the nature of their duties to any entities external to the AU;

(d) Information given by an official or staff member of the AU during his or her duty shall be true, fair and not designed to mislead;

(e) Officials and Staff members of the AU shall seek to-preserve and enhance the reputation of the AU by:
   (i) Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the AU;
   (ii) Developing the highest possible standards of professional competence in the management and use of AU funds and other resources for which he or she is responsible;
   (iii) Exercising utmost discretion throughout the entire procurement process to keep confidential information as such; and complying both with the letter and the spirit of the policies and procedures of the African Union;
   (iv) Abstaining from any of the unethical practices described under section 3.3. below; and
   (v) Reporting any such practices or conduct by other colleagues, bidders or vendors to the relevant AU authorities.

3.1.4 Obligations of bidders/vendors

(a) Bidders and vendors are required to abide by the highest standards of professional ethics and abstain from any unethical practices in competing for and executing contracts funded by the AU.

(b) Bidders and Vendors shall inform the relevant AU authorities of any unethical behavior involving bidders, vendors or officials/staff members of the AU during the bidding process or contract execution.

3.2 UNETHICAL PRACTICES

3.2.1 Conflict of Interest

3.2.1.1 Conflict of interest involving Officials/Staff members

a. A conflict of interest occurs when an official or staff member's private interests, such as outside professional relationships or personal financial assets, interfere or appear to interfere with the proper performance of his or her professional functions or obligations.

b. A conflict of interest may also arise in situations where an official or staff member is seen to benefit, directly or indirectly, or allow a third party, including family, friends or someone they favor, to benefit from the official/staff member's decisions.

c. Officials/Staff members are prohibited from any involvement in a procurement action with a Vendor in which they have a financial interest.

d. The appearance or perception by others of a conflict of interest involving an official or staff member of the AU may be as detrimental as an actual conflict and can have serious consequences for the effectiveness and reputation of AU.

e. Therefore, officials/staff members of the AU shall disclose immediately in writing any actual, apparent or potential conflict of interest, financial or otherwise, derived from their involvement in a procurement action, and formally abstain from such action.

f. In cases where a conflict of interest could occur, such conflict should be reported to the head of the office, who should review the facts and decide whether the official/staff member should carry out the procurement activity. The Ethics Office should be consulted, if necessary.

3.2.1.2 Bidders' Conflict of Interest

(a) African Union policy requires that a firm/individual participating in a procurement process shall not have a conflict of interest in relation to a said process. Any firm/individual found to have a conflict of interest shall be disqualified as ineligible for award of a contract.

(b) A firm shall be considered to have a conflict of interest in a procurement process if:

i) such firm (or any of its affiliates) is providing consulting services related to goods, works or services that it supplied for the AU;

ii) such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of a firm as a subcontractor in more than one bid.; or

iii) such firm (including its personnel) has a close business or family relationship with a professional staff of the AU who:

- is directly or indirectly involved in the preparation of the solicitation documents, the definition of specific requirements, and/or in the bid evaluation process of such contract; or

- would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the AU.

iv) such firm does not comply with any other conflict of interest situation as specified in the solicitation documents.

v) A Bidder shall be requested to declare in its Submission that it is not under a situation of conflict of interest. Should a situation of conflict of interest arise during the performance of the Contract, a requirement shall be introduced in the Solicitation Documents and Contract obligating the Vendor to immediately report such developments to the Procurement Unit.

3.2.2 Corrupt and Fraudulent Practices

(a) For the purposes of this Manual, the following definitions apply to corrupt and fraudulent practices, as aligned with international standards:

(i) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

(ii) A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(iii) A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

(iv) A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

(v) Obstructive practice is any of the following acts:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation initiated by the AU into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or;

- threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- carrying any acts intended to materially impede the exercise of the AU's inspection and audit rights

3.2.3 Other Unethical Practices

The following are examples of other types of conduct proscribed by the Code of Ethics of the AU:

(i) Revealing confidential or "inside information" either directly or indirectly to any bidder or prospective bidder;

(ii) Discussing the details of an ongoing procurement process with bidders or prospective bidder outside the authorized channels

(iii) Favoring or discriminating against any bidder or prospective bidder in the drafting of technical specifications or standards, or in the evaluation of bids;

(iv) Destroying, damaging, hiding, removing, or improperly changing any official procurement document;

(v) Accepting or requesting money, travel, meals, entertainment, gifts, favors, discounts or anything of material value from bidders or prospective bidders;

(vi) Discussing or accepting future employment with a bidder or prospective bidder;

(vii) Using a position of power to unfairly advantage or disadvantage a bidder in the tender process;

(viii) Receiving a gift, loan, or other reward in exchange for not publicly tendering a contract and instead directly awarding it to a certain company;

(ix) Instructing/influencing/requesting any other Officer or representative of AU in a procurement process to deviate from applicable policies and procedures;

(x) Not reporting and/or stopping illegal or unethical activity by bidders or prospective bidders, vendors, and their affiliates, officials or staff members of the AU, in relation to a procurement process or contract execution.

3.3 SANCTIONS FOR UNETHICAL PRACTICES

3.3.1 Sanctions against AU Officials/Staff Members

(a) Due to the special trust placed on those involved in the procurement processes as custodians of AU funds, adherence to the Code of Ethics by AU officials/staff members is mandatory.

(b) Any unethical conduct will be considered an offence subject to disciplinary measures n or other appropriate sanctions under the relevant provisions of the FR and other applicable instruments of the African Union.

3.3.2 Sanctions against Bidders and Vendors

(a) In pursuance of its Code of Ethics, the AU:

i) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive practices or other unethical behavior, in competing for the contract in question;

ii) will sanction a firm or individual, at any time, in accordance with prevailing AU's sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time;

- to be awarded a contract financed by the AU; and
- to be a nominated sub-contractor, consultant, supplier or services provider of an otherwise eligible firm being awarded an AU contract;

iii) may apply other sanctions, including criminal prosecution, as mandated by the particular circumstances of the offense.

(b) Debarment and Suspension

Suspension and debarment are actions that can be taken by the AU on firms or individuals who have committed fraud or a criminal offence.

(i) Debarment is the banning or the exclusion of a person legal or natural from participating in procurement processes of the AU for no more than three years.

(ii) Suspension means deferment of payments of implementation of procurement process pending remedial or corrective action by the awardee or pending a decision to terminate the award.

(iii) Suspension and debarment shall be for a defined period as approved by the Accounting Officer.

(iv) While under debarment or suspension, a firm or individual shall be prohibited from participating in AU funded procurement as a main or sub - contractor.

(v) AU Entities shall apply cross debarment by not employing firms or individuals placed under sanctions by one of its Entities or Partners.

3.4 REMEDIAL ACTIONS

(i) Where cases of impropriety are report aganinst a bidder, AU shall undertake thorough investigations on the validity of the allegations.

(ii) Bidders shall be entitled to make a case and defend themselves in writing in line with the provisons on complaints handling.

(iii) Before applying sanctions such debaring or suspending a bidder, AU shall take due consideration to ensure that the punishment is proportionate to the offence.

(iv) After lapse of the debarement period, bidders shall be allowed show cse that corrective actions have been put in place before they can be allowed to participate in AU funded procurements.

(v) The remedial actions shall be assessed by a multi disciplinary team including the Office of Oversight, OLC and the procurement team.

(vi) Recommendations for readmission shall be tabled for approval by the Accounting Officer.

3.5 DATA PROTECTION

The AU in exercise of its procurement responsibilities will process personal data. The processing of personal data might be necessary at different stages of the procurement cycle during the pre award process of contracts and post award or execution stage.

3.5.1 Categories of Subjects for personal data processing

The subject matter of data protection is personal data. Personal data is information relating to an identified person or identifiable person. Personal data provisions will apply to the following categories maybe subjects of personal data processing;

a) Individual Consultants
b) Indivdual Contractors
c) Legal representatives of Vendors/bidders
d) Key Experts or team members submitted by a bidder during the tendiring process

3.5.2 Data Category

Personal data categories includes but is not limited to the following:

a) Contact information including name, telephone number, email address and postal address.
b) Company name.
c) Identification documents like passport, ID etc.
d) Information on qualifications, experience and academic background, references, certificates for a particular profession
e) Financial records e.g bank account,
f) Extract from judicial record
g) Absence of bankruptcy, fraud, conflict of interest,
h) Information on the payment of taxes and social security contributions
i) Information on the non-appealable conviction of persons belonging to the administrative, management or supervisory bodies of the candidate or tenderer or of a member of the consortium of candidates or tenderers
j) System related data under E-procurement and other electronic systems in the procurement/ grant processing cylce. (e.g log-in, pass words etc)

3.5.3 Data Retention Period

Any personal data collected and processed in the above context will not be kept longer than is necessary on the one hand and on the other hand the maximun retention period will be in line with the broader period prescribed in the AU policy on Personal data protection.

3.5.4 Rights of Data Subjects

Bidders/ suppliers will have rights to access and rectify their personal data, as well as to object to its processing, request erasure, and obtain data portability in certain circumstances.

1) Right to be informed. Individuals have a right to know how the AU is managing their data e.g what personal data is being collected from them, retention period, access of their data by a 3rd party.
2) Right of access. Individuals have a right to submit access requests and obtain information as to whether their personal information is being processed.
3) Right of Erasure: Erasure of personal data when theyare no longer necessary in relation to the purposes for which they were collected.
4) Right to object or restriction of processing, on grounds relating to a particular situation, when theprocessing of personal data is unlawful;
5) Right to rectification of any innaccurate or incomplete personal data.
6) Right to lodge a complaint with a Supervisoy authority
7) Right to portability which allows individuals to obtain their personal data that they have previously provided to an organisation and transferred it to another organisation or another functional area with in the same organisation.
8) Right to confidentiality of electronic communications

CHAPTER 4 – ORGANIZATION OF THE PROCUREMENT FUNCTION

4.1. PROCUREMENT OVERSIGHT

4.1.1. The Accounting Officer

(a) The Accounting Officer shall have ultimate authority and responsibility for all procurements of the Union. These include:

i) Approving the Procurement Manual including any amendments/revisions thereof;
ii) Approving Exceptions/Waivers to the policies and or procedures in the Procurement Manual;
iii) Reviewing/approving recommendations for suspension/debarment of vendors

(b) The Accounting Officer may delegate his/her authority and responsibility to Controlling Officers of AU Organs and Institutions

4.1.2. Chief Controlling Officer and Controlling Officers

(a) The Chief Controlling Officer of the Commission and Controlling Officers of the Union shall be responsible for establishment of all necessary procurement systems and processes and designate relevant officials responsible for performing procurement functions within their respective Organs and Institutions.

(b) In respect of the procurement process, among other roles and responsibilities the Chief Controlling Officer of the Commission and Controlling Officers at the Organs and Institutions of the AU shall;

i) Approve the Entity's Annual Procurement Plan;
ii) Appoint Members of the Internal Procurement Committee (IPC);
iii) Enforce the implementation of the Rules described in the Procurement Manual

(c) The Chief Controlling Officer shall be responsible to the Accounting Officer in execution of their procurement responsibilities.

(d) The Controlling Officers shall be responsible to the Accounting Officer through the Chief Controlling Officer in the execution of their procurement responsibilities

(e) The Chief Controlling Officer may delegate his or her authority under these Rules to a Competent Authority of the Union as deemed appropriate.

4.1.3. AU Tender Board

(a) The AU Tender Board shall be appointed by the Accounting Officer to deal with all procurements of the AU with values exceeding the limits contained in the categories of each IPC. This includes responsibility for:

(i) Reviewing and approving/rejecting the recommendation for contract award and other submissions within its threshold.
(ii) Proposing to management the revision/amendment of the Procurement Rules;
(iii) Referring suspected procurement violations to the Office of Internal Audit for investigation;
(iv) Reviewing and analyzing risk factors in proposed Contract awards and make appropriate and proportionate decisions;
(v) Referring matters of suspected engagement in corrupt practices to the relevant committee for investigation.

(b) The composition of the Tender Board shall be 8 Members. These shall include:

(i) A Chairperson
(ii) A representative from the office of Legal Counsel,

(iii) Five other members appointed by the Accounting officer
(vi) A Secretary.

(c) The officer in charge of the procurement function of the AUC shall serve as Secretary and provide secretarial and technical services to the Tender Board. The Secretary shall not have a right to vote.

(d) Members shall be appointed in their individual capacities and alternates shall be appointed for each member.

(e) The Tender Board may invite experts to attend its proceedings without a right to vote.

(f) The tenure for membership of the Tender Board shall be three years subject to renewal.

(g) The head of a department charged with procurement functions shall not be chairperson of the Tender Board.

(h) Where and as much as possible, membership of the Board Shall reflect women and youth participation

Internal Procurement Committee (IPC)

(a) Internal Procurement Committees are bodies appointed by the Chief Controlling Officer of the Commission and Controlling Officers of each AU Organ and Institution, which shall take full responsibility for ensuring that procurement actions proposed by their entity are based, inter alia, on compliance, fairness, integrity and transparency, and, as such, are impartial. The responsibilities of an IPC include:

(i) Review and approve / reject the recommendation for contract award and other submissions within its threshold.

(ii) review written presentations made by Bid Evaluation Committees and provide advice to officials duly authorized, on whether proposed procurement actions, including contracts, are in accordance with the FRs, the Procurement Manual and other relevant AU procurement policies.

(iii) examine and provide general advice regarding the financial, commercial, operational implications of any proposed procurement action, comment where appropriate as to whether, in its view, the proposed action, inter-alia, is in the best interest of the AU.

(iv) Review and analyze risk factors in proposed Contract awards.

(v) Refer suspected procurement violations to the Chief Controlling Officer/ Controlling Officers and the Office of Internal Oversight for investigation.

(b) Notwithstanding the foregoing, the IPC is not responsible for the evaluation of bids and shall not decide on the adequacy or necessity of tender requirements post bid opening or informally or otherwise recommend contractors, suppliers or consultants for award of contract.

(c) The composition of Internal Procurement Committee shall be the Chairperson of the committee and 4 other members. These shall comprise:

(i) A Representative from Finance, where applicable
(ii) A Representative from the office of legal Counsel, where applicable;
(iii) A maximum of 2 other members of the Organ or Institution.

(d) Members shall be appointed in their individual capacities and alternates shall be appointed for each.

(e) Where and as much as possible, membership of the Board Shall reflect women and youth participation that is at least 50% women and at least 35% youths.

(f) The tenure shall be two years subject to renewal not more than twice.

(g) Rotation shall ensure that some members remain for continuity

(h) In order to ensure continuity and institutional memory, at the end of their second term Members in substantive position will serve one additional year as an alternate member.

(i) Where the Chairperson or any of his/her alternates is not available, the Chairperson will nominate a member to chair the meeting.
(j) The Head of department charged with procurement functions shall not be chairperson of the IPC.
(k) The Chief Controlling Officer of the Commission, Controlling Officers, Commissioners of the Commission, members of staff of Internal Audit function and members of staff of the Procurement Unit shall not be members of the Internal Procurement Committee.
(l) The Procurement Unit shall provide secretariat and technical advisory services to the IPC without a right to vote.

4.1.4. Local Internal Procurement Committees (LIPC)

(a) The Chief Controlling Officer shall establish Local Internal Procurement Committees for Regional, Representational/Specialized/liaison Offices and Peace Support Operations of the AUC situated outside of the AUC Headquarters that perform procurement activities.
(b) The functions and responsibilities of LIPCs, to the extent appropriate, mirror those of the IPC.
(c) The composition of the LIPC shall be the Chairperson and two (2) other Members including but not limited to:
    (i) the Chairperson
    (ii) Finance and Administration Officer, when not in charge of the procurement function
    (iii) An Officer handling legal matters, where applicable.
    (iv) Other professional staff
(d) Members shall be appointed in their individual capacities and where possible alternates shall be appointed for each. Where and as much as possible, membership of the LIPC reflect women and youth participation at least 50% women and at least 35% youths.
(e) The Officer in charge of Procurement shall provide secretarial and advisory services to the LIPC, without a right to vote.
(f) Where the Chairperson or any of his/her alternates is not available, the Chairperson will nominate a member to chair the meeting. The Officer handling the procurement function shall not be eligible to be a member.
(g) The LIPC may invite experts to attend its proceedings without a right to vote
(h) The tenure shall be two years subject to renewal.

4.1.5 Rules of Procedure for Tender Board, IPC AND LIPC

(a) The following shall constitute the rules of procedure that govern the functioning of the IPC:
    (i) The A quorum for meetings shall be and 4 members including the Chairperson for the IPC and 3 for LIPC.
    (ii) Decisions shall be by consensus; failing which, by 2/3 majority of members present. A dissenting member may request that his/her dissent be recorded in the minutes of the meeting;
    (iii) The shall meet as and when required;
    (iv) Working documents shall be distributed at least two days before the meeting with the exception of emergencies.
    (v) At the commencement of each meeting, the members must sign a Declaration of Confidentiality and Impartiality which covers all matters arising from the meeting. This Declaration shall be attached to the final report by the Secretary;
    (vi) Matters of substance shall not be discussed during a meeting under "Any Other Business";
    (vii) The Secretary shall circulate to the members who attended the said meeting, copies of a draft report for their comments or amendments. Such comments or amendments shall be sent to the Secretary within 48 hours upon receipt of the draft report. If no comment or amendment is received within the

deadline above, the Secretary shall proceed with the finalization of the report. No amendment to the report shall be allowed after members have signed it;

(viii) Deliberations and minutes shall be classified and be treated with confidentiality and shall not be disclosed to suppliers and other parties external to the AU procurement process.

(ix) Members shall sign the report and initial all the pages;

(x) The IPC may invite technical or resources persons to provide expert advice. The experts shall not have voting powers.

(c) Where a member has a direct or indirect interest in any matter, he or she shall declare his or her interest in the matter and shall not participate in the deliberations or decision-making process of the in relation to that particular matter.

(d) In respect of submissions from the Bid Evaluation Committee, the IPC may;

(i) Review and make decisions on submissions through meetings or by circulation where necessary,

(ii) For any rejected submission, explanation and justification for the rejection shall be provided.

(iii) The IPC shall not make any changes or amendments to submissions once they have been received. Any required changes or clarifications should be returned to the Business unit for action.

(e) Decisions shall be communicated to the Business unit in writing.

(f) Where it is not practical to convene a meeting for matters on which a decision is needed urgently, approving an award by circulation is permitted.

(i) A draft decision may be circulated to the Members together with the necessary supporting documents for seeking their approval, physically or electronically through email or fax.

(ii) Due consideration shall be taken to ensure that the decision is circulated to all members where possible or as minimum, the number of members who form a quorum.

(iii) The decision is approved when it is endorsed by majority of the Members.

(iv) Decisions approved by Circulation should be presented at the next IPC meeting and recoded in the minutes of that meeting.

(f) Participation in Tender Board, IPC and LIPC meetings shall be considered as additional criteria for staff performance evaluation for non - procurement staff. The Procurement Unit shall maintain a record of all meetings and submit an attendance report on an annual basis to the Chief Controlling Officer or Controlling officers as applicable.

4.2. PROCURING ENTITIES

4.2.1. Procurement Unit

(a) Though some Entities may not have a Procurement Unit as such, the term Procurement Unit is used to include any office with responsibility for conducting procurement operations.

(b) The Procurement Unit of each entity has the responsibility for the coordination and/or conduct of the procurement function in a professional manner and in accordance with the core principles of procurement. The functions of the procurement unit are to, inter alia:

i) Advise the AU Organs and Institutions on procurement policy and procedural issues;

ii) Review, consolidate and update the consolidated annual procurement plan.

iii) Act as secretariat to IPC / LIPC to provide general secretarial and technical support and advice to meetings

iv) Review specifications, terms of reference and scope of work when submitted by the Business Units;

v) Recommend the appropriate procurement method;

vi) Initiate procurement upon receipt of a valid requisition from Business units

vii) Prepare solicitation documents, advertise business opportunities and coordinate the evaluation process.

viii) Responding in writing to any requests for clarifications from bidders;
ix) Coordinate the receiving, storage and manage all tender opening meetings with a bid opening committee;
x) Manage and safeguard the tender box;
xi) Maintain a register of prequalified suppliers;
xii) Oversees the appointment of members of the ad hoc Bid Evaluation Committee (BEC);
xiii) Provide advice and support to BEC in the evaluation of bids/proposals;
xiv) compile the bid/proposal evaluation reports;
xv) Prepare and issue rejection and debriefing letters;
xvi) Notifying award of contract to the successful and unsuccessful bidders;
xvii) Prepare draft contract document for vetting and approval by the office of the Legal Counsel, as applicable;
xviii) Arrange for publication of contract awards on the website of the entity and/or other relevant websites;
xix) Prepare contract amendments;
xx) Perform market surveys and procurement research;
xxi) Implement the decisions of the IPC/LIPC;
xxii) Supports Business units in the management and administration of contracts;
xxiii) Registering and safeguarding any samples required to be submitted by bidders and coordinating their return to bidders after completion of the procurement process;
xxiv) Keeping track of all bid securities or performance guarantees entrusted to the safekeeping of the finance or equivalent, and actioning any claims against securities or retention monies.
xxv) Advising and ensuring prompt release and return of all securities as soon as they are no longer required for protection of the AU;
xxvi) Co-ordinate the internal monitoring and evaluation of the procurement functions and prepare a detailed Annual Report on procurement activities;
i) Prepare price catalogue;
ii) Collect, safeguard and archive records of the procurement process and maintaining detailed records for each procurement;
iii) Coordinate contract close-out procedures
iv) Undertake any other procurement-related duties or tasks as directed by the Controlling Officer

4.2.2. Business Units

(a) The functions of Business Units are to;

i. Identify all procurement requirements for goods, works and services for the next Financial Year for inclusion in the Annual Procurement Plan.
ii. Liaise with the Procurement Unit to develop an annual procurement plan
iii. Initiate and prepare statement of requirements, specifications, terms of reference, and scope of works, Bills of Quantities and forward them to the procurement unit along with a formal procurement requisition
iv. Certify services and invoices for payments to suppliers
v. Implement and monitor contracts in collaboration with Procurement Unit
vi. Propose amendments for awarded contracts

4.3. **COMMITTEES**

4.3.1 Bid Opening Committees (BOC)- Composition and Exemptions

(a) There shall be an Ad hoc Bid Opening Committee which shall open bids with an estimated value above USD50,000.00 under an open or limited tendering process. The following activities shall be exempted from formal bid opening regardless of the competition method;

i) EOI of Individual Consultants;

ii) Conference and meeting related services including but not limited to hotel accommodation and conference package, vehicle hire, translation services, interpretation equipment hire and printing if not advertised publicly.

iii) RFQ for standard goods, services and works below the prescribed threshold of open and limited competition.

(b) The adhoc Committee shall be composed of at least three members with a representative from the Business Unit, Procurement Unit as secretary and one other member.

(c) The Procurement Unit shall be responsible for constituting the Committee in collaboration with the Business Unit.

(d) The Procurement Unit shall provide advisory and technical support to the BOC and ensure that all procedures regarding the opening of tenders in open session are strictly followed, including the following;

(i) Circulating and collecting the declaration of confidentiality and impartiality and attendance register.

(ii) Preparing the minutes of the meeting Bid opening Committee

4.3.2 Bid Evaluation Committees (BEC)

(a) Bid Evaluation Committees shall be constituted on an ad hoc basis and may be composed of a representative from the Business Units, and subject matter experts, to undertake evaluation and make recommendations for contract award, shortlisting, and any other process recommendation as appropriate. The composition/quorum of the Committee shall be at least 3 members.

(b) The Head of Procurement Unit or Officer -in-Charge of procurement shall constitute the Bid Evaluation Committee for specific procurement process. Procurement unit shall provide secretariat and technical advisory support to the BEC;

(c) The secretary shall be responsible for carrying out all the technical and administrative support connected with the evaluation procedure. These include:

(i) Taking part in the evaluation if necessary to promote partiality and transparency in the evaluation process and also come out with an opinion position should there be an investigation and litigation requirements

(ii) Circulating and collecting the declaration of confidentiality and impartiality.

(iii) Ensuring safe custody of the bids and other relevant documents and records and

(iv) Registering attendance at meetings and compiling the evaluation report and its supporting annexes.

(v) Preparation of clarification requests or any other communication with bidders during the evaluation process.

(d) Evaluation for each tender shall not exceed 21 working days from commencement except where the circumstances of the process warrants otherwise;

(e) The Committee may carry out due diligence pre-qualification assessment or post qualification of bidders, where necessary. External experts may be appointed as members to assist the BEC on an ad hoc basis to provide specialist technical input.

4.3.3 Inspection and Receiving Committees (IRC)

The delivery of goods, and the completion of works, shall be subject to inspection and verification by an Ad hoc Inspection and Receiving Committee established for each procurement process consisting of at least 3 members. Stores Unit shall provide secretariat and technical advisory support to the IRC.

(a) The threshold for activities to be subjected to formal inspection by the IRC is stipulated in annex II of this Manual.
(b) The Committee may be composed of representative(s) from the Business unit, subject matter experts and a representative from the Stores Unit who Shall act as the Secretariat to the IRC. The composition of the team will depend on the nature of the requirement.
(c) Certification of works completed shall only be undertaken by the Inspection and Receiving Committee for the provisional or final acceptance of works resulting in the issue of a formal certificate of completion or performance where applicable.[1]
(d) External experts may be appointed as members to assist the IRC on an ad hoc basis to provide specialist technical input;
(e) Except for items delivered outside HQ and where AU has offices, the membership to IRC can be constituted from these offices provided that they have the requisite knowledge of the assignment to undertake the Inspection;
(f) Participation in procurement committees' meetings shall be considered as additional criteria for staff performance evaluation for non - procurement staff. The Procurement Unit shall maintain a record of all meetings and submit an attendance report on an annual basis to the Chief Controlling Officer or Controlling officers as applicable.

4.4. ASSETS AND STORES UNITS

(a) Stores Units, including approved sub-stores, are responsible for the following activities:
   (i) preparation of the annual budget for stock items with exception of medicine and medical items;
   (ii) acting as the Business Unit for purchase of stock items and make appropriate follow up;
   (iii) where items requested on a Stores Requisition are not available within the stores, raising of a Purchase Requisition to the Procurement Unit;
   (iv) Reporting on stock levels and movement;
   (v) Receipt, inspection verification and issuance of a Goods Received Note for all items received in the Stores below the threshold of the Inspection and Receiving Committee (IRC);
   (vi) Arranging for attendance of the Inspection and Receiving Committee and the supplier, if within the threshold of the IRC;
   (vii) Management of stock items and non-stock where applicable.

4.5. DIRECTORATE OF FINANCE

(a) [1] *The thresholds for a formal inspection by an IRC are specified in Annex II of this manual.*

The Directorate of Finance or equivalent is directly involved in the procurement process through project and program planning, co-ordination of the annual budgeting process and, confirming availability of funds. The responsibilities shall include but not limited to:

(a) The Directorate or equivalent must provide proof of fund availability before any procurement process is initiated;
(b) The Directorate or equivalent shall be responsible for the payment of suppliers and service providers, and the safekeeping of various securities provided by bidders and/or vendors;
(c) Provide financial advice and insights in the procurement processes whenever requested to do so

4.6. OFFICE OF LEGAL COUNSEL (OLC)

The Office of Legal Counsel or the Officer responsible for all legal services in an entity including, inter alia:

(i) the provision of legal advice to IPC/LIPC and Procurement Units on contractual issues and disputes;
(ii) the review vetting of all Standard Solicitation Documents and Standard Contracts before their first use by the AU; and
(iii) the review and vetting of all contracts within the threshold of the IPCs before their signing within 7 days.

4.7. OFFICE OF THE INTERNAL OVERSIGHT (OIO)

(a) The Office of the Internal Oversight shall ensure that the Procurement Rules and Procedures of the African Union are adhered to accordingly, including conducting any investigation as and when requested or mandated by the circumstances.

(b) The OIO shall also receive, adjudicate and recommend a course of action regarding complaints on the procurement processes.

CHAPTER 5 – PROCUREMENT MANAGEMENT TOOLS

5.1. INTRODUCTION

(a) The AU has developed several tools to help in the management of procurement and contract administration processes in accordance with the policies and procedures described in this Manual, including:

i) Standard Solicitation Documents and Standard Forms and Templates
ii) Standard Contract Templates
iii) Guidelines and Standard Operating Procedures
iv) Procurement Risks Management Register
v) A Suppliers' Register
vi) An Electronic Procurement Porta

5.2. STANDARD SOLICITATION DOCUMENTS

(a) The purpose of Standard solicitation documents is to help Users to accurately reflect their requirements and conditions and to help bidders arrive at an informed decision on whether or not to submit a bid, and to enable bidders to prepare responsive bids.

(b) These documents explain in detail the requirements of the purchaser regarding the works, goods consulting and non-consulting services being procured, the instructions for preparing and submitting bids/proposals the evaluation methodology for bids/proposals and the provisions of the proposed contract.

5.2.1. Standard Request for Bids (SRFB)

(a) The Standard Request for Bids (SRFB) is used to solicit bids for goods, Non-consulting services or works when the requirements can be clearly and completely specified and the evaluation can be conducted on a pass/fail quantitative basis, without the requirement for the bidder to submit subjective information that would require a more flexible evaluation methodology.

(b) This SRFB shall be used for competitive procurement above the thresholds specified in Annex II of the Manual.

(c) Modifications of the Instructions to Bidders and to GCC are subjected to prior approval of the Office of Legal Counsel of the AU or equivalent.

5.2.2. Standard Request for Proposals (SRFP)

a) The Standard Request for Proposal (SRFP), is used whenever AU solicits Proposals for requirements that cannot be evaluated quantitatively. This includes consulting and/or Non-Consulting services, where the evaluation methodology uses merit points systems.

b) Modifications of the "Instructions to Proposers/consultants" and to GCC are subjected to prior approval of the Office of Legal Counsel or equivalent.

5.2.3. Standard Request for Quotations (SRFQ)

(a) The Standard Request for Quotation (SRFQ) is to be used when the AU solicits Quotations for the procurement of limited quantities of simple goods, works and standardized Non-consulting services.

(b) This document is primarily designed for the procurement of limited quantities of readily available off-the-shelf goods, simple civil works of small value, or easily specified Non-consulting services (or a combination of these), where the requirement is straightforward and easily specified.

(c) Quotations should be obtained through advertisement or, when limited competition is justified, through a request for quotations (RFQ) to a limited number of firms. To ensure competition, request quotations should be sent to not fewer than three (3) suppliers / service providers.

(d) Firms shall be given sufficient time to prepare and submit their quotations. RFQs shall include the description, quantity, delivery period, location of the Goods, Works and Non- consulting Services, including any installation requirements, as appropriate. The request shall also indicate the deadline for submission of quotations and specify that quotations may be submitted by letter, facsimile or by electronic means.

(e) The evaluation of the quotations and contract award shall be carried out according to the criteria specified in the RFQ. The terms of the accepted quotation shall be incorporated in a contractually binding document.

5.3. STANDARD FORMS AND TEMPLATES

Standard procurement templates shall be used for all procurement activities in the process. The following standard templates and forms shall apply but the list can be updated from time to time;

5.3.1. Standard Templates

i) Combined Evaluation Report for Works, Goods and Non-Consultant Services
ii) Combined Evaluation Report for Consultant Services
iii) Simplified Procurement Plan (for publication on the internet).
iv) Procurement Statistics Data Collection Template.

5.3.2. Standard Forms

i) Purchase Requisition Form
ii) Bids Received Register
iii) Tender Opening Record
iv) Declaration of confidentiality and impartiality for Bid Evaluation Committee
v) Declaration of confidentiality and impartiality for IPC/LIPC
vi) Certificate of Final Completion (works contracts)
vii) Works Payment Request

5.3.3. Standard Letters

i) Response to bid clarification requests
ii) Bid cancellation pre-opening
iii) Extension of bid closing date
iv) Bid cancellation post-opening.
v) Bid clarification request
vi) Request for extension of bid validity
vii) Notification of Contract Award

viii) Notification of unsuccessful bid

5.4. GUIDELINES AND STANDARD OPERATING PROCEDURES

AU shall develop Guidelines and Standard Operating Procedures to be listed under an SOP and Guidelines Register.

(a) Guidelines provide advice on the execution of specific procedural aspects of the Procurement manual.
(b) Standard operating procedures are written, step-by-step instructions that describe how to perform a routine procurement activity. Standard operating procedures help maintain consistency and provide a shared understanding within the AU of how certain specific aspects of the procurement function.

5.5. PROCUREMENT RISKS MANAGEMENT REGISTER (PRMR)

(a) The AU shall develop a Procurement Risks Management Register (PRMR), to help AU officials and staff members involved in procurement, to identify and mitigate potential risks associated with the established procurement environment (institutions and management tools), in one hand and the conduct of procurement and contract management operations on the other hand.
(b) AU officials and staff members are encouraged to consult the relevant sections of the at critical step of the procurement and contract management processes to be alert to the risks associated with their actions and decisions.[2]

5.6. SUPPLIERS' REGISTER

5.6.1 Maintenance of Suppliers' Register

(a) The AU shall maintain a database of approved vendors. To register, a Vendor must provide information about itself and meet the AU's eligibility requirements. Registration is an administrative step.

(b) The Procurement Unit maintains a centralized electronic register of Vendors for sourcing the supply of AU needs for Goods, Services, and Works. All Procurement Practitioners should ensure that they encourage Vendors wishing to be included in the register of Vendors to do so through the AU's internet portal.

(c) The purpose of registration is to enable Vendors to respond to specific procurements and receive information on specific procurements relating to their expertise. This does not mean that Vendors have been pre-qualified for any specific procurement.

(d) Due diligence regarding qualification, past experience, financial standing and Contract performance will be carried out during specific competitive tender or direct Procurement Processes.

5.6.2 Roles and Responsibilities

(a) The Procurement Unit shall be responsible for evaluating Vendor Registration Forms (VRF), administering and maintaining the register of Vendors.

(b) The Procurement Unit will verify regularly the list of debarred Vendors and block the Vendor master record for the period of a Vendor's suspension.

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[2] *Ref. to the **AU Procurement Risks Management Register** for further information and guidance*

5.6.3 Registration Process

(a) Applicants shall complete and submit the VRF online. The applicants must attach the relevant documents to the VRF. Upon receipt of the VRF, The Procurement Unit will evaluate the VRF. The applicant will be informed of the status of its application in writing.

(b) The VRF must be certified to ensure that all information provided is true and correct.

(c) Any information concerning a Vendor's registration received independently from Vendors by any staff member shall be forwarded to the Procurement Unit.

(d) The Procurement Unit will request all registered Vendors to inform the AU immediately in writing about any changes in the information provided to the AU in VRFs.

5.6.4 General Principles

(a) The Procurement Unit maintains a database of pre-qualified suppliers, contractors and service providers, who have been assessed to be of a suitable standard to meet the requirements of the AU, based on clear qualification criteria.

(b) The Procurement Unit shall supervise all registration of suppliers based on the following principles:
   i) Establishment and publication of clear evaluation criteria for acceptance into defined categories;

   ii) Monitoring and evaluation of the performance of suppliers on contracts awarded and removal from the register of suppliers who fail to perform satisfactorily;

   iii) Sharing of database information among AU Procurement Units;

(c) Registration to be subject to periodic formal renewal, or cancellation if a supplier has not undertaken any AU contracts or re-registered within a three-year period.

(d) Registration of a Supplier in the Register of Suppliers indicates that the Supplier is eligible to participate in AU procurement with respect to goods and/or services for which it is registered. It does not guarantee that the Supplier will be selected to participate in any Solicitation or be awarded any Contract.

5.6.5 Additions to the Register of Suppliers

(a) To ensure that any new suppliers, contractors or service providers are given the opportunity to join the Register, open advertisement to invite applications shall be published

(b) Where invitations are issued for expressions of interest or pre-qualification, prospective vendors who respond and are found to be suitably qualified, shall be added to the database;

(c) In open competition, where the AU specifies the criteria by which the capability of bidders to execute a contract will be assessed, bidders who successfully pass this examination shall also be placed on the Register of Suppliers;

(d) Unsolicited application for registration may be accepted after assessment on the basis of the published criteria.

6.6.7 Other Provisions

(a) IPCs and LIPCs have overall responsibility for approval of registration and/or removal of Suppliers from the Register.

(b) Except when open tendering is required, and where no other method of pre-qualification is used, suppliers on the Register can be invited to participate in a limited competition, or solicited directly to negotiate a contract under certain.

(c) Whenever possible, a rotation of suppliers selected from the Register shall be made to ensure fairness and transparency rather than using the same suppliers every time

(d) In any case, the selection the capacity of the suppliers thus selected shall be commensurate with the size and complexity of the particular procurement.

5.7. ELECTRONIC PROCUREMENT SYSTEM

(a) Where possible, the AU is encouraged to develop and maintain a dedicated electronic procurement portal in order to improve its procurement management capability. The electronic procurement portal would ensure the following;
   i) obtain bids from different suppliers via a single online portal;
   ii) streamline the procurement management process;
   iii) reduce prices by maximizing supplier competition, and
   iv) creating a repository for procurement records and bidder's information;
   v) reduce the environmental impact of paper-based tendering.

(b) Separate guidelines shall be developed and annexes to this manual once the portal is fully operational to provide detailed procedural guidance to AU staff on its us

CHAPTER 6 - TYPES OF PROCUREMENT

6.1. INTRODUCTION

(a) For the purpose of this manual, procurement can be defined as "all actions necessary for the acquisition, by purchase or lease, of property, including products and real property, and of services, including works"

(b) Depending on the subject, procurement can be classified in three main categories, namely,
   i) the Procurement of Works,
   ii) the procurement of Goods and
   iii) the Procurement of Services (Consulting or Non-consulting services)

6.2. PROCUREMENT OF WORKS

(a) The procurement of works is the contracting of a Vendor with the relevant technical expertise to carry-out one or more of the following activities with respect to a structure:
   i) Construction, (including the assembly of prefabricated elements to form a structure)
   ii) modifications (alteration; fitting-out, conversion; renovation, fitting out) etc.); ·
   iii) commissioning; recommissioning
   iv) maintenance (repair; upkeep; redecoration or other maintenance)
   v) decommissioning, demolition or dismantling, or the disassembly of prefabricated elements which, immediately before such disassembly, formed a structure;
   vi) any other activity, with respect to a structure similar to the foregoing.

(b) Structure means
   i) any building (residential, institutional or commercial/industrial).,
   ii) railway line or siding, tramway line,
   iii) dock, harbor, inland navigation systems, viaduct, waterworks, sea defense works, river works, drainage works
   iv) road, airfield, tunnel, bridge,
   v) underground tank, reservoir, pipe-line, underground or over ground cables, aqueduct,
   vi) sewer, sewage works, gasholder,
   vii) , earthworks, lagoon, dam,
   viii) mast, tower, pylon,
   ix) wall, caisson, earth retaining element or assembly of elements designed to preserve or alter any natural feature, and
   x) any formwork, falsework, scaffold or other element or assembly of elements designed or used to provide support or means of access during construction work, or
   xi) any fixed plant in respect of work which is installation, commissioning, de- commissioning or dismantling;
   xii) any other structure similar to the foregoing.

(c) For the Purpose of this manual a works contract is an agreement between the AU (the Client) and a company (the Contractor), by which the latter provides any of the foregoing type of activities referred to under section 6.2(a), in exchange for an agreed upon price.

6.3. PROCUREMENT OF GOODS

(a) The term "goods" refers to all movable and tangible and intangible property, i.e., all that can be seen, touched and transferred from one place to another that have value and satisfy human needs, but excludes actionable claims and money.

(b) A Goods contract concerns the transfer of goods from the Supplier (seller of the Goods) to the AU (the Buyer), in exchange for an agreed-upon sum of money.

6.4. PROCUREMENT OF SERVICES

6.4.1 Consulting Vs Non-Consulting Services

(a) Non-Consulting Services are services in which the physical component of the activity leading to the delivery of the services is crucial. This type of services may include

i) complex equipment-intensive assignments using established technologies and methodologies that have measurable physical outputs.
ii) more traditional services such as transportation, cleaning, printing, maintenance, pest-control services, gardening and landscaping, accommodation, catering services, etc.

(b) Consulting services are intellectual, specialization or advisory-type assignments, which the AU has decided to outsource for inadequate or lack of in-house expertise in the specific areas.

(c) Unlike Non-consulting services where the physical component of the activity is crucial, Consulting services would normally call for intellectual inputs only.

(d) However, the boundary between Consulting and Non-consulting services is becoming more and more blurred. In some hybrid-type of services, such as utility management and plant operation, or Information Technology (IT) procurement, it may be necessary to determine the predominant features and cost of the assignment to decide whether to award the contract following methods of selection of consultants or in accordance with the Procurement of Non-Consultant Services.

6.4.2 Firms Vs Individuals

(a) The TOR of the assignment provide the basis for deciding whether an individual consultant or a consulting firm shall be hired for a particular assignment,

(b) Individual consultants are employed on assignments for which

i) the experience and qualifications of the individual are the predominant considerations,
ii) no support from a home office is needed, and
iii) teamwork or a multidisciplinary approach is not necessary.
iv) advisory services assignments or technical opinions on specific matters in which specialist individual knowledge is the key issue.

(c) On the other hand, when integrated technical and inter-multi-disciplinary teams, work and collective responsibility for the consultants' output are important, for example in preparing a complex feasibility study, it is necessary to hire a consulting firm.

(d) As a practical rule, if two or more individuals are needed for an assignment, it is often better to hire a consulting firm so that the firm can be responsible for identifying the best experts, ensuring cohesiveness and technical solvency, as well as backup and transparent administration.

(e) Notwithstanding the above, if hiring a team of independent individuals appears to be the most suitable solution, one of them may be designating one of them as the Team Leader (TL) if the scope work of the services requires some degree of coordination.

(f) The responsibility of the Team Leader may range from playing the role of the spokesperson on a panel of experts, to being the technical coordinator of a team of experts, with or without administrative responsibility. The TOR of each team member shall define their relationship to the team leader.

6.4.3 Individual Consultants

(a) The AU utilizes temporary assistance of individuals in order to respond quickly, flexibly and effectively to organizational priorities. There are two categories of such individuals, namely Individual consultants and Individual Service Providers.

(b) An Individual consultant is an individual who is a recognized authority or specialist in a specific field, engaged by the AU under a temporary contract in an advisory or consultative capacity. A consultant must have special skills or knowledge not normally possessed by the staff of the Union and for which there is no continuing need.

(c) The functions of a consultant are results-oriented and normally involve analyzing problems, facilitating seminars or training courses, preparing documents for conferences and meetings or writing reports on the matters within their area of expertise on which their advice is sought;

(d) Individual Service Providers

(i) An individual Service Provider is an individual engaged by the Union from time to time under a temporary contract to provide skills or handle a specific task or piece of work, which would be short-term by nature, against the payment of an all-inclusive fee.

(ii) The work assignment may involve full-time or part-time functions similar to those of officials/staff members, such as the provision of translation, editing, language training, public information, secretarial or clerical or other functions that could be performed by staff.

(e) Individual consultants and Individual Service Providers serve in their individual capacity and not as representatives of the AU. They are neither staff members under the Staff Rules and Staff Regulations of the AU nor officials for the purpose of the Privileges and Immunities of the AU.

6.4.4 Individual Consultants Contracts Vs Individual Service Contracts

(a) For the Purpose of this manual a Consultant contract is an agreement between the AU (the Client) and a Firm or Individual (the Consultant), by which the latter provides intellectual or advisory services to the AU, in exchange for an agreed upon remuneration or fee.

(b) For the Purpose of this manual an Individual Service Contract is an agreement between the AU (the Client) and an individual Service Provider by which the latter provides Non-Consulting Services to the AU, in exchange for an agreed upon remuneration or fee.

CHAPTER 7 – METHODS OF PROCUREMENT

The selection of the appropriate procurement method or procedure and type of competition is based on:

(i) The value of the procurement
(ii) The technical considerations of the goods, services or works being procured
(iii) The market conditions
(iv) The specific operational environment
(v) The type of contract to be awarded

(b) The Procurement Officer must examine each of the criteria above to select the method of procurement and type of competition that will fulfil all of the deliverables of the contract.

7.1. OPEN COMPETITION

(a) Open competition also called Open competitive Bidding or Open Tender, is a formal procurement process where:

i) the invitation to bid or tender is publicly advertised and
ii) all eligible bidders can submit an offer (bid or proposal).
iii) Competing bids are evaluated against pre-determined criteria, and

the contract is awarded to the bidder offering the Most Advantageous Bid/Proposal, in accordance with the applicable selection method.

(b) Open competition may be carried out with post or pre-qualification of bidders.

i) Under post-qualification, the capability of the bidder with the most advantageous Bid/Proposal, in accordance with the applicable selection method, will be assessed prior to awarding the contract:

ii) Under prequalification, the capability of all prospective bidders to undertake a specific contract is assessed prior to being invited to submit a bid. Pre-qualification is followed by limited competitive bidding to which only those firms who passed the prequalification stage are invited:

(c) Pre-qualification is appropriate for large or complex works, large custom-designed equipment, management contracting contracts to be bid as turnkey or design and build contracts, or in other circumstances when the high costs of preparing detailed bids could discourage competition.

(d) Pre-qualification has the following advantages:

i) It ensures that invitations to bid are extended only to those bidders who have adequate capabilities and resources, thus avoiding the unnecessary burden of having to evaluate a large number of bids from unqualified bidders;

ii) It provides assurance that only bids from competent suppliers and contractors are considered, and eliminates disputes that may arise from rejection of lowest bids at post-qualification stage.

iii) International and major firms are less likely to respond to an Open Tender with post qualification for large/complex contract as the cost of preparing a detailed bid is high, and open tendering introduces an unknown number of marginally qualified bidders, who may try to win the contract by submitting an unreasonably low bid.

(e) It is a fundamental principle of public procurement that an Open competitive process shall be used unless there are justifiable exceptional circumstances. Other methods of procurement may

be used when the advantages of Open competition are clearly outweighed by the administrative or financial burden involved.

(f) The selection of other procurement method to be used in each case shall consider prudent commercial practices and consider the use of a method appropriate within the particular industry for the Works, goods, or services being sought.

Continental and Regional Competitive Bidding

(a) In certain circumstances, it may be preferable to encourage continental or regional competition by limiting participation in contracting opportunities to a region or continent. Such procurement methods are then referred to as Continental or Regional Competitive Bidding, respectively.

(b) Continental or Regional Competitive Biddings are normally used under the following circumstances:
   (i) Approaching the continental or regional market is in the best interests of the AU whilst ensuring the achievement of best VFM and fit for purpose results;

   (ii) Where from a total cost perspective it is beneficial to obtain the goods, services or works locally;

   (iii) If the requirement is in a geographical location or with a delivery time frame that may not be of interest to international firms;

   (iv) Where it has been determined that obtaining goods, services or works locally would have a positive impact to sustainable local development;

   (v) Where contracting with a local company would reduce the environmental impact or increase national ownership;

   (vi) If expert knowledge of the region is required.

(c) However, in order to ensure effective competition continental and regional competition shall only be used where there are enough capable suppliers to participate in a tender process.

(d) Further, care must be taken to reduce the risk of potential fraud in the form of collusion or the formation of cartels.

7.2 LIMITED COMPETITION

(a) A limited competition allows only a selected number of suppliers to be invited to participate in a procurement process (a minimum of 3 should be invited).

(b) The Procurement Unit/Officer shall invite vendors from the approved suppliers' Register except where there are no prequalified suppliers for the category of goods, works or services required.

(c) Valid reasons for limited competition may include:
   i) An open competition would have negative security implications;

   ii) The subject matter of the tender is otherwise sensitive and cannot be advertised;

   iii) The requirement is below the threshold for open competition. Competent Authority;

iv) The number of potential suppliers is limited;

v) An open competition has failed to bring an award of contract;

vi) there is an urgent need for the goods, works or services there is insufficient time to engage in open bidding, provided that the circumstances giving rise to the urgency could not have been and have not been caused by dilatory conduct on the part of the Business Unit.

vii) Where limited competition is proposed the Procurement Unit shall request approval from the Competent Authority, depending on the threshold. The list of bidders to be invited shall be submitted as part of the justification.

viii) The Procurement Unit shall select the list from the Suppliers' Register except where there are no prequalified suppliers for the particular procurement or the list is in not elaborate.

7.3 DIRECT CONTRACTING

Direct contracting is the procurement of works, goods and non-consulting services without competition (single or sole sourcing) and may be an appropriate method under the following circumstances:

(a) An existing contract for goods, works and non-consulting services, competitively awarded within a maximum period of one year, may be extended for additional requirements of identical nature. The AU shall be satisfied in such cases that;

i. complementary services not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract. The services shall not consist of repetition of similar services entrusted to the contractor furnishing the services under the initial contract;

ii. additional deliveries by the original contractor intended either as a partial replacement of normal goods or installations or as the extension of existing contracts for goods or works, where a change of contractor would oblige the Procuring Entity to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.

iii. additional works not included in the initial contract which due to unforeseen circumstances, became necessary for carrying out the works described therein and have been awarded to the contractor already carrying out the work: (i) where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary; and (ii)) where such works, although separable from the performance of the original contract, are strictly necessary to its completion.

iv. no advantage could be obtained by further competition and;

v. the prices on the extended contract remain unchanged or if changed, prices are reasonable.

(b) there is a justifiable requirement to re-engage a Supplier that has previously completed a contract, within a maximum period of one year, to perform a similar type of contract. The justification shall show that:

(i) no advantage may be obtained by competition;

(ii) the prices for the direct contracting remain unchanged or if changed, they are reasonable;

(c) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier or new purchase from a new Supplier. For additional purchases to be justified,

i. the original equipment shall be suitable,
ii. the number of new items shall generally be less than the existing number,
iii. the price shall be reasonable (compared to market price for similar items), and
iv. the advantages of another make or source of equipment shall have been considered and rejected on acceptable grounds

(d) The required equipment is proprietary and/or obtainable only from one source;

(e) The procurement of certain goods from a particular Supplier is essential to achieve the performance or functional guarantee of an equipment, plant or facility;

(f) For very low value contracts[3] as prescribed in the thresholds under Annex I of this manual;

(g) In circumstances where open or limited competition would have negative security implications for the AU;

(h) In circumstances that are in accordance with the provisions of the AU Guidelines for Procurement under Disaster and Emergency Situations;

(i) Purchase of the following services and goods:

(a) Regular training programs offered at published rates by established training institutes[4]
(b) Photography services
(c) Advertisements e.g. in newspapers, magazines, journals, websites, radio, television or similar public media.
(d) Lease/rental of real estate services
(e) Writers
(f) Subscriptions to journals, magazines and other publications whether digital or printed.

(j) Where Direct Contracting is proposed, except for transactions within the threshold for Direct Contracting, the Procurement Unit shall request approval from the Competent Authority, depending on the threshold.

(k) Where the use of direct contracting has been approved, the vendor must submit a written offer based on the specifications and applicable terms and conditions of contract.

(l) Negotiations with the vendor shall be carried out by team comprising a minimum of two BEC members, who are fully familiar with the assignment, and preferably have a prior experience in contract negotiations to obtain best value for money and best terms and conditions of contract.

(m) The Negotiation Team shall be supported by the Procurement Officer in charge, who shall ensure that its members are fully briefed on the procedures and understand the scope and limits of the negotiations.

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[3] *Dollar thresholds defining "very small/very low value" is the same as those specified for Micro Purchases*

[4] Ad-hoc or tailor-made training programs designed for the specific needs of the AU, are normally delivered by consulting firms (including training institutes) or s selected as per the procedures of this manual

(n) The Contract award recommendation and Minutes of Negotiations (where applicable) shall be submitted to the Competent Authority for approval prior to the issuance of the final contract to the vendor.

7.4 MICRO-PURCHASES

(a) Micro-Purchases is the process of acquisition of goods, works and/or services, which are readily available off-the shelf goods, very small civil works and very simple services, through Direct Selection method for contract values prescribed in annex I of this Manual.

(b) Under this process Business Units are entrusted with responsibility to initiate direct interaction with a supplier that leads to the acquisition of goods and services using Direct Contracting (one supplier) or request quotations from more than one Supplier.

(c) However, Business Units should ensure that the principle of Value for Money is upheld throughout the Direct Selection procurement processes.

(d) Under Micro Purchases, the use of Purchasing Cards (Debit or Credit Cards) may be prominent based on an imprest -reimbursement arrangement which will be authorized by the controlling officer.

7.5. USER EXECUTED PURCHASES (UEP)

(a) Is a delegated procurement authority to Business Units (BU) which provides BUs with the ability to initiate direct interaction leading to the selection of a Contractor. As with standard requisitions, Directors and above are authorized to approve procurement transactions under UEP.

(b) Business Units shall be responsible for effective management of their budgeted resources and therefore shall be fully accountable for all expenditures incurred through the use of UEP.

(c) The Following regulations shall apply:

i. The estimated amount of the transaction shall not exceed USD 25,000.00. The threshold may be reviewed subject to risk analysis and compliance;

ii. The requirement shall be limited to off-the-shelf, standard commercially available Goods and Services;

iii. UEP shall apply for the following categories (a) Catering services, (b) Accommodation, (c) Conference Package, (d) Stationeries for meetings, (e) car hire (f) subscription to journals and professional associations (g) payment of honoraria, purchase of medical supplies;

iv. Business Units shall use standard solicitation documents as prescribed in this manual;

v. This method shall not be used for hiring consultants and for procurement of goods and services that leads to framework Contract;

vi. Requirements shall not be split or desegregated in order to remain under the designated threshold;

vii. The Business Units shall be responsible for issuing Purchase Orders, confirming service delivery, ensuring delivery of Goods to stores for Goods Received Note, and ensure payment is done on timely basis to the vendor.

7.6. FORCE ACCOUNT AS PROCUREMENT A METHOD

a). Force account, that is, Procurement by the use of a grant recipient's own personnel and equipment, may be the only practical procurement method where:

(i) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;

(ii) quantities of work involved cannot be defined in advance;

(iii) it is uneconomical to outsource or conduct a competitive process for the works;

(iv) work is required to be carried out without disrupting ongoing operations;

(v) risks of unavoidable work interruption are better borne by the AU than by a Contractor; and;

(vi) these works are required in response to emergencies needing prompt attention.

b). Where a procuring entity uses force account, the procedure shall be as follows:

(i) identify and include the activity in the annual procurement plan;

(ii) seek approval from the Competent Authority for use of force account method;

(iii) prepare relevant bills of quantities, cost estimates and technical drawings, where applicable;

(iv) establish that the cost of the items to be procured are at prevailing indicative market prices obtained through a market survey

7.7. FRAMEWORK CONTRACTS[5]

(a) A framework agreement is a long-term agreement with a vendor (or multiple vendors), which sets out the terms and conditions and agreed pricing under which specific procurements (call-offs) can be made throughout the duration of the agreement.

(b) Framework contracts minimize the cost and effort invested waste in preparation of multiple similar small procurement processes by agreeing fixed item prices with a vendor for a set period of time, and reduce the need for costly stock-holding within the AU Stores.

(c) Framework (or "call-off") Contracts may be used, wherever practical to provide an efficient, cost effective and flexible means to procure goods, works or services that are required continuously or repeatedly by the AU over a set period of time.

(d) Framework contracts may be used for goods works and services items that are readily available in the market, or goods of relatively short shelf life.

(e) The Procurement Unit, in consultation with the Business Units shall exercise professional judgement in determining the best approach and which category for which Framework Contracts maybe used

[5] *Ref the AU **Standard Operating Procedure for Framework Contracts** for detailed procedural guidance*

CHAPTER 8 – METHODS OF PROCUREMENT OF CONSULTING SERVICES

8.1. SELECTION OF CONSULTING FIRMS

(a) Depending on the circumstances there are six possible methods for the selection of consulting firms, namely:
   i) Quality and Cost Based Selection (QCBS);
   ii) Quality Based Selection (QBS);
   iii) Selection under a Fixed Budget (FBS);
   iv) Least Cost Selection (LCS);
   v) Selection Based on Consultant's Qualifications (CQS); and
   vi) Single Source Selection (SSS).

(b) The choice of the appropriate method of selection is dependent on the nature, size, complexity, likely impact of the assignment, technical and financial considerations, and the particular circumstances of the assignment.

(c) It is therefore necessary to have a good understanding of the objective and the scope of the services, before deciding on the selection method.

8.1.1. Quality and Cost-Based Selection (QCBS)

(a) Quality and Cost Based Selection (QCBS) is the standard method of selecting consultants through competition among a short-list of qualified or direct call for proposals firms. The selection is based on the quality of the proposals submitted by the shortlisted firms, and the cost of the services to be provided.

(b) The relative weights given to the technical quality and cost of each proposal are determined jointly by the Business Unit and Procurement Unit for each case, depending on the nature of the assignment. The default minimum scores shall be 70 for technical evaluation and 30 for financial evaluation. These can be revised upwards on case by case basis.

(c) Since under QCBS the cost and quality of the proposed services is a factor of selection, this method is appropriate when:

   (i) the scope of work of the assignment can be precisely defined and the TOR are well specified and clear, and;

   (ii) the staff time as well as the other inputs and costs required of the consultants can be estimated with reasonable precision.

(d) Under QCBS the technical and financial proposals are submitted simultaneously in separate sealed envelopes (two-envelope system). The Evaluation of proposals is carried out in two stages: (1) quality and (2) cost.

(e) The technical envelopes are opened immediately after the closing time for submission of proposals; the financial proposals remain sealed and shall be deposited in safe custody until the technical evaluation is completed and approved by the Competent Authority.

(f) The financial envelopes of those consultants who submitted responsive technical proposals meeting the qualifying mark[6] are opened in the presence of the consultants or their representatives if they choose to attend. Default pass mark will be 70% but the Business unit and Procurement may agree on a higher mark.

(g) A combined evaluation of the technical and financial proposals is carried out by weighting and adding the quality and the cost scores, and the consultant obtaining the highest combined score is awarded the contract or invited for negotiations.

8.1.2. Quality-Based Selection (QBS)

(a) Quality Based Selection (QBS) is based on an evaluation of the quality of the proposals and the subsequent negotiation of the technical and financial proposal and award of the contract to the consultant who submitted the highest ranked technical proposal.

(b) This method is suitable for the following types of assignments:

(i) complex or highly specialized assignments where it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, financial sector reforms etc.);

(ii) assignments that have a long-term impact and in which the objective is to have the best experts available (for example, feasibility and structural engineering design of such major infrastructure as large dams or hazardous waste remediation plants, policy studies of national significance, management studies of large government agencies); and;

(iii) assignments that can be carried out in very different ways, and therefore proposals may not be directly comparable (for example, management advice, or policy studies in which the value of the services depends on the quality of the analysis);

(iv) In some cases, the choice between QBS and QCBS may be difficult. In situations of strong uncertainty and/or high risk for the AU, QBS shall be adopted because quality is the key element.

(c) The RFP may require submission of a technical proposal or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the best-evaluated technical proposal is opened (subject to meeting a predetermined qualifying mark of 70%) and, the rest are returned unopened to the bidder, after the negotiations are successfully concluded.

(d) If technical proposals only are invited, after evaluating the technical proposals the Consultant with the best-evaluated technical proposal will be invited to submit a detailed financial proposal for negotiation.

(e) Since the TOR of assignments under QBS are generally less defined and relatively more complex than under QCBS, contract negotiations with the winning consultants may be lengthy and complicated.

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[6] *The Qualifying Mark for QCBS shall not be less than 70 points (70%)*

(f) Other aspects of the selection process are identical to those of QCBS

(g) The use of the QBS method shall be subject to approval by the Competent Authority depending on the threshold prior to launch of selection.

8.1.3. Selection Under a Fixed Budget (SFB)

(a) Under this method, the available budget is disclosed to invited consultants to obtain the best proposal from short-listed consultants within a pre-determined budget limit;

(b) This method is only appropriate when:
   (i) the assignment is simple and can be precisely defined;
   (ii) the time and staff-month effort required from the consultants can be assessed with precision and
   (iii) the budget is fixed and cannot be exceeded (unavailability of additional funds).

(c) The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks and to minimize the risk of receiving unacceptable technical proposals or no technical proposals at all.

(d) The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the stated budget.

(e) Technical proposals will be evaluated using the same procedure followed for QCBS, and consultants who pass the minimum technical mark[7] will be invited to a public opening of their financial envelopes.

(f) Any financial proposals that exceed the indicated budget shall be rejected and the Consultant who has submitted the highest ranked technical proposal within the budget will be awarded the contract.

8.1.4. Least Cost Selection (LCS)

(a) LCS is a competitive process among firms under which the selection of the successful firm considers the quality of the Proposal and the cost of the services. Technical proposals are examined to ensure that they pass a specified minimum technical score and the lowest-priced bidder of those passing this minimum technical qualification score will be selected for contract award.

(b) This method is more appropriate for assignments of a standard or routine nature (standard financial audits, engineering design of non-complex works, etc.)
   i) Where well-established practices and professional standards exist, and
   ii) when the contract value is small,[8] a qualifying mark determined by the Business Unit and Procurement for the required quality is stated in the RFP. Since quality is set as the qualifying mark, it is recommended to set such a mark higher than is usual to ensure quality and avoid the risk of selecting low-cost proposals of marginally acceptable quality.

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[7] *The minimum Qualifying mark shall not be less than 70%*

[8] *Dollar thresholds defining "small/low value" is the same as those specified for User Initiated Purchases (UIP)*

(c) Technical and Financial Proposals are required to be submitted in separately by the short-listed firms.

(d) Technical proposals are evaluated first. Those bids scoring less than the qualifying mark are rejected.

(e) The financial proposals of the firms that have passed the technical evaluation with the minimum qualifying mark are evaluated and the qualified firm with the lowest evaluated price is selected for contract award.

8.1.5. Selection Based on Consultant's Qualification (CQS)

(a) This method may be appropriate for low value consultancies [9] where the need for submission and evaluation of detailed competitive proposals is not justified.

(b) Expressions of interest and information on the consultants' experience and competence relevant to the assignment are requested and the firm with the most appropriate qualifications and references among those shortlisted is selected.

(c) The selected firm is invited to submit a combined technical and financial proposal, and then to negotiate the contract if the technical proposal is acceptable.

(d) The use of the CQS method shall be restricted to exceptional circumstances and subject to approval by the Competent Authority depending on the threshold prior to launch of selection.

8.1.6. Single Source Selection (SSS)

(a) Single Source Selection (SSS) is a non-competitive method where a specific consultant is asked to prepare technical and financial proposals, which are then considered for award of contract or negotiated.

(b) Single-source selection shall only be used in exceptional circumstances where there is a clear advantage over competitive selection such as:

i) An existing contract for-consulting services, competitively awarded with a maximum period of 12 months, may be extended for services of identical nature subject to satisfactory performance in the first assignment. The AU shall be satisfied in such cases that no advantage could be obtained by further competition and that the remuneration rates on the extended contract are reasonable or the same as under the original contract.[10]

ii) for tasks that represent a natural continuation of previous work carried out by a Consultant within the last 12 months, where continuity in the technical approach, experience acquired, and continued professional liability of the same Consultant may make continuation with the initial Consultant preferable to a new competition, if performance has been satisfactory in the previous assignment (s):

iii) The required services are obtainable only from one source;

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[9] *Dollar thresholds defining "very small/very low value" is the same as those specified for Micro Purchases*

[10] *Provisions for such an extension, if considered likely in advance, shall be included in the original contract;*

iv) For very low value assignments as prescribed under Annex II of this Manual;

v) In circumstances where the use of a competitive selection method would have negative security implications for the AU.

vi) In circumstances that are in accordance with the provisions of the AU Guidelines for Procurement under Disaster and Emergency Situations

vii) Where rapid selection is necessary for example in response to emergency situations

(o) All requests for Single sourcing shall be fully justified and approved by the Competent Authority prior to engagement with the consultant.

(p) The recommended contract award and Minutes of Negotiations where applicable shall be submitted to the Competent Authority for approval, prior to the issuance of the final contract to the consultant.

8.2. SELECTION OF INDIVIDUAL CONSULTANTS AND INDIVIDUAL SERVICE PROVIDERS

(a) Individual consultants and Individual service Providers are selected based on their qualifications and experience. The selection shall be on the basis of comparison of qualifications and experience of candidates expressing interest in the assignment or approached directly by the AU should the call for Expression of interest fail to attract suitable applicants.

(b) Rosters of Individual consultants and contractors should be utilized where available, as they provide easy access to a screened pool of individuals with a relevant track record

(c) It is recommended to publish in the AU websites, a call for submission of applications and relevant proof of qualifications, especially where potential suitable candidates are unknown. The call shall include a short description of the task or job description and the criteria for selection.

(d) Candidates selected from a roster should be further screened for qualifications, references and prior work experience.

(e) Individual consultants and Individual service Providers employed by the AU shall meet all relevant qualifications and shall be fully capable of carrying out the assignment.

(f) Capability is judged on the basis of academic background, relevant experience, and, as appropriate, knowledge of local conditions, such as local language, culture, administrative system etc.

(g) For assignment above USD100,000.00, interviews shall be conducted for the key experts in the case of a firm.

(h) Subject to approval by the relevant authority, for key (potentially high impact) assignments, interviews may be set up, and shortlisted candidates may be assessed by an ad-hoc evaluation committee through audio or video conference call.

(i) Individual consultants or individual service Providers may be selected on a single-source basis with due justification, in exceptional circumstances similar to those described for consulting firms.

CHAPTER 9 – PROCUREMENT PLANNING

9.1. IMPORTANCE OF PROCUREMENT PLANNING

(a) Procurement planning is the process of assessing and projecting the procurement needs of the AU in order to determine the best approach to procurement of works, goods and services.

(b) Adequate procurement planning and prioritization of needs by each Business unit is an essential prerequisite to effective purchasing for the following reasons:

(i) Funding for procurement is unlikely to be sufficient to meet all requirements, and scarce financial resources must be channeled to ensure that the priority aims of the AU are adequately met before spending on less essential activities.

(ii) Because the AU expects recipients to limit the acquisition of goods works and services to the amount it needs to support its programs and operations, advance procurement planning is the best opportunity to identify potential consolidation of procurements (e.g., several internal customers purchasing common items at the same time).

(iii) Effective planning allows individual requirements to be aggregated into larger purchases at lower unit costs, rather than frequent request for quotations of small quantities of identical items and the issue of multiple separate Purchase Orders.

(c) Procurement planning is a strategic function which should be carried out collaboratively by the Business Units, the Procurement Unit and the Finance or equivalent.

9.2. THE PROCUREMENT PLANNING PROCESS

9.2.1. Annual Procurement Plans

(a) Annually, and as soon as the annual budget is approved each Business Unit shall prepare its list and schedule of procurement activities and submit it to the Procurement Unit.

(b) Contracts with an estimated value of USD,20,000.00 shall be included in the APP. However, all consultants Contract shall be included in the APP.

(c) The APP shall be prepared for the following categories of procurement (a) Goods, (b) works, (c) Consulting Services and Non-Consulting services.

(d) Exception to the above shall be given to:

(j) procurements under UEP

(ii) Conferencing packages irrespective of amount

(iii) Procurements under emergencies, which shall be guided by the Emergency Procurement Guidelines

(iv) Payments for on - going services

(iv) Extension of Contracts under Direct procurement and all direct procurements.

(e) Notwithstanding the exceptions in (d) above, all procurements shall be reported in the Union's procurement report. The report shall be desegregated in according category, geographical distribution, participation by women and youths among other criteria.

(e) The Procurement Plan shall contain the following minimum information:

i) Item No. (i.e., a numerical identifier);

ii) Type of works, goods or services, using the applicable AU nomenclature

iii) Estimated quantity (number of units) or term (number of months or years);

iv) Estimated value in US dollars, funding source and budget reference;

v) Start and Delivery dates or quarter when the goods are required to be delivered or the services or works are required to commence and be completed;

vi) Any other relevant information (e.g., places where goods, services or works re needed, if different from the Business Unit's location).

vii) Indicate the method of procurement

9.3. CONSOLIDATED ANNUAL PROCUREMENT PLAN

(a) Procurement Units shall review annual requirements of the respective Business Units to identify opportunities for economies of scale and consolidate their need into a single procurement plan for better efficiency and lower costs.

(b) Consolidated Annual Procurement Plans for the forthcoming year (1 January – 31 December) shall be approved by the Chief Controlling Officer or Controlling Officer of the other Organs. This approval authority may be delegated in writing to a Competent Authority

(c) The approved Annual Procurement Plan, shall be published on the entity's website for the forthcoming year to allow the market to respond more effectively to the requirements of the AU,

(d) Originating Units shall provide any proposed revisions to their requirements at no more than six-month intervals, and Procurement Units shall advise as to what portion of these needs can be procured within the current Acquisition Plan period.

(e) Long-term procurement planning (i.e., planning more than one year in advance) is advisable for major, complex capital investment projects, or a substantial number of operating contracts that will span several years.

9.2.2. Market Research/Analysis

(a) The Procurement Unit may conduct a market research to have a good understanding of the market to decide on the best approach to procurement activities for the upcoming year.

(b) Such understanding can be gained from various sources, including:
   i) own knowledge from previous experience
   ii) internet research
   iii) other buyers
   iv) use of the services of a market analysis consultant
   v) professional bodies (chamber of commerce, business associations etc.)

(c) A thorough analysis of the market will help the Procurement Unit;
   i) assess the size and structure of the market, the capability of market sectors relevant to the type of works, goods and services identified in the acquisition plans submitted by business,
   ii) identify potential issues and risks to competition
   iii) decide on the optimum procurement strategy, i.e., approach to contract packaging and the choice of procurement methods.

9.2.3. Contract Packaging

(a) The Procurement Unit, collaboratively with the respective Business units may decide how items to be procured shall be combined or divided into separate contract packages, considering market conditions.

(b) The objective is to divide the requirements of the AU into a manageable number of appropriate batches of contracts that will produce the maximum competitive response from bidders, while benefitting from economies of scales.

(c) For works, homogeneous contract sections or buildings or other physical facilities need to be determined and assessed against the capabilities of local contractors and the perceived level of interest of foreign contractors.

(d) For goods procurement, each contract normally includes only goods of the same or related specialty or works of a similar kind. For activities requiring both civil works and the supply and installation of equipment, separate contracts are normally awarded.

(e) Commonly-used items may also be aggregated for more than one Business unit into annual Framework (Call-off) Contracts to permit further economies of scale.

(f) Certain works contract may include the supply of some or limited pieces of equipment, and a supply contract may include installation works that are civil in nature. The type of contract is normally determined by which items in the scope—goods or works or services—dominate.

(g) For services, the selection of the appropriate packaging is based on whether the assignment is to be carried out by consulting firms or by individual consultants or contractors.

(h) Whenever possible, each bid package shall be large enough to be suitable for International Competitive Bidding. Procurement packages shall not be split with the sole purpose of avoiding the use of competitive methods.

(i) The size and scope of individual contracts will depend on the magnitude, nature, and location of the activity that requires the procurement of works, goods or services.

(j) The capacity of the Business Unit to manage the contracts may also affect the choice of contract packages.

(k) The Business Unit shall be responsible for implementation of the Procurement Plan

CHAPTER 10 – REQUIREMENT DEFINITION

10.1. IMPORTANCE OF REQUIREMENT DEFINITION

(a) The purpose of requirement definition is to inform bidders of the nature and specific features of the works, goods, or services the AU intends to procure to fulfil its business needs.

(b) It should focus on features that are truly necessary, as opposed to those that may be desirable, but are not really pertinent to the AU's requirements.

(c) Poorly defined requirement may result in the following negative consequences (list not limitative):
   i) breach of procurement principles of Non-discrimination, Economy, Value for Money, Transparency, Integrity etc.)
   ii) bidders' mis-interpretation of requirements which may result in non-responsive bids and unsuccessful procurement
   iii) major difficulties in evaluating the bids and insufficient justification for rejection of bids for technical non-compliance
   iv) wasted money due to the procurement of costly, unsuitable or unnecessary products that exceeds the needs of the AU.
   v) Delays due to many requests for clarifications of ambiguous definitions or claims of unfair treatment being made by tenderers.

(d) Also, once a contract is awarded, the scope for changes to the requirements is limited and any major modifications may be call for compensation or challenged in courts.

(e) It is therefore critical that such definition is sufficiently clear (unambiguous) to enable prospective Vendors to effectively respond to them.

(f) Where a procurement project is complex, the Business Unit may use external consultants to assist in preparing or reviewing the definition of requirements.

(g) Requirement definitions are usually classified as

   i) Statement of Works (SOWs) for civil works,
   ii) Technical Specifications (TS) for goods/equipment,
   iii) Performance Specifications for Non-consulting Services or
   iv) Terms of Reference (TOR) for Consulting Services.
   v) Bill of Quantity (BOQ)

10.2. STATEMENT OF WORKS

(a) For works contracts, a clause setting out the scope of works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings to accurately describe the building or facility.

(b) Where the contractor is responsible for the design of any part of permanent works the extent of his obligations must be stated.

(c) SOWs are usually developed by an Engineer (or suitable technical expert) and cleared an AU engineer to suit specific contracts.

(d) In specifying standards for materials, equipment, plant, workmanship and other supplies to be used for works contracts, international standards shall be used as much as possible.

(e) Where other standards are used, whether national standards of the concerned Member state of the AU or other standards, the specifications shall state that other authoritative standards which ensure substantially equal quality to the specified standards would also be acceptable.

10.3. TECHNICAL SPECIFICATIONS FOR GOODS

(a) Specifications should not refer to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer shall be avoided as far as possible, except when it has been determined that it is absolutely necessary to do so. In these cases, the references should be followed by the words "or equivalent", together with the criteria for determining such equivalence.

(b) The specific features of the requirements for goods and equipment vary depending on the type and complexity of the goods.

i) Technical Specifications and Standards- Public standards can be used as a basis for specification (where international Standards exist these must be given preference) or these can be supplemented or replaced by output/performance specifications.

ii) Output/Performance Specification: The specification may be written in "performance" terms, which focus on the function of the equipment or the output of the service required. This means building the specification around a description of what is to be achieved rather than a fixed description of exactly how it shall be done. Performance specifications promote innovation in the market place, thereby allowing and encouraging suppliers to propose modern (including environmentally friendly) solutions.

iii) As much as possible characteristics required from complex equipment shall be specified in terms of functionalities or performance range (minimum and maximum) rather than specific pass-fail targets. Only those characteristics that are critical to the functionality of the equipment or plant (as applicable) are clearly outlined as mandatory (pass-fail) requirements.

iv) Design Specification: In very exceptional circumstances, for a very limited number of manufactured products, a "design" specification may be unavoidable. As the term implies, such a specification details the physical dimensions, the materials used, the manufacturing processes required, and so on. However, these assertions shall be tested and guidance sought, as a "design" specification may restrict competition.

(c) Technical specifications for Supply and Installation of major Plants and Equipment shall be descriptive and give the full requirements in respect of, but not limited to, the following:

i) standards of materials and workmanship required;
ii) details of all factory tests required (type and number);
iii) details of all pre-commissioning and commissioning activities to be performed by the Supplier; and

iv) details of all functional guarantees required and liquidated damages to be applied in the event that such guarantees are not met.

(d) It is recommended that essential technical and performance characteristics and requirements, including maximum or minimum acceptable values, as appropriate, be summarized in a specific section, to be completed by the bidder and submitted as an Attachment to the bid form.

(e) There are considerable advantages in standardizing general specifications for repetitive goods or equipment such as vehicles, office equipment, uniforms etc. which are to be used under similar conditions.

10.4. PERFORMANCE SPECIFICATIONS FOR NON-CONSULTING SERVICES

(a) The specifications for non-consulting services is generally written in "performance" terms, which Include service levels and a process for measuring ongoing performance, including criteria for acceptance of the services.

(b) Performance specifications for services may refer to many types of service levels expressed either in quantitative terms (output) or qualitative terms (outcome) as illustrated but not limited to the following examples:

Type of Services	Quantitative Specifications	Qualitative Specifications
Health services	• Number of children under 5 year of age vaccinated per year or • minimum percentage of children vaccinated among a given population	• Reduction in number of cases of child mortality due to malaria
Transport services	• Transport and distribution of X tons of food supplies to 10 named villages; • Evacuation of X number of people from conflict zones etc..	• Frequency of damage of transported goods; or frequency of delayed delivery etc.
Maintenance services	• Number of preventive maintenances per quarter; • number of equipment serviced per month	• Average response time upon notification of breakdown, or average repair time after a system breakdown.
Catering services	• Number of lunch boxes to be delivered to workshop participants	• Percentage of satisfactory reviews in a population of X number of regular customers

(c) The process for measuring service performance levels shall be contradictory and can be in the form of inspections, statistical data collection and/or surveys among customers/users of the service.

10.5. TERMS OF REFERENCES FOR CONSULTING SERVICES

10.5.1 Main Considerations

(a) Adequate and clear TOR are important for the understanding of the assignment and its correct execution. They help reduce the risk of ambiguities during the preparation of consultant proposals, lengthy contract negotiations, and delayed delivery of the services.

(b) Drafting the TOR requires expertise with the type of assignment as well as familiarity with the background of the activity for which consulting services are needed.

(c) The level of detail and quality of information that can be contained in the TOR influence the selection method to be adopted. For example,
   i) if the TOR cannot be defined with adequate precision and detail, QBS may be more appropriate than QCBS,
   ii) whereas QCBS is preferable when a defined scope of work and a reliable cost estimate are available.

(d) The scope of work in particular shall be consistent with the available budget

10.5.1. Content of Terms of Reference

(a) The TOR may consist of the following sections:
   i) background of the activity;
   ii) objectives of the assignment and Qualification and experience of the firm;
   iii) scope/duration of the assignment;
   iv) transfer of knowledge, if applicable
   v) list and schedule of deliverables, period of performance;
   vi) data, local services, personnel, and facilities to be provided by the AU; and
   vii) supervision arrangements.
   viii) Time input

10.5.2.1. Background of the activity

(a) The background summarizes the main features and general purpose of the activity, including in particular (as applicable):
   i) name of the Entity/Business Unit
   ii) summary and location of the activity that would be supported by the consultant; •
   iii) historical background (what has been done so far and by whom);
   iv) list of relevant studies and or background data;
   v) need for consulting services and issues to be resolved and
   vi) source of financing for the assignment;

10.5.2.2. Objectives of the assignment

(a) The TORs shall precisely describe the objectives and expected results of the assignment. Typical objectives of an assignment may include;
   i) Development of operational systems;
   ii) determination of project feasibility before an investment is made;
   iii) preparation of solicitation documents;
   iv) Civil works supervision;
   v) collection and analysis of statistical data;
   vi) Evaluation of assets etc.

10.5.2.3. Scope of the assignment

(a) This section of the TOR details all main activities (or tasks) to be conducted by consultants towards the expected results.

(b) The TOR shall describe the activities, by which the results are to be achieved. It may not be necessary to describe the methodology since this is normally proposed by the consultant where it is a key evaluation criterion for deciding the merit and suitability of each proposal.

(c) Sometimes, the activity may require phased consultant assignments. In such cases, the TOR shall be more detailed for the first phase and less detailed for the subsequent ones. The details of the subsequent phases will be refined as needed on the basis of the outcomes of earlier phases.

(d) Phased assignments are likely to require that the scope of work be modified depending on intermediate results. In such cases, the TOR shall clearly indicate the circumstances under which a decision will be made to modify the scope of work.

(e) If transfer of knowledge is an objective of the assignment, the TOR shall provide specific details on the key characteristics of this component (e.g. number and profile of targeted beneficiaries) and ask consultants to propose suitable training approaches and methods.

10.5.2.4. Output and Schedule of deliverables

(a) The TOR shall clearly define the output and deliverables required of the consultants, such as reports, maps, drawings, or software etc.

(b) The TOR shall indicate the estimated duration of the assignment, from the date of commencement to the date the AU receives and accepts the consultant's final deliverable or a specified completion date.

(c) The reporting requirements shall be clearly specified. In particular, for inception and progress reports, there shall be a balance between keeping the AU well informed and not forcing consultants to spend an excessive amount of time preparing intermediate reports.

(d) Depending on the assignment, the following reports are usually required from consultants

i) Inception Report. The inception report is designed to give the Business Unit confidence that the assignment can be carried out as planned and as agreed upon in the contract, and shall bring to its attention major problems that might affect the direction and progress of the work. No payment shall be made to the consultant at this stage except where justified and approved by the relevant authority.

ii) Progress Reports. These reports keep the Business Unit regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for actions to be taken by the AU.

iii) Interim Reports. If the assignment is phased, interim reports are required to inform of preliminary results, alternative solutions, and major decisions that need to be made.

iv) Draft Report: This is the first comprehensive output that is due at completion to account for all the work carried out under the assignment.

v) Final Report. The final report is the deliverable in its final form.

(f) The TOR shall indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports.

10.5.2.5. Data, services, and facilities to be provided by the AU

(a) Inputs to be provided by the AU to the consultant, if not well defined in advance, can potentially be a matter of contention during the execution of the assignment.

(b) Consultants may overestimate the AU's contribution and reduce their proposal price accordingly, particularly if the method of selection takes price into account.

(c) It is therefore important that the client's inputs are defined in the TOR as precisely and realistically as possible. Depending on the particular circumstances of the assignment, such inputs may include, as appropriate:
   i) background data, previous surveys or reports related to the activity.
   ii) Local services may be related to visa or transportation or other services.
   iii) Facilities such as office space, vehicles, survey equipment, office and computer equipment, etc.

10.5.2.6. Supervision/Coordination arrangements

(a) The TOR shall clarify institutional arrangements for the supervision of consultant's work, including:
   i) The Hiring department/unit and authorized Representative of the AU
   ii) The roles and responsibilities of all stakeholders involved and the type, timing, and relevance of their involvement; and
   iii) The Number and profile of counterpart staff (if any) etc.

10.6. ROLES AND RESPONSIBILITIES IN DEFINING REQUIREMENTS

10.6.1. Roles of Business Units

(a) Business Units are responsible for defining the requirement, but shall ensure that the relevant technical specialists and the Procurement Unit are consulted where appropriate.

(b) Requirement Definition requires expertise with the type of procurement as well as familiarity with the activity. If the needed qualifications to produce the specifications, SOW or TOR are not available in-house, the Business Unit shall consider hiring a specialized independent consultant for this purpose.

(c) Such eventuality shall be considered proactively at time of procurement planning so that the recruitment of the specialized consultant is considered and included in the Annual Procurement Plan and Procurement Implementation Plan.

(d) At the definition stage the Business Unit shall chose the type of specifications that would best describe the requirement and explore opportunities to incorporate socio-economic and/or sustainability considerations, as applicable.

(e) Heads of Business Unit are responsible for reviewing and approving the requirement definition after verifying that:
   i) Requirement is complete and accurate;
   i) Stakeholders needs are considered with no over-specification of performance (more than is actually required) to ensure procurement at the optimum cost;
   ii) Opportunities for sustainable procurement have been considered, as appropriate;
   iii) Future developments have been considered (e.g. future needs for expansion of the capacity of the equipment, plant or system being procured);

iv) The requirement is consistent with the AU's requirements and objectives including: the AU Procurement policies and other relevant rules and regulations; sustainability objectives, (life cycle costs);

10.6.2. Role of Procurement Unit

(a) Procurement Unit /Officers shall ensure that requirement definition supports the key Principles of sound Procurement.

(b) Specifically, Procurement/Unit Officers shall verify that the requirement as defined by Business Units:

i) is consistent with the approved Procurement Plan.
ii) Clearly describe what is required without notable ambiguities but is not so explicit that it discourages innovative solutions that optimize Value for Money (VfM).
iii) does not refer to:
   a. brands or trade names, except where justified by the subject-matter, in which case, the words "or equivalent" shall be added.
   b. any particular process that is specific to a supplier in the market place
   c. trademarks, patents, types, or a specific origin or production.
iv) Provides equal access to bidders and is not written in a way that distorts market competition, creates unjustified obstacles (e.g. over specification) or limits scope for entry to the procurement process by potential bidders;
v) Ensure that any requirements for limits, tolerances, deliverables timescales etc. are practical and realistic;
vi) Support a structured method of tender evaluation and future assessment of vendor's performance during contract execution, e.g.:
   (a) definition of critical functionality or performance requirements (as applicable) as pass-fail; performance range (tolerances);
   (b) definition of critical commercial requirements, if any, etc.

CHAPTER 11 – PROCUREMENT REQUISITION

11.1. INITIATION OF REQUISITION

(a) In order to start a procurement activity, the relevant Business Unit shall prepare a request called a Purchase Requisition, which includes the following elements:
   i) Purpose of the requisition (goods, works and services to be procured with the necessary quantities or scope);
   ii) Estimated value of the works, goods or services;
   iii) Specific reference of the activity in the annual procurement plan
   iv) Expected delivery date
   v) Purchase Requisition in the system

(b) The requirement definition (Technical specifications, SoW or Terms of Reference) shall be attached to the Requisition.

(c) The requisition is then transmitted to the Finance or equivalent, for verification of funds availability for the proposed procurement.

(d) The Finance /equivalent shall
   i) verify that sufficient funds are available to finance the total cost of the proposed contract,
   ii) Release the PR in the system

(e) A validated Requisition is sent to the Procurement Unit/Officer with a signed request to initiate the procurement process.

(f) Business Units shall, to the extent possible, avoid last minute requisitions as this may hamper the ability of the Procurement Unit to ensure a transparent, open, efficient and timely procurement process.

(g) The Originating Unit shall provide adequate lead-time to the Procurement Unit to properly complete the procurement process.

(h) Realistic lead-time shall allow for:
   i) Preparation of specifications/terms of reference/Statements of works;
   ii) Preparation of solicitation documents
   iii) Publication period and time for preparation of bids/proposal, including pre-bid/ proposal conference, where appropriate;
   iv) Receipt and evaluation of bids/proposal; and
   v) Required reviews and approvals etc.

(i) The use of "exigency" as a justification for shorter lead-times shall only be permitted in an absolute emergency when the Originating Unit could not reasonably have foreseen the need, and requires fulfilment in a time frame shorter than normally available for the specified procurement method.

(j) Typical Procurement timelines are defined in Annex VI of this Manual.

11.2. EVALUATION OF REQUISITION

(a) Upon receiving the duly authorized Requisition, the Procurement Unit/Officer will verify if:

(b) Features of requisitions that do not conform to the FR and the General Procurement Principles described under Chapter 2 of this manual shall be avoided. Such non-conforming features may include (list not exhaustive):

i) Requirements designed to limit or eliminate competition, such as:

a. Specification of a particular product (such as by make or model number) instead of a generic description, without a valid justification;

b. Specifications formulated in such a way that only one Vendor or a limited group of Vendors can fulfil the requirement.

c. Unjustified or unpersuasive requests for exemptions from competitive bidding or other procedures such as claiming "exigency" even though no real emergency exists;

d. Requesting technical standardization without adequate written justification and/or supporting documentation.

ii) Unreasonable delivery times, which may arise from causes such as:

a. Deliberately waiting to submit a Requisition until a need has become imminent, instead of when the need was first identified and established by the Originating Unit;

b. Submission of Requisition(s) solely for the purpose of using funds by the end of the budget period.

iii) Unrealistic budget estimates based on such factors as less than the minimum number of units or less than the minimum level of services or works necessary to fulfil the requirement

(c) The Procurement Officer shall identify and bring any of the above aspects to the attention of the Originating Unit for appropriate corrective action.

CHAPTER 12 – PREPARATION OF THE REQUEST FOR BIDS (RFB)

12.1. INTRODUCTION

(a) Following receipt and satisfactory verification of a valid procurement requisition and requirement definition, the Procurement Unit/Officer is expected to prepare RFB documents for each proposed purchase involving open, continental or regional competitive bidding.

(b) The AU mandates the use of Standard RFB (RFB) documents approved by the AU, to inform and instruct potential bidders, suppliers and contractors of the specific requirements of the particular procurement.

(c) The RFB documents shall clearly define the scope of works, goods or services to be supplied, the rights and obligations of the AU and of suppliers and contractors, service providers, and the conditions to be met in order for a bid to be declared valid and responsive. They shall also set out fair and non - discriminatory criteria for selecting the winning bid. RFB documents shall thus;

i) be drafted so as to permit bidders to submit responsive bids.
ii) encourage the participation of all eligible and potentially qualified firms by making reasonable demands for information;
iii) not discriminate against any potential bidder; and
iv) provide a clear, objective means of evaluating the bidders.

(d) The detail and complexity of RFB documents vary according to the nature and size of the contract but they generally include the following:

i) Invitation for Bid; the IFB is normally used to invite potential bidders to present their bids for the particular procurement.
ii) Instructions to Bidders; providing information to bidders regarding the form, procedure and timing of bidding.
iii) Bid Data Sheet; which specifies the parameters of the Instructions to Bidders for the particular procurement.
iv) Evaluation and Qualification Criteria; this section specifies the criteria for evaluating the Bids and assessing the capability of the selected Bidder to execute the contract satisfactorily.
v) General Conditions of Contract; set out the general provisions of AU contracts.
vi) Special Conditions of Contract; which modify the General Conditions of Contract for the particular procurement.
vii) Schedule of Supply; which specifies the quantities, delivery locations and dates for the items to be procured (goods procurement).
viii) Definition of Requirements: which detail the characteristics (Technical Specifications, functionalities and or Performance requirement; SOWs and drawings) of the Works, Goods or services required including a technical responsiveness cross – reference form, where applicable).
ix) Bidding Forms; which need to be filled by bidders as part of their bid.
x) Eligibility requirements; which provides information regarding the requirements to be met by bidders to participate in AU-financed procurement.

(e) No changes shall be introduced to the Instructions to Bidders and the General Conditions of Contract, however, if changes are necessary to address the specificities of a particular procurement, they may be introduced only through bid data sheets or through Special Conditions of Contract, respectively.

12.2. INSTRUCTIONS TO BIDDERS (ITB) AND BID DATA SHEET (BDS)

(a) The information below shall be included in all AU RFB documents in the ITB and/or specified in the BDS section:

(i) Description of the procurement activity: this shall include purpose of the procurement activity.

(ii) Instructions for preparation and submission, including:

- a list of documents that the bidder must submit in order to form a complete bid
- Mode of submission of bids (electronic, hand-delivered, mail)
- Address to which bids must be submitted
- Instructions for presentation of bids (e.g. sealed envelope(s), number of copies, markings of the envelopes etc.)

(iii) Electronic bid submission: if available, shall be specified along with indications of the portal dedicated for this purpose and relevant detailed instructions about its use.

(iv) Pre-bid conference or site visit: if such visits are required for the tender, the date, time and place of pre-bid conference or site visits shall be specified. The pre-bid conference is an open forum in which questions from potential bidders are addressed. The necessity for pre-bid conference or site visits shall be decided in consultation with the Business unit and/or the Engineer (for works procurement).

(v) Currency of offer, payment: Bids can be quoted in the currency specified in the tender document.

(vi) Source, date and currency of exchange rate: The BDS shall state the Operational Rate of Exchange (ORE) shall be used for the purpose of converting all bid prices into one currency for evaluation and comparison purposes. The date of such rate shall be the latest published by the UN prior to the deadline for the receipt of bids.

(vii) Language: The instructions shall state the language in which bidders shall prepare their bids. The contract signed with the selected bidder must be written in the same language as the RFB documents, and this language shall govern contractual relations between parties.

(viii) Bid security: The purpose of a bid security is to discourage insincere offers that would have a negative impact on the procurement process. However, care shall be taken to ensure that the specified value of the bid security does not discourage participation in the procurement process. Any requirement for a bid security shall be indicated in the BDS as a fixed sum only, based on a varying percentage of between 1% and 5%. of the estimated contract amount (the larger the estimated value of the contract, the smaller the percentage of bid security).

(ix) Bid validity: Bidders shall be required to keep their bid valid for a specific number of days (typically 60 or 90), allowing time for evaluation of offers and award of contract. When required, the bid security shall remain valid for a period that provides sufficient time for the conduct of the evaluation and award of the contract.

(x) Method of evaluation and evaluation criteria: It must be clearly stated in the RFB documents how offers will be evaluated (criteria and methodology).

(xi) Discrepancies and errors in the price component: the instructions shall define how discrepancies and errors in the price component will be handled.

(xii) Modifications: the RFB documents must stipulate that any additional information, clarification, correction or errors or modifications to the RFB document will be notified in writing to all suppliers prior to the deadline for bid submission to enable suppliers to take them into account.

(xiii) Alternative Bids: The BDS shall state whether alternative bids are accepted. An alternative bid is one that offers an alternative for consideration. An alternative bid is submitted with an intentional variation to a provision, specification, term or condition of the solicitation.

(xiv) Contact information: The BDS shall list who to contact in the event of queries or clarifications.

(xv) Deadline for submission of bids - the time, date and place for submissions must be clearly stated, together with the date, time and place for public opening of bids.

12.3. BID FORMS

(a) These are forms that need to filled out as instructed and submitted as part of the bidders' bids. They include where applicable
   (i) the Bid Submission Form and Price Schedules,
   (ii) the Bid Security Form,
   (iii) the Bank Guarantee Form for Advanced Payment and
   (iv) the Manufacturer's Authorization Form.

(b) RFB documents shall contain a standard bid submission form to be signed by the bidder. A duly authorized signatory must sign the bid form in order for it to be valid and legally binding.

12.4. KEY CONTRACT PROVISIONS

(a) AU RFB has a Section on General Conditions of Contract that is standard for all bidding and one on Special Conditions of Contract which contains provisions that shall be drafted specifically for each procurement.

(b) The General conditions of contracts are subjected to the vetting of the Office of the Legal Counsel (OLC) of the AU before they can be used by Business Unit. Any subsequent amendments of the GCC shall also be approved by the OLC.

12.4.1 General Conditions of Contract (GCC)

(a) The GCC in the RFB Documents establishes an accepted basis for similar contracts. The GCC contains:

   i) Operational Clauses: These establish the relationship between the AU and the suppliers/contractors they contain information regarding:
      - Definitions;
      - Rights and obligations of parties;
      - Procedures for shipment and documentation;
      - Delivery and transfer of risk;
      - Terms and currencies of payment;
      - Mode and form of dispute settlement;
      - Governing language; and
      - Applicable law.

ii) Protective Clauses: They establish protection against various risks and allocate them between the parties. They include instructions on:
- Performance security;
- Retention of payments;
- Insurance;
- Inspection and tests;
- Warranty;
- Protection against third party infringement suits; and
- Force Majeure.

iii) Variations: Unforeseen or planned changes during the life of the contract are identified and provided for under these parts of the GCC. They cover the following:
- Quantity changes;
- Adverse physical conditions;
- Price adjustments; and
- Changes in delivery requirements.

iv) Remedies: These deal with the breach of contract by one of the parties. They include provisions on:
- Forfeiture of performance security;
- Procedure for damages,
- penalties for delay;
- Procedure for suspension and termination; and
- Nonpayment or failure to provide required approvals and information.

12.4.2 Special Conditions of Contract (SCC)

(a) The Special Conditions of Contract are meant to assist the Procurement Unit/Officer in providing contract-specific information relating to corresponding clauses in the General Conditions of Contract. Such specific requirements can be subjected to vetting by the OLC.

(b) Where there is a conflict between the provisions of the General Conditions of Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

CHAPTER 13 – TENDER PERIOD

13.1. ADVERTIZING/ISSUANCE OF RFB

(a) Under open competitive bidding, public advertisements of an Invitation for Bid (IFB) shall be issued to provide equal access for all prospective bidders. The advertisement must clearly explain how bidders shall submit a bid and provide sufficient information to enable potential bidders to decide whether to participate.

(b) The advertisement of the Invitation to Bid (ITB) shall be published on the AU/Entity website and/or widely read journal/newspapers/magazine/digital portals.

(c) The publication of the ITB shall allow sufficient time before the deadline for bid submission to enable prospective suppliers to obtain the RFB documents and to prepare and submit their bids. Such period shall be a minimum of four (04) weeks following the date of the advertisement, but longer periods may be necessary for more complex procurement.

(d) The IFB shall include brief information on:

i) unique reference to the specific procurement activity (title and tracking number);
ii) Brief Description of the Goods, Works or Non-Consulting Services to be procured;
iii) Eligibility requirements (Legal, fiscal etc.);
iv) Qualifications requirements (technical, financial, minimum level of experience];
v) Margin of Preference, if applicable;
vi) Source of information about the tender (Name and email of Officer in charge);
vii) Address where the RFB can be inspected, including office hours for this purpose;
viii) Procedures for obtaining the complete set of RFB documents;
ix) Deadline and address for submission of bids (the time, date and place for submissions must be clearly stated);
x) Amount and currency of Bid Security, if required;
xi) Any other information deemed relevant

(e) The RFB documents may be issued through an appropriate channel to all eligible bidders who expressed interest to participate in a bidding process.

(f) In a limited competition, or competitive tender with pre-qualification, the RFB documents shall be made solely available to the list of pre-identified/pre-qualified bidders.

13.2. PREPARATION OF BIDS

(a) The time period from the issuance of the RFB documents to the submission deadline is referred to as the tender period.

(b) During the tender period, no communication regarding the contents of the RFB documents is permitted between bidders and the Procurement Unit or any other person involved in the process, except through written request for clarification.

13.2.1 Bid Clarifications

(a) The period during which clarifications can be requested must be defined in the RFB documents. Requests for clarifications received after this period may be ignored unless they draw attention to a serious flaw in the RFB documents.

(b) The Procurement Unit prepares responses to requests for clarifications in consultation with the Business unit, including the relevant technical specialist, as necessary.

(c) A written response shall be issued simultaneously to all bidders, detailing the request for clarifications and the corresponding responses without identifying the source of the query.

(d) Multiple clarifications requests may be compiled into a single response document to be issued to all bidders simultaneously in order to reduce the administrative burden involved.

13.2.2 Amendments to RFB documents

(a) Amendments to the RFB documents must be made within a reasonable time before the deadline for submission of bids in order to allow bidders sufficient time to address any such changes. In certain cases, amendments may justify an extension to the submission deadline.

(b) In order to ensure that suppliers receive the same information at the same time, amendments to the RFB documents must:
   (i) In the case of Limited Competition, be sent simultaneously to all pre-qualified bidders.
   (ii) In the case of Open Competition, be disseminated using at least one of the channels as for the IFB and also sent to all bidders who had been issued the original RFB documents.

13.2.3 Extension of Bid Closing Date

(a) The closing date for submission of bids may be extended at the discretion of the Head of Procurement Unit for any practical or justifiable reason, notably:
   (i) amendment to the RFB documents after issue, requiring additional research or effort by bidders to submit a responsive bid;

   (ii) legitimate requests for a time extension by bidders; and

   (iii) unforeseen compelling circumstances which require a postponement of the original bid opening date.

(b) Where a decision has been made to extend the bid closing date, all bidders shall be notified of the revised date using the same method of dissemination as for amendments to the RFB document before the closing of the bid.

13.2.4 Cancellation of Bidding Process Before Bid Opening

(a) A bidding process may be cancelled at any time before the deadline for receipt of bids subject to approval by the Competent Authority. Justifications for cancellation may include:
   (i) the procurement need has ceased to exist or changed significantly;
   (ii) insufficient funding for the procurement to proceed;
   (iii) there is a significant change in the technical details, bidding conditions, conditions of contract or other critical aspects;
   (iv) there is evidence of collusion among bidders; or
   (v) cancellation is deemed to be in the best interest of the AU as determined by the Competent Authority.

(b) Notification of cancellation shall be by at least one of the channels used for dissemination used for amendments to the RFB document.

(c) Bids which had already been submitted must be returned, unopened.

13.2.5 Modifications and withdrawal of submissions

a) Bidders may modify or withdraw their bids at any time prior to the submission deadline. If the bid had already been submitted, such modifications/withdrawals can be accepted if notified in writing to the relevant AU official prior to the deadline for submission.

b) Withdrawal of a bid after the submission deadline calls for automatic forfeiture of the bid security of the concerned bidder. In addition, it may also be grounds for exclusion/suspension from future AU tenders, if there is proven evidence that the withdrawal was made in an attempt to distort the competition (e.g. collusion with other bidders).

13.3. SUBMISSION AND OPENING OF BIDS

13.3.1 Submission/Receipt of Bids[11]

(a) The RFB documents will have provided clear instructions for the marking and sealing of the bids and the procedures to be followed for bid submission. Bids can be submitted by hand, mail, courier, (or dedicated electronic portal if allowed by the RFB documents[12]).

(b) All hardcopy tenders received shall be stamped with the date and time of receipt and deposited in the designated locked tender box until the tender opening.

(c) Bids or samples which are too large to fit in the tender box shall be registered and securely retained in a locked room under the direct control of the Procurement Unit until the tender opening.

(d) A Bid Receipt Register shall be maintained to record all submissions received by post, courier, and the information contained within shall correspond to the date which is appended on each hardcopy receipt.

(e) All bidders' representatives delivering bids by hand shall be directed to the tender box so that they may place their envelopes directly in the tender box.

(f) The tender box shall be closed and sealed immediately following the deadline for submission of bids. Late tenders shall not be accepted and shall be returned unopened to the concerned bidders.

13.3.2 Public Opening of Bids

(a) Bids shall be opened in public at the place and time stated in the RFB document, except in unforeseen compelling circumstances, where the Procurement Unit shall set a convenient replacement date and time.

(b) Only bidders who have submitted bids or their authorized representatives (e.g. local agent) may attend a public bid opening. Representatives shall however present acceptable evidence of their being mandated by the bidder they represent.

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[11] *This sub-section 13.3.1 describes procedures for manual submissions of bids. Procedures for electronic submission when applicable, will be described under separate guidelines and reflected in the solicitation documents*

[12] *Procedures for bid submission through shall be specified in the solicitation documents*

(c) The Procurement Unit/Officer shall provide the Bid Opening Committee with the Bid Received Register and a summary of the tendering requirements, including the bid closing date, tender reference and title, procurement and advertising method.

(d) For the purpose of a public bid opening, the Bid Opening Committee shall appoint a Chairperson who shall co-ordinate the tender opening session with the assistance of the Procurement Unit/Officer and outline the procedures to be used for the bid opening.

(e) It is the responsibility of the Chair of the Bid Opening Committee to ensure the security of documents and bids at all times during the Bid opening proceedings to prevent any unauthorized interference with the documents and process.

(f) Due care shall be taken to ensure that bidders' representatives are seated separately from the Bid Opening Committee and officials/staff members of the AU, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.

(g) Bidders are not permitted to amend their bid in any way during the bid opening nor submit any additional documents during the process.

(h) The Bid Opening Committee shall compile all unopened bids and samples received which have been removed from the tender box or from the secured room for those bid or sample, which could not be accommodated in the tender box.

(i) The Tender Opening Committee shall check the markings on each envelope or sample to confirms that it is for the correct tender.

(j) Envelopes containing the bids shall be opened one by one and critical details of each bid shall be read out loud and recorded. The reading shall be from the original version of each bid, and the actual amounts and other key details read out. All Members of the Bid Opening Committee shall initial the original of each bid and all attachments thereto.

(k) It is recommended to use a checklist of items to be inspected in each bid as it is opened. The checklist shall be filled out for each bid during the actual reading out at the meeting.

(l) Any envelopes containing substitutions, modifications, or withdrawals must be read first and be subject to the same level of scrutiny, including the reading out of critical details, such as price changes. Failure to read out such information and include it in the written record shall result in denial of its inclusion in bid evaluation.

(m) If a bid has been withdrawn by cable, it shall nonetheless be read out and shall not be returned to the bidder until the authenticity of the withdrawal notice has been confirmed.

(n) No bids shall be rejected at bid opening except those received after the deadline for receipt of bids. Such bids shall be returned unopened to the bidder.

13.2.3 Bid Opening Report

(a) For each bid received the following details shall be recorded in the Bid Opening Report prepared by the Procurement Unit/Officer:

(i) the number allocated to the bid by the Tender Opening Committee;

(ii) the name and country of the bidder;
(iii) any bid modifications or withdrawals;
(iv) the title and lot of the goods, works and/or services offered if the tender is for more than one Lot;
(v) the total bid price and the currency of the bid;
(vi) any discounts offered, where applicable;
(vii) the presence or absence of bid security, if required; and
(viii) Any obvious failure to provide a responsive bid, such as unsigned bid submission form, no bid security or inadequate bid security.
(ix) any other information deemed relevant.

(b) The Bid Opening Report shall be signed by all members of the Committee and made available to all bidders who submitted a bid.

(c) Disclosure of any other information regarding the procurement process, other than that contained within the Bid Opening Report is strictly prohibited.

(d) All bid securities, if any, shall be kept in a secure place under the safekeeping of the office in charge of financial management or department/unit in charge of finances.[13]

(e) Immediately after the bid opening session, all bids shall be kept in a secure location by the Procurement Unit and made available only to members of the relevant Bid Evaluation Committee at the appropriate time.

[13] *Due their cashable nature, all securities shall be entrusted to the office in charge of financial management*

CHAPTER 14 - EVALUATION OF BIDS

14.1. INTRODUCTION

(a) The evaluation of bids must be based on the professional judgment of competent and impartial evaluators and shall comply with the procedures and evaluation criteria indicated in the solicitation documents issued to bidders.

(b) The procurement process in AU should provide bidders with confidence in the procurement process and aim to reduce the likelihood of complaints by bidders.

14.2. APPOINTMENT OF BID EVALUATION COMMITTEE (BEC)

(a) Bid Evaluation Committee members shall have the requisite skills and technical expertise in order to take objective and independent decisions.

(b) The Procurement Unit shall oversee the constitution of the Bid Evaluation Committee by writing to the responsible parties (Head of the Business unit) to nominate members accordingly.

(c) The Procurement Unit/Officer should ensure that each member knows and understands their responsibilities and make sure that they are aware of the following critical requirements of their mission:

i) The bid evaluation process must be objective and based on the bid itself as submitted without considerations that are outside the submission.

ii) All bids must be given equal consideration and all evaluation/qualification Criteria set out in the RFB documents shall be applied consistently without discrimination or favoritism.

iii) The BEC shall not modify the technical specifications, or the evaluation/qualification criteria or contract terms and conditions set out in the RFB documents.

iv) Any information gained after public opening of bids and during the evaluation shall not be disclosed to bidders or other persons not officially concerned with this process until the successful bidder is notified of the award of contract.

v) Members of the BEC shall not entertain any calls or informal communications, meetings or other forms of contact with bidders. If required, any notifications to bidders shall be communicated in writing by the Secretary of the BEC and Bidders shall not be requested or allowed to modify their bids.

vi) Any effort by a bidder or other stakeholders to influence the evaluation process including offering of bribes, gifts or other inducements must be reported to the Office of the Internal Audit (OIO) and shall result in the rejection of the bid.

vii) BEC members are expected to make themselves readily available to attend diligently to the evaluation of bids to avoid delays and opportunities for breach of confidentiality of the process.

viii) Bid evaluation shall comply with the provisions of the RFB documents to minimize undue delays associated with bidders' complaints and/or rejections by approving authorities.

ix) Any potentially controversial decision (e.g. rejection of bids/disqualification of bidders) shall be fully documented and backed by adequate evidence that can withstand bidders' challenges and/or the scrutiny of approving authorities/auditors.

(d) Prior to evaluation of bids, the Secretary shall ensure that each BEC member signs a Confidentiality and Impartiality Declaration (CID) Form.

(e) By signing the CID Form, each BEC member acknowledges that s/he has been fully briefed on his/her duties and responsibilities, and commits to refrain from partial behavior or activities that may create or appear to create a conflict of interest.

(f) Once each BEC have signed the CID Form, the secretary will
   i) make the bids and the RFB documents available to them and
   ii) ensures that they fully understand key aspects of the evaluation and qualification criteria and methodology before starting the preliminary examination of bids.

14.3. PRELIMINARY EXAMINATION

(a) The purpose of preliminary examination is to identify and eliminate from further consideration, any bids that do not meet the minimum standards of administrative compliance and acceptability as set out in the RFB documents.

(b) Bids which were duly withdrawn, or bids not opened and read out at the tender opening, shall not be considered.

(c) The below subsections discuss some of the critical aspects of preliminary examination of bids:

14.3.1. Verification of Eligibility of Bidders

(a) Bidders must substantially comply with the eligibility requirements, specified in the bid document;

(b) Where a bidder did not meet minor criteria, the missing information must be availed before commencement of evaluation;

(c) Also, if prequalification has taken place, only bids from prequalified bidders shall be considered.

14.3.2. Verification of Bid Securities

(a) The bid security submitted by each bidder must conform to the requirements of the RFB documents, and must accompany the bid. If the bid security is issued as a bank guarantee, it must be consistent with the wording of the bid security form provided in the RFB documents.

(b) Bid securities for an amount smaller or for a validity period shorter than the one specified in the RFB documents are not acceptable and shall result in rejection of the bid.

(c) The bid security submitted by a joint venture can be in the name of all of the partners of the joint venture or the lead Partner only.

14.3.3. Verification of Completeness of Bids

(a) Simple omissions or obvious minor mistakes shall not be grounds for rejection of the bid since a bid is rarely perfect in all respects.

(b) Attention shall be directed toward deficiencies that, if accepted, would provide unfair advantages to the bidder. Omissions that can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interests of other bidders, need not be causes for rejection.

(c) Such discrepancies shall be noted however, and subsequent decisions about their acceptance or rejection shall be recorded in the bid evaluation report.

(d) The BEC shall exercise reasonable judgment to avoid rejecting bids on trivial procedural grounds. For example,

i) if the RFB documents stipulate that each page of the bid shall be signed or initialed and a bidder failed to initial one or two pages of supporting information, this shall not be a ground for bid disqualification.

ii) Furnishing one more or one less than the required number of bid copies, or not using the form supplied in the bid document, but providing bid prices on a similar form on the bidder's own letterhead would also be minor discrepancies.

iii) Under works contracts, missing prices for occasional work items are considered to be included in prices for closely related items elsewhere.

(e) However, the validity of the bid itself shall not be questionable, for example,

i) its signatures, must not be in question. If the bidder is a joint venture, the joint venture agreement must be submitted;

ii) if the bidder is an agent, an authorization from the supplier or manufacturer must be provided in addition to any documentation required of the supplier or manufacturer itself.

iii) If any erasures, interlineations, additions, or other changes have been made, they shall be initialed by the bidder.

iv) Missing pages in the original copy of the bid may be cause for rejection, as may contradictions in model numbers or other designations of critical supply items.

(f) If the bid fails preliminary examination/acceptance (ineligible bidder or administratively non-compliant bid), the reasons must be clearly explained in footnotes or in an attachment to the Bid Evaluation Report, as appropriate.

14.4. TECHNICAL AND COMMERCIAL EVALUATIONS

The purpose of technical and commercial evaluations is to determine the level of responsiveness of each bid to the technical and/or commercial requirements set in the RFB documents. The Bid Evaluation Committee shall confirm substantial compliance, or spell out reasons for non-compliance with the requirements using the technical evaluation worksheet format under Annex III.

14.4.1. Technical Evaluation

(a) The Bid Evaluation Committee shall confirm the degree of compliance with the specifications by identifying any technical deviations and deciding on their acceptability.

(b) Unacceptable deviations are those which, if accepted, would not fulfil the purposes for which the goods, works or services are being procured, or would prevent a fair comparison with bids that are fully compliant with the specifications. Examples may include:

(i) failure to respond to the specifications by offering a different design or product that is inferior in performance or in other critical requirements;
(ii) submission of samples (if required) which do not correspond to the specifications;

(c) Minor Deviations from the technical specifications are those which do not affect the suitability of the works, goods or services for the intended purpose. For example,

i) a bid offering alternative goods that are equal or superior in specifications and performance, unless the bid documents explicitly prohibit consideration of any alternatives;

ii) a bid that meets all performance criteria of a works plant, but not the dimensional provisions that do not affect performance or the utility for the purpose intended;

iii) a bid offering goods with minor deviations from the technical specifications which do not affect the suitability of the goods for the intended use; and

iv) a bid offering the equipment specified but omits minor attachments and components, e.g. a tool kit in motor vehicle.

(d) However, the BEC must quantify such deviations in monetary terms during the financial evaluation process prior to comparing such bid with the other bids.

(e) Deviations are those which, if accepted, would allow the vendor to not fulfil its obligations, or would prevent a fair comparison with bids that are fully compliant with the commercial conditions of the contract.

(f) Examples of major deviations to commercial requirements include

i) Refusal to bear important responsibilities and liabilities specified in the RFB documents, such as performance guarantees and insurance coverage;
ii) Disagreement with critical contract provisions such as the applicable law, taxes and duties, and dispute resolution procedures; and
iii) Phasing of contract start-up, delivery, installation, or construction not conforming to required critical dates or progress markers
iv) Subcontracting in a substantially different amount or manner than permitted
v) Stipulating price adjustment when fixed price bids were called for
vi) Any other commercial conditions that are specified in the RFB Documents as requiring rejection of the bid.

(g) Examples of minor deviations to Commercial aspects

i) a bid offering delivery at a date slightly different from that indicated in the RFB documents, unless it is later than an absolute cut-off date that is clearly stated as such in the RFB documents;

ii) a bid with a fixed price in response to RFB documents calling for bidders to submit prices subject to price adjustment;
iii) a bid requesting changes in the coefficient of the price adjustment formula specified in the RFB Documents or seeking a ceiling for the price adjustment;
iv) a bid that has minor deviations in payment terms;

14.4.2. Determination of substantial responsiveness

(a) Bids that contain minor deviations may be considered as substantially responsive if;
   i) the deviations can be assigned a monetary value to be added as a penalty for comparison of bids, and,
   ii) such deviations would be acceptable in the eventual contract.

(b) Bids that contain major deviations from, or reservations to, the technical or commercial or requirements of the RFB documents, are deemed non-responsive and shall be rejected at this point and will not be further considered for financial evaluation.

14.5. FINANCIAL EVALUATION

(a) The purpose financial evaluation is to determine the evaluated price of the respective bids for comparison and ranking purposes.

(b) The financial evaluation consists in identifying arithmetic errors, minor deviations, omissions and other similar discrepancies on the read-out bid prices and assessing their impact on the final bid price. The below subsections discuss some of the critical aspects of this assessment:

14.5.1. Correction of arithmetic errors

(a) Bids shall be checked carefully for arithmetic errors to ensure that stated quantities and prices are consistent. The quantities shall be the same as stated in the RFB Documents and the total bid price for each item shall be the product of the quantity and the quoted unit price.

(b) The methodology for correction of computational errors is as described in the RFB documents, i.e.,
   i) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

   ii) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

   iii) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (i) and (ii) above.

14.5.2. Corrections for Provisional Sums

Bids may contain provisional sums for contingencies or for nominated subcontractors that are set-out in the RFB documents. As these sums are the same for all bids, they shall be subtracted from the read-out prices to allow for a proper comparison of bids in subsequent steps.

14.5.3. Modifications and Discounts

(a) Modifications that were received prior to the deadline for bid submission, shall be taken into consideration and fully reflected in the examination and evaluation of the bids. These modifications may include either increases or discounts to the bid amounts that reflect last-minute business decisions.

(b) Discounts that are conditional on the simultaneous award of other lots (cross-discounts) shall not be incorporated until the completion of all other evaluation steps (ref. sub-section 14.6.2. below).

14.5.4. Additions

(a) Omissions to the bid shall be compensated for by adding the estimated costs for remedying the deficiency. Where items missing in some bids are present in others, an average of quoted prices could be used for the sole purpose of comparing competitors' bids.

(b) Alternatively, external sources, such as published price lists, freight tariff schedules, etc., may be appropriate source of prices for evaluation purposes.

14.5.5. Adjustments

(a) The evaluation of bids may require the consideration of other factors, in addition to the quoted Bid Price. These factors may be related to the characteristics, performance, and terms and conditions of contract. The RFB documents specify which, if any, of these factors will be considered, based on the methodology described in the RFB documents.

(b) Bonuses or additional credits that reduce the evaluated bid price will not be given in the bid evaluation for features that exceed the requirements stated in the RFB documents, unless specifically provided for in the RFB documents.[14]

(c) The impact of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in the RFB documents, and the value of such adjustments shall be reflected in the relevant tables of the Bid Evaluation Report.[15]

14.5.6. Price deviations

(a) Requests for deviations that are expressed by the bidder in vague terms, such as "we would like an increase in the amount of mobilization advance" or "we wish to discuss changes in the completion schedule" shall ordinarily be ignored in bid evaluation. However, a categorical statement by the bidders taking exception to a requirement in the RFB documents shall be treated as a deviation.

(b) Bids with minor deviations may be considered substantially responsive if their further consideration assigns a monetary cost or penalty to the bid for the purpose of bid comparison.

(c) If a bid requires a faster payment stream than specified in the RFB documents, the penalty is based on the prospective benefit to the bidder. (e.g., a discounted cash flow using the prevailing commercial interest rates for the currencies of the bid, unless the RFB documents foresee the eventuality and specifies a rate).

(d) If a bid provides for a delivery or completion that is beyond the date specified in the RFB documents but that is nonetheless technically acceptable, the time advantage given shall be assessed a penalty

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[14] *Similarly, a bid offering a choice of different product models is evaluated on the basis of the lowest price offered by the bidder from among the models meeting the requirements of the RFB Documents.*

[15] *ref. the AU Standard form of Bid Evaluation Report*

specified in the RFB documents or, if none is provided, based on the rate of liquidated damages specified in the RFB documents.

14.5.7. Price Adjustment

(a) If bids are invited on prices subject to price adjustment, the RFB documents shall specify the price adjustment formula which will apply to all bidders uniformly.

(b) The BEC shall compare the bids only on the basis of the base price, excluding the price adjustment during performance of the contract, since any computation of probable increase or decrease in labor and material cost would be speculative.

(c) If in response to an invitation for bids subject to price adjustment, a bidder chooses to quote a fixed price, no special consideration will be given, and the price adjustment factor will be considered as "zero".

(d) Further adjustments to the final price and scope of the contract to correct arithmetic errors or acceptable omissions and quantity variations in the bid, may still need to be agreed with the successful bidder.

14.5.8. Clarifications

a) BEC must evaluate bids on the basis of the information provided in the respective bids. However, on occasion, the BEC may request clarifications concerning ambiguities or inconsistencies in the bid. Such requests and the responses from bidders shall be in writing but no changes in the bid price or substance of bids shall be allowed.

b) During evaluation, members shall not enter into direct communication with bidders. All requests for bid clarifications shall be through the Secretary of the BEC.

14.5.9. Currency Conversion

(a) The remaining bids as corrected for computational errors and as adjusted for discounts shall be converted to a common evaluation currency as described in the RFB documents.

(b) If bid prices are permitted in more than one currency, the BEC shall use the UN Operational Rate of Exchange for conversion of all bid prices into one currency for the purpose of their comparison and ranking.

(c) the date of exchange rate of the UN Operational Rate of Exchange, shall be the latest published by the UN prior on the deadline for submission of bids.

14.6. COMPARISON/RANKING OF BIDS

(a) The evaluated bid prices, i.e., the corrected bid prices, adjusted for omissions, deviations and specified evaluation factors, and converted to a common currency shall be compared to determine the lowest evaluated bid, which is the bid with the lowest evaluated total amount subject to:

i) Application of Margin of Preference, if specified in the RFB documents;

ii) Application of any conditional discounts, i.e., discounts that are contingent on the simultaneous award of multiple contracts or lots.

14.6.1. Margin of Preference (MOP)

The RFB documents shall clearly indicate the percentage of preference (called Margin of Preference) and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.

14.6.2. Cross-discounts

(a) Cross-discounts are conditional discounts offered if more than one contract or lot is awarded to the same bidder. Bid evaluation in such cases can be complicated where:

i) the value of cross-discounts offered vary with the number of contracts awarded; or

ii) the RFB documents limit the number or total value of awards to a bidder based on financial and technical capacity. Thus, a bidder offering the lowest evaluated cost bid on a particular contract may be denied award because of such a restriction.

iii) Application of cross discounts shall be defined on a case by case basis in the Bid document. AU shall develop guidelines for application of cross discounts.

14.7. EXTENSION OF VALIDITY OF BIDS

(a) The evaluation and award of contract shall be completed within the period and deadline set in the RFB documents for the validity of bids.

(b) The validity of bids must be monitored by the Procurement Unit,

(c) If, due to unforeseen circumstances, the award process cannot be completed within the bid validity period, the Procurement Unit shall contact bidders in writing to seek their agreement to an extension of the bid validity along with the validity of their bid security.

(d) Bidders have the right to refuse to grant an extension of bid validity without forfeiting their bid security (where applicable). If a bidder refuses to extend the validity of his bid, then on expiry of the original bid validity period, the bid security shall be returned and the bid not considered further.

(e) However, if the bidder agrees to extend the validity of its Bid, it shall be done without any change in the original Bid, except when the RFB documents specifically provide for a price adjustment mechanism to reflect changes in the cost of inputs for the contract during the new period of extension.

(f) Only bidders who respond confirming their unconditional acceptance and enclosing the required extension to their bid security, may be considered for further evaluation and award of contract.

CHAPTER 15 – CONTRACT AWARD

15.1. VERIFICATION OF QUALIFICATIONS OF THE SUCCESSFUL BIDDER

15.1.1. Post-qualification

(a) Prior to the recommendation for contract award being submitted for approval, the BEC may verify if the bidder who submitted the most advantageous bid/proposal in accordance with the applicable selection method, has the required qualifications, i.e., the capability to perform satisfactorily if awarded the contract.

(b) Qualification criteria specified in the RFB documents are dependent on the value and complexity of the contract, and judgment shall be applied when determining the extent of post qualification due diligence that shall be conducted.

(c) Such due diligence may include background checks, and verification of physical and financial resources available to the successful vendor to undertake the contract along with his current workload from other contracts.

15.1.1.1. Background Checks

(a) Initial supplier background checks if conducted shall include as a minimum:
   (i) Verification that the company is legally incorporated by requesting the certificate of incorporation (if this has not been requested as part of the bid);
   (ii) Verification of bidder's references (if requested as part of the tender response);
   (iii) Ensuring that the successful bidder is not under suspension or debarment from entering into contracts with the AU.

(b) Advanced background checks shall be conducted if the contract is for a high value, high risk contract, or if doubts persist upon completion of the initial background check. Advanced background checks may include:
   (i) Conduct a site visit to the bidder's stated location;
   (ii) Verify information contained in corporate registries;
   (iii) Analysis of the litigation history of the bidder;
   (iv) Verification of the compliance policies of the bidder;
   (v) Review the payment procedures and banking history of the bidder.

15.1.1.2. Financial Due Diligence

(a) The purpose of conducting financial due diligence is to ascertain the bidder's financial capacity to perform the contract.

(b) The bidder's audited financial accounts or financial statements covering the period stated in the RFB document shall be analyzed, using a range of financial ratios.

(c) The financial analysis depends on industry in which the bidders exists. The following key factors will determine which type of analysis to perform:
   i. Key success factors for each industry
   ii. Key risks in the project against which AU seeks to mitigate
   iii. Industry averages and trends in the industry

iv. Benchmarking historical analysis of similar work in same sector of industry

(d) Depending on the available information on the above factors, the Finance Officer, using professional judgement, should make conclusions and recommendation as follows;
   i. Commentary of, at least, 3 years trend analysis and industry average commentary and
   ii. Insights being revealed by the combined ratios – interrelationships between ratios may mean that interpretation of accounting ratios are evaluated in aggregates or cause effect analysis.

(e) The most common types of financial analysis are but not limited to following:
   i. Profitability Ratios
   ii. Debts/ Leverage ratios
   iii. Liquidity Ratio
   iv. Activity (Efficiency) Ratios
   v. Market Ratio

(f) It shall be noted that the above ratios are best practice guidance. A bidder shall not be disqualified based on any single ratio; rather all or most relevant ratios, as applicable, shall be applied to determine an overall picture of financial health.

(g) If the lowest evaluated bidder fails post qualification, its bid shall be rejected, and the next ranked bidder shall then be subjected to same post qualification examination. If successful, this bidder shall receive the award. If not, the process continues until a bidder is successfully qualified.

(h) The disqualification of a bidder requires substantial justification, which shall be clearly documented in attachments to the bid evaluation report.

15.1.2. Pre-qualification

(a) If pre-qualification was undertaken, a lesser degree of post-qualification shall be conducted, to ensure that
   i) the criteria that had been used to pre-qualify the bidder have not materially deteriorated, or
   ii) the bidder has not since received additional work that reduces its current capacity.

15.2. CONTRACT AWARD RECOMMENDATION

(a) The qualified bidder who has submitted a the most competitive bid with the applicable selection method shall be recommended for award.

(b) The amount of the recommended contract award is the bid price as submitted by the successful bidder after adjustment for corrections, any discounts and acceptance of alternative offers from the bidder (if alternative offers are permitted in the RFB documents).

(c) Adjustments for evaluation purposes only (e.g. for deviations or margins of preference) shall not be included in the contract price.

(d) The successful bidder will be notified of the detailed changes resulting from such corrections, which are considered binding on the bidder who must accept them or the bid will be rejected.

(e) Successful evaluation of one bid shall not be a ground for cancellation of the process. Further, lack of competition shall not be determined solely on the basis of the ii) number of Bidders/Proposers. Even when only one Bid/Proposal is submitted, the process may be considered valid, if:

(i) the procurement was satisfactorily advertised in an open competition and or in a limited competition, the minimum required number was invited;

(ii) the qualification criteria were not unduly restrictive;

(iii) prices are reasonable in comparison to market values;

(iv) here only technical evaluation has been conducted and only one bidder/proposer is found to be technically qualified the bid may be accepted for further financial analysis to make sure the price is reasonable in comparison to market values.

15.3. REJECTION OF ALL BIDS

(a) The Bid Evaluation Committee may recommend that all the bids be rejected if:

(i) none of the bids/proposals are found to be responsive or qualified to the requirements of the bidding documents;

(ii) all of the bids are unreasonably high in price compared to the cost estimate and/or available budget for the activity;

(iii) deemed to be an absence of competition.

(b) The BEC shall indicate in the Bid evaluation report the reasons for such rejection, and shall obtain the approval of the Competent Authority.

15.4. BID EVALUATION REPORT (BER)

(a) The Procurement Officer in charge of secretariat to the Bid Evaluation Committee shall use the AU approved Standard Bid Evaluation Form to prepare the report.

(b) The Bid Evaluation Report shall contain a summary of the procurement and evaluation process, including but not limited to:

(i) key dates and steps in the bidding process;

(ii) Details of any bidders' requests for clarifications, and responses by the Procurement Unit, and bid clarifications requested from bidders and responses received.;

(iii) A summary of important evaluation criteria, with evidence of how it affected the outcome of the evaluation;

(iv) Explanation of any inconsistencies between prices read-out at bid opening and evaluated bid prices;

(v) Explanation of any substantial corrections for arithmetic errors, additions, adjustments, and priced deviations that may affect the ranking of bidders;

(vi) Explanation of any cross-discounts not read out and recorded at the bid opening

(vii) Margin of Preference, if any;

(viii) Detailed justification of any decisions reached by the BEC on disqualification of bidders, or rejection of bids;

(ix) Post-qualification results;

(x) the recommendations of the BEC, clearly establishing the actual amount of the proposed contract award (ref. section 15.2 above);

(xi) All required Tables and supporting documents.

(c) Where an alternative bid is recommended for award, a detailed explanation addressing issues of time delays, performance factors, and cost implications, and justification of any changes to the original scope and contract conditions must be provided.

15.5. APPROVAL OF AWARD RECOMMENDATION

(a) In accordance with FR the Procurement Manual, the Authority responsible for the approvals of the recommendation for award is pursuant to the value of the contract to be awarded. (Ref. to Annex II of the Manual for approval authority thresholds).

(b) Before granting approval to the award recommendation, the Authority will ensure that any written complaints made by bidders concerning the bidding process have been referred to the Office of Internal Oversight for review and adjudication.

(c) In the absence of valid reasons for opposing the proposed award, the Authority shall award the contract to the bidder recommended by the BEC with or without additional recommendations.

(d) For projects funded by external partners, the award recommendation may be subjected to Prior review by the Partner depending on the thresholds specified in the legal agreement between the AU and the Funding Partner.

15.6. NOTIFICATION OF AWARD

(a) The successful bidder shall be notified in writing (by letter or email), of the provisional award of contract subject to contract signature taking place.

(b) The bidder must accept the offer in writing and sign a declaration of confidentiality and non - disclosure.

(c) Notification of the name and country and amount of the successful bidder shall be also sent simultaneously to the unsuccessful bidders.

15.7. COMPLAINTS HANDLING MECHANISM

(a) Unsuccessful bidders may wish to be informed of the reasons as to why they were not selected, in which case,

i) the PU shall provide reasonable, prompt, and satisfactory replies to all such requests in writing but shall not discuss the details of any other bid except that of the inquiring bidder.

ii) If the inquiring bidder is not satisfied with the explanation, the Head of the Procurement Unit may organize a debriefing meeting with the bidder and the concerned staff. Such debriefing is intended to help unsuccessful bidders understand why they lost and help them submit improved bids in the future.

(b) Bidders may also decide to file a complaint if they have reasons to believe that the evaluation (or any other part of the procurement process) was not carried-out in compliance with the applicable procedures, or involved unethical practices, in which case:

i) The complaint shall be immediately referred to the Office of the Internal Audit (OIO) for review and adjudication. The bid document shall indicate the address through which bidders may lodge complaints.

ii) If, due to the adjudication of the complaint, the BEC changes its contract award recommendation, the reason for the decision and a revised evaluation report shall be submitted to the Competent Authority for approval.

(c) Unsuccessful consultants may wish to be informed of the reasons for their low technical scores especially if below the minimum qualifying mark, in which case,

i) the PU shall provide reasonable, prompt, and satisfactory replies to all such requests in writing but shall not discuss the details of any other bid except that of the inquiring bidder.

ii) If the inquiring consultant is not satisfied with the explanation, the Head of the Procurement Unit may organize a debriefing meeting with the consultant and the concerned staff. Such debriefing is intended to help unsuccessful consultants understand why they lost and help them submit improved proposals in the future.

(d) Consultants may also decide to file a complaint if they have reasons to believe that the evaluation, or any part of the selection process, was not done in compliance with the applicable procedures, or involved unethical practices, in which case.

i) the complaint shall be promptly referred to the Office of the Internal Audit (OIO) for review and adjudication in accordance with the applicable complaint handling procedures[16]

ii) If, due to the adjudication of the complaint, the BEC changes its contract award recommendation, the reason for the decision and a revised evaluation report shall be submitted to the Competent Authority for approval.

(e) If, due to the adjudication of the complaint, the BEC changes its evaluation and ranking of proposals, the reason for the decision shall be reflected in a revised technical evaluation report and submitted to the Competent Authority for approval.

15.8. FORMING OF CONTRACT

(a) The AU can enter into a contractual obligation with the successful bidder, only after official award of contract by the Competent Authority and the fulfilment of any conditions to that award.

(b) The successful bidder shall be notified in writing, by letter or email, regarding the provisional award of contract subject to contract signature taking place.

5.8.1 Preparation/vetting of the Contract

(a) Following the notification as detailed above, the Procurement Unit will prepare the draft contract document using standard templates as shared in the bid documents.

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[16] *Ref. **Guidelines for the handling of bidders' complaints** for procedural details*

(b) For all contracts other than simple Purchase Orders, the Procurement Unit take the following actions:

(i) Fill out the Special conditions of contracts by populating the missing information using data from the approved recommendation for award;

(ii) Assemble the contract documents including all attachments forming part of the contract;

(iii) submit the draft contract to the Office of the Legal Counsel or competent Legal Officer, for vetting if the contract is within the approval threshold of the IPC[17].

5.8.2 Contract Signing

(a) Following the vetting and clearance of the draft contract by the Office of the Legal Counsel (if required) the Procurement Unit shall:

i) send the draft contract, and a performance security form if required (indicating the amount of security) to the successful Bidder, along with a request to sign and return the contract together with a valid performance security within a specified;

ii) Upon receipt of the contracts signed by the bidder along with the duly executed performance security, have the contract countersigned by the designated Contracting Officer of the AUC.

iii) Keep a copy of the contract duly signed by both parties in the designated unique procurement file.

iv) distribute copies to the following:

- The Vendor / Consultant
- Office of the Legal Counsel
- concerned Business unit

(b) If the successful bidder fails to submit the performance security as requested, or refuses without valid reason, as determined by the AU, to sign the contract, the bid security shall be forfeited and the contract awarded to the next ranked bidder, subject to meeting applicable qualification requirements.

(c) In this case, a revised Evaluation report shall be submitted for approval by the Competent Authority.

15.9. RELEASE OF BID SECURITIES

(a) Upon signing of the contract by both parties, the Procurement Unit shall:

i) Deposit the original of the Performance security to the Finance or equivalent, for safekeeping;

ii) Keep one copy of the Performance security in the relevant folder of the unique procurement file that is dedicated to the contract;

iii) request Finance or equivalent to release all bid securities to concerned bidders, including the successful bidders;

iv) return samples, if any, to the concerned bidders. The Procurement Unit shall request the concerned bidders to collect their samples.

15.10 PUBLICATION OF CONTRACT AWARD

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[17] *No Legal vetting is required for contracts below the IPC approval threshold.*

(a) In furtherance of the principle of transparency, publication of a Contract Award Notice is mandatory for all contracts above the value of US$50,000.
(b) The Contract Award Notice must be published by the Procurement Unit on the Entity's website.
(c) The frequency of publication shall be bi annually and the consolidated publication shall be done no later than 31 days following the end of each financial year.
(d) The contract award notice shall include the following information:
    i) the name and address of each vendor awarded a Contract;
    ii) Description of the Contract and the Contract number
    iii) Procurement category (Consultancy, non-consultancy services, works, / goods)
    iv) The Contract amount;
    v) Contract duration
(e) Exceptions to publication of contract award shall include:
    a. Where for security reasons its not prudent to publish award of contract publicly
    b. For low value contracts
    c. Procurement under emergency, situations shall be exempt from bi-annual publication requirements.
    d. Where exceptions are required for any reasons other than the above, approval for such deviation shall be granted by the Chief Controlling Officer.

CHAPTER 16 – ADVERTISING AND SHORT LISTING

16.1. PUBLICATION OF REQUEST FOR EXPRESSIONS OF INTEREST (EOI)

The term 'Expression of Interest' (EOI) is used to refer to a pre-qualification process for consulting services.

(i) It is used to identify consultants who have adequate capabilities, personnel and experience to perform a consulting assignment in order to establish a limited shortlist and invite detailed proposals from shortlisted firms. This approach is used:

(a) Because it is too time consuming and expensive to invite and evaluate proposals from all interested consultants, the selection is based on limited competition among qualified firms that, as determined by the AU, are capable of delivering the required services.

(b) To identify qualified consultants, the Procurement Unit shall organize the publication of a Request for Expressions of Interest (EOI), which
   i) states the intention of the AU to enter into a contract for a given assignment and
   ii) seeks information from prospective consultants, in order to assess their eligibility, capabilities and expertise in the field of the assignment.

(ii). The advertisement shall be published on the AU/Entity website and/or widely read journal/newspapers/magazine. Additionally, contacting professional organizations and firms that are known to the AU, with a copy of the REOI may prove useful.

(iii). Not less than 14 calendar days from the date of publication shall be provided for responses prior to short listing.

16.2. SHORT LISTING

(a) Upon expiration of the deadline for submission of applications, an evaluation committee will be appointed to screen the expressions of interests received.

(b) The Committee reviews the applications and gives first consideration to those that meet the adopted shortlisting criteria, including:
   (i) General background of the applicant firm, including organization and staffing;
   (ii) expertise in the field of assignment;
   (iii) eligibility (country of origin, and any other conditions stated in the advertisement);
   (iv) previous experience in similar assignments and under similar conditions;
   (v) satisfactory performance under previous assignments;

(c) The committee shall come up with a shortlist of a minimum of firms

(d) If such list cannot be drawn from the expressions of interest, the Committee may add known qualified firms extracted from the Suppliers' Register maintained by the Procurement Unit or from other reliable sources; (should be approved by Competent Authority)

(e) It is the responsibility of the Procurement Unit/Officer to ensure that the shortlisting complies with the above provisions, notably, that:
   i) the stated shortlisted criteria are applied indiscriminately;
   ii) none of the shortlisted firms is in a conflict of interest situation; or under sanction by the AU.

CHAPTER 17 – PREPARATION, ISSUANCE OF THE REQUEST FOR PROPOSALS

17.1. INTRODUCTION

(a) The AU's approved Standard Request for Proposals (RFP) is the mandatory format for the preparation and issuance of the RFP for a specific assignment.

(b) The RFP identifies the selection method, and procedures that will be used to evaluate proposals from shortlisted firms and comprises the following sections:

- (i) Letter of Invitation (LOI);
- (ii) Information to Consultants (ITC), including the Data Sheet,
- (iii) Standard Form for Technical Proposal
- (iv) Standard Forms for Financial Proposal
- (v) Terms of Reference; and
- (vi) Standard Forms of Contract

(c) The SRFP is a standard document that can be adapted for any of the selection methods described in the Manual.

(d) It has been designed in such a way that some of its parts cannot be modified by the user, such as the ITC and GCC, which contain standard provisions that have been vetted by the Office of Legal Counsel.

(e) Other parts, such as the Data Sheet, TOR, and SCC can be modified during RFP preparation to suit specific assignment conditions (e.g., name of business unit, country of assignment, contract terms and conditions, payments terms etc.).

(f) The following paragraphs describe in details the key sections that will be subjected to modifications during the RFP preparation.

17.2. LETTER OF INVITATION (LOI)

(a) The LOI is a letter to be addressed individually to each of the shortlisted firms inviting them to submit a proposal for a consulting assignment. The LOI includes a list of all shortlisted firms to whom similar letters of invitation were sent, and a reference to the selection method.

(b) The template shall be filled out to provides basic information such as:

- i) the name of the Agency/Business unit;
- ii) the names of the shortlisted consultants;
- iii) a brief description of the objectives and scope of the assignment;
- iv) the method of selection; and
- v) the date, time, and address for submission of proposals.

(c) The LOI also requests that the invited firms

- i) acknowledge receipt of the RFP and;

ii) inform whether or not they will be submitting a proposal alone or in association with other shortlisted firms.

(d) The Procurement Unit shall make the necessary follow-ups within two weeks of dispatch of the LOI, to ensure that each shortlisted consultant provides the information requested under c (i) and c(ii) above.

(e) This information is necessary to allow the AU to invite other consultants in case one or more shortlisted consultants decline the invitation or decide to associate, thus reducing competition.

17.3. INFORMATION TO CONSULTANTS (ITC) /DATA SHEET (DS)

(a) The ITC and DS sections of the RFP contain all necessary information that would help consultants prepare responsive proposals.

(b) The ITC section contains standard provisions that have been vetted by the Office of Legal Counsel of the AU for use in all selections of consulting firms. Due to their standard nature, they are not supposed to be modified during the preparation of specific RFPs

(c) The Data Sheet is the part of the ITC that contains specific information relating to the assignment for which an RFP is being prepared. Its purpose is to complement the ITC by providing information on specific conditions and requirements that are not addressed by the ITC standard text.

(d) The Data sheet shall include adequate information on the following aspects of the assignment:

i) Name, reference and title of the assignment;

ii) Selection method and procedures: details of the selection method and procedure to be followed to select the successful proposal;

iii) Form of submission of proposals: The method of submission shall be specified (electronic, mail, hand as applicable), including the requirement that the technical proposals and financial proposals be sealed and submitted separately as well as the deadline for submission;

iv) Electronic submission: if available, shall be specified along with indications of the portal dedicated for this purpose and relevant detailed instructions about its use.

v) Language(s) of proposals. The language specified in the Data Sheet may be any of the official languages of the AU (English, French, or Portuguese, Arabic, as appropriate).

vi) Period of validity of proposals during which the consultants shall undertake to maintain, without change, the proposed key experts,

vii) Phasing of the assignment, if appropriate, and likelihood of follow-up assignments;

viii) Pre-proposal conference. A pre-proposal conference is recommended for complex assignments when the proposal preparation benefits from field visits and collection of

documents. The conference shall be convened after consultants have had sufficient time to examine the RFP. However, the conference shall leave enough time for consultants to prepare their proposals, considering the clarifications obtained during the conference. Minutes of the conference shall be made available to all shortlisted consultants.

ix) Request for clarifications. The deadline for requesting clarifications shall allow the Procurement Unit sufficient time to prepare responses and permit the consultants to take them into account in their proposals. Therefore, no less than 10 to 15 days before deadline for submission of proposals, shall be provided.

x) Associations among shortlisted firms shall not be allowed when less than six (06) consultants have been invited to submit proposals.

xi) Estimated number of professional staff months required for the assignment. Only the estimated total of professional staff months, not the individual staff months, shall be indicated. However, this estimate does not bind the consultants, and they shall propose the level of inputs that they consider appropriate. Staff months shall not be disclosed when the available budget is given (i.e., in the case of a fixed budget selection).

xii) Minimum required experience of proposed professional staff. The minimum experience deemed necessary for the correct execution of the assignment shall be indicated for each key staff of the consultant's team. The Consultant shall submit certified copies of academic and professional credentials for proposed experts. There shall not be unreasonable requirements that would unnecessarily increase the cost of the services.

xiii) Taxes. Since consultants are required to estimate all identifiable local taxes as a separate amount, they shall be made aware of the AU's tax regimen

xiv) Validity period of proposals. The validity period shall allow for an adequate time for the evaluation of proposals and negotiations/award of the contract with the successful consultant.

- However, excessive time for the proposal's validity poses a strain on consultants, who have to keep their staff available for the assignment for an indefinite period.

- If the period is too long, the risk of staff substitution increases considerably. Usually, a reasonable period is between 60 and 90 days from the closing date of submission of proposals.

xv) Proposal submission date. Adequate time shall be allowed for the preparation of proposals depending on the specific circumstances of each assignment.

- For small and simple assignments, three (03) to four (04) weeks from the date of the invitation;
- For large and complex assignments, where the consultants have to associate or visit the site, periods ranging from two (02) up to three (03) months may be needed.

xvi) Currency (ies) in which the costs of services shall be expressed, compared, and paid can be expressed in any convertible currency;

xvii) Currency conversion and source and date of the exchange rate. The data sheet shall state that if Financial proposals are received in different currencies,

- they shall be converted in one single currency for evaluation and comparison purposes using the UN operational rate of exchange and
- the date of exchange rate of the UN operational rate of exchange, shall be the latest published by the UN prior to the deadline for submission of proposals.

xviii) Anticipated date of commencement of the assignment; such information is important for the consultants to secure the availability of their key experts (usually independents consultants) hired as part of the team proposed for the assignment.

17.4. EVALUATION CRITERIA AND METHODOLGY

(a) The choice of evaluation criteria and number of points (weight) allocated to each criterion is critical to achieving a satisfactory result in the selection of consultants.

(b) The evaluation criteria and methodology must be linked to the terms of reference and be relevant to the subject matter of the assignment. Accordingly, the weighing of the technical evaluation criteria and the choice of technical evaluation sub-criteria together with their weight shall be decided concurrently by the Procurement Unit and the Business Unit.

(c) Technical Evaluation Criteria: The criteria specified in the RFP may include:
   (i) the firm's relevant experience for the assignment;
   (ii) the quality of the proposed methodology;
   (iii) the qualifications and experience of the proposed key staff;
   (iv) Training and transfer of competence (if applicable)
   (v) the extent of participation of nationals of AU Member States among key staff in the execution of the assignment.

(d) Some of the above criteria may be divided into sub-criteria to assist in the evaluation. The number of sub-criteria shall however be kept to the essential minimum and must be fully detailed within the RFP.

(e) The following table shows the usual range of points to be specified for each criterion, which may be adjusted as appropriate for specific circumstances, and as indicated in the RFP:

Evaluation Criteria	Suggested Range
Firm's relevant experience	0 to 10 points
Quality of the proposed Methodology (including work plan and Staffing)	20 to 50 points
Key personnel	30 to 60 points
Training, Transfer of knowledge[18]	0 to 10 points
Participation by nationals of AU Member states	0 to 10 points
Participation of women and youths	0 to 10 points
	100 points

(f) Following are some considerations for the scores for each criterion.

i) Consultant's Relevant Experience: The points given to experience can be relatively low as this criterion may have already been considered when short-listing the bidders.

ii) Quality of the proposed Methodology (including work plan and Staffing): A large number of points shall be given the proposed methodology for more complex assignments (for example, multidisciplinary feasibility or management studies).

iii) Key Personnel: Only the key personnel shall normally be evaluated since they will determine the quality of the consultant's performance. Supporting personnel (assistants, drivers, etc.) shall not be evaluated. When the assignment depends critically on the performance of a Project Manager or key specialist in a team of individuals, more points shall be allocated for this person.

iv) Individuals shall be evaluated on the following sub-criteria as relevant to the task:

- General Qualifications: General education and training, professional qualifications, length of experience, positions held, time with the consulting firm, experience in similar countries, etc.;
- Adequacy for the Assignment: Specific experience relevant to the assignment in the sector, field, subject or activity; and
- Experience in the Region: Knowledge of local culture, administrative systems, legal systems, etc.

(g) Minimum qualifying technical score to be achieved for a proposal to proceed to the Financial Evaluation must be 70 points (75 points for Quality-Based Selection). The marks for each criterion are aggregated to give the total technical score.

(h) Financial Evaluation Criteria: In addition to specifying the weighting for technical and financial scores, the RFP must specify the formula for award of points to each evaluated financial proposal. Normally the lowest evaluated financial proposal receives 100 points and the other financial proposals receive points based on the following inversely proportional formula:

- Sf = 100 x Fm/F, where
- Sf means financial score;
- Fm means lowest evaluated financial proposal; and

18 Transfer of knowledge may be the main objective of some assignments; in such cases, it should be given a higher weight to reflect its importance.

- F means the financial proposal under consideration.

(i) Combined Technical and Financial Score: The relative weightings for technical and financial scores must be stated in the RFP. This is usually set at 70- 80% for the technical score and 20-30% for the financial score.

(j) Both technical and financial point scores are assessed initially out of 100 points for the purpose of clarity. During final evaluation, the scores are combined by applying the weighting percentage stated in the RFP for technical and financial scores, respectively. For example, the technical score will be multiplied by 70 or 80% and the financial score by 20 or 30%, as applicable, to obtain the combined total score for each proposal.

17.5. TYPES OF CONSULTANTS' CONTRACTS

(a) The type of contract must be selected when preparing the Request for Proposals and included as a draft with all contract terms and conditions in the RFP.

(b) The form of contract shall be prepared on the basis of one of the Standard Forms of Contract annexed to the RFP, i.e., the Lum-sum fixed-Price contract or the Time-Based Contract[19].

17.5.1. Lump-Sum Fixed-Price Contracts

(a) Lump sum contracts are used mainly for assignments in which the following are both clearly defined:
   (i) the scope and duration of the services; and
   (ii) the required output of the consultants.

(b) Lump sum contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, etc.

(c) Payments are linked to defined outputs (deliverables), such as reports, drawings, bills of quantities, solicitation documents, etc.

(d) Lump sum contracts are simple to administer because payments are due on attainment of clearly specified outputs.

17.5.2. Time-Based Contract

(a) Time-Based Contracts are generally appropriate when it is difficult to define or determine the scope and the duration of the services, either because
   i) they are related to activities carried out by others for which the completion period may vary, or
   ii) the level of effort required for attaining the objectives of the assignment is difficult to assess.

(b) This type of contract is widely used for complex studies, supervision of construction contracts, technical advisory services, etc.

(c) Payments are based on:
   (i) Remuneration expressed as hourly, daily, weekly, or monthly rates for staff; and
   (ii) Reimbursable items using actual expenses and/or agreed unit prices.

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[19] *Other forms of contracts may also be used depending on their relevance and suitability for the specific assignment*

(d) The rates for staff remuneration include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.

(e) This type of contract must include a maximum amount of total payments (the contract ceiling) to be made to the consultants. This contract ceiling usually includes a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

(f) Time-based contracts need to be closely monitored and administered by the AU to ensure that the assignment is progressing satisfactorily, and payments claimed by the consultants are appropriate.

17.5.3. Other types of Consultants' Contracts

17.5.3.1. Retainer and Contingency (Success) Fee Contracts

(a) This type of contract is sometimes used when consultants (banks or financial firms) are undertaking specialist financial activities such as preparing companies for sale, mergers of firms, or privatization operations.

(b) The remuneration of the Consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

17.5.3.2. Percentage Contracts

(a) These contracts are commonly used for architectural services but may be also used in similar circumstances such as for procurement and inspection agents. Percentage contracts directly relate the fees paid to the Consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected.

(b) Percentage Contracts are negotiated on the basis of market standards for the services and/or estimated staff-month costs for the services, or competitively bid.

(c) In the case of architectural or engineering services, percentage contracts lack any incentive for economic design or performance. The use of a percentage contract format for such services is only recommended if based on a fixed target cost and covers precisely defined services.

17.5.3.3. Indefinite Delivery Contract

(a) These contracts are used when there is a need for "on call" specialized services to provide advice or services, the extent and timing of which cannot be defined in advance.

(b) These are commonly used to retain "advisors" for the implementation of complex projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, etc.

(c) The unit rates to be paid shall be agreed with the firm, and payments are made on the basis of the time and resources actually used.

18.1. PREPARATION OF PROPOSALS

18.1.1 Clarifications

(a) The period during which clarifications can be requested must be defined in the RFP documents. Requests for clarifications received after this period may be ignored unless they draw attention to a serious flaw in the RFP documents.

(b) The Procurement Unit prepares responses to requests for clarifications in consultation with the Business Unit, including the relevant technical specialist if the question is related to the TOR.

(c) A written response shall be issued simultaneously to all shortlisted consultants, detailing the request for clarifications and the corresponding responses without identifying the source of the query.

(d) Multiple clarifications requests may be compiled into a single response document to be issued to all consultants simultaneously in order to minimize the administrative burden involved.

18.1.2 Amendments to RFP documents

(a) At any time, prior to the deadline for the submission of proposals, the Procurement Unit, may modify the RFP documents for any legitimate reason.

(b) Amendments to the RFP documents must be made within a reasonable time before the deadline for submission of proposals in order to allow consultants sufficient time to address any such changes. In certain cases, amendments may justify an extension to the submission deadline.

(c) Amendments to the RFP documents must be notified simultaneously to all shortlisted consultants.

18.1.3 Extension of Closing Date

(a) The closing date for submission of proposals may be extended at the discretion of the Head of Procurement Unit for justifiable reasons, notably but not limited to:

(i) amendment to the RFP documents after issue, requiring additional research or effort by consultants to submit a responsive proposal;

(ii) legitimate requests for a time extension by a consultant/s; and

(iii) unforeseen compelling circumstances which require a postponement of the original closing date.

18.1.4 Cancellation of the Process Before and after Opening of Proposals

(a) The process may be cancelled at any time before the deadline for receipt of proposals subject to approval by the Competent Authority (ref. Authority levels under Annex II of the Manual). Justifications for cancellation may include:

(i) the need for the assignment has ceased to exist or changed significantly;
(ii) insufficient funding for the assignment;
(iii) significant change in the TOR, selection procedures, conditions of contract or other critical aspects details, such that the re-commencement of proceedings is necessary;
(iv) evidence of collusion among consultants; or

(v) cancellation is deemed to be in the best interest of the AU as determined by the Competent Authority.

(b) Notification of cancellation shall be in writing through official channels, and any proposals which had already been submitted must be returned unopened if it is before bid opening to the concerned consultants.

18.1.5 Modifications and withdrawal of submissions

(a) Consultants may modify or withdraw their proposals at any time prior to the submission deadline. Modifications/withdrawals of proposals already submitted can be accepted if notified in writing prior to the deadline for submission.

(b) Withdrawal of a proposals after the submission deadline may be grounds for exclusion/suspension from future AU assignments, if there is proven evidence that the withdrawal was made in an attempt to distort the competition (e.g. collusion with other consultants).

18.2. SUBMISSION OF PROPOSALS[20]

(a) Under QCBS, FBS, LCS, CQS, QBS and SSS methods of selection, both technical and financial proposals must be submitted at the same time.

(b) Under QBS, financial proposals may be submitted together with technical proposals, but submission of the technical proposals first by all shortlisted consultants, followed by submission of the financial proposal of only the consultant with the highest technical score, may also be permitted.

(c) Envelopes containing the proposals shall be stamped with the date and time of receipt and deposited in the designated locked tender box. Consultants' representatives delivering proposals by hand shall be directed to the tender box so that they may place their envelopes directly in the tender box.

(d) A Bid Receipt Register shall be maintained to record all submissions received by post, courier, and the information contained within shall correspond to the date and time stamp which is appended on each hardcopy receipt.

(e) The tender box shall be closed and sealed immediately following the deadline for submission of proposals. Late submission shall not be accepted and shall be returned unopened to the concerned consultants.

(f) Bid submission by email: include the conditions. Security of the platform should be intact

18.3. PUBLIC OPENING OF TECHNICAL PROPOSALS

(a) A suitable accessible room must be arranged in advance and specified in the RFP for the Public opening of Technical Proposals. All Consultants' representatives present at the opening session shall sign a register of attendance. A meeting link will be shared with interested bidders who chose to attend the bid opening virtually.

[20]. *Procedures for electronic submission shall be detailed in the RFP when applicable, will be described under separate guidelines and reflected in the RFP documents*

(b) Proposals submitted after the deadline stated in the RFP (or as amended) shall be rejected and returned unopened.

(c) The Procurement Unit shall ensure that all procedures regarding the opening of tenders in open session are strictly followed, including circulating and collecting the attendance register after signing by all participants.

(d) On the date and time set out for the public opening of proposal, envelopes containing the technical proposals shall be opened one by one and critical details of each technical proposal shall be read out loud and recorded.

(e) It is recommended to use a checklist of items to be inspected in each technical proposal as it is opened. The reading shall be from the original version of each technical proposal.

(f) Any submission containing substitutions, modifications, or withdrawals must be subject to the same level of scrutiny. Failure to read out such information and include it in the written record may result in denial of its inclusion in technical evaluation. If a proposal has been withdrawn by cable, it shall nonetheless be read out and shall not be returned until the authenticity of the withdrawal notice has been confirmed.

(g) After the opening and reading of the technical proposals, the BOC verifies that envelopes containing the financial proposals are sealed, before they are entrusted to the safe custody of the Procurement Unit.

(h) The Secretary shall prepare the Minutes of the Bid Opening Report[21] to account for all relevant aspects of the bid opening proceedings.

[21] *Ref. AU recommended template for The Tender Opening Records*

CHAPTER 19-EVALUATION OF TECHNICAL PROPOSALS

19.1. CRITICAL ASPECTS OF TECHNICAL PROPOSALS

(a) The procedures for evaluating technical proposals described in this section apply to the Quality and Cost Based Selection (QCBS) method.

(b) They may be applied (with a few modifications) to Quality-Based Selection (QBS), Fixed-Based Selection (FBS), and Least Cost Selection (LCS) methods.

(c) Aspects discussed in the following sections are generic and shall be taken as general guide for the evaluation of technical proposals. Some of these aspects shall have been discussed beforehand and suitably reflected in the RFP in the form of relevant sub-criteria.

19.1.1. Firms' Experience relevant to the Assignment

(a) Experience in Similar Projects. Evidence of having successfully carried out similar assignments.

(b) Experience in Similar Areas and Conditions. The consultants have worked in regions or countries with physical, cultural, social, and institutional characteristics comparable to that of the country in which the assignment is to be carried out.

(c) Specialization. For some assignments, it may be important to evaluate the consultants' specialized skills and access to particular technologies related to the assignment.

(d) Experience in Capacity Building. The consultants' experience in capacity building and transfer of knowledge (if relevant).

19.1.2. Quality of Proposed Methodology

(a) Understanding the Objectives of the Assignment. The extent to which the consultants' technical approach and work plan respond to the objectives indicated in the TOR.

(b) Clarity, Completeness and Responsiveness. Does the proposal respond in an exhaustive manner to all the requirements of the TOR? Are the various elements coherent and the decision points well defined?

(c) Creativity and Innovation. Are there any innovative solutions being proposed in response to the objectives of the assignment or for better outcomes?

(d) Timeliness of Output. Is the proposed activity schedule realistic considering the required delivery date?

(e) Quality of Resource Utilization. Are the team composition and allocation of time input among key staff adequate? (e.g., does the level of involvement of the team leader compared to other experts adequately reflect the requirements of the proposed methodology)?

(f) Flexibility and Adaptability. Are the methodology and work plan flexible enough and easy to adapt to changes that might occur during implementation of the assignment? This aspect is especially relevant when the assignment takes place in potentially changing environments.

(g) Logistics. If the consultants must work at remote/difficult sites, the consultants' approach to logistics could also be considered.

19.1.3. Qualifications of Proposed Staff

(a) General Qualifications. It is important to consider the academic background and number of years of professional experience of the proposed staff in the technical fields similar to the assignment.

(b) Adequacy for the Assignment. This is the most important aspect and shall be carefully evaluated as it is meant to assess the capability to execute the specific functions entrusted to each expert, i.e.,

i) How well do the knowledge and skills (field of expertise) of the staff meet the needs of the assignment? and

ii) Has the expert in the past or recently, held positions similar to that s/he is being proposed for?

iii) If yes, were such positions related to assignments similar to the one under consideration?

iv) The qualifications of the team leader shall be carefully evaluated because this position plays a crucial role in the assignment.
- Has the proposed team leader held such a position before?
- If yes, has he or she managed a team similar to the one proposed (size, technical disciplines involved, similar mix of home and expatriate personnel, etc.)?
- If the team leader is acting as both project manager and expert, his or her qualifications must be evaluated for each function, and the scores are assigned to each function proportional to the time effort dedicated to each of them (if the two functions overlap). Full marks for each function are assigned only if the functions can be clearly separated without affecting the quality of the services.

(c) Experience in the Region and Language. When evaluating this sub-criterion, consideration may be given to factors such as;
i) the number of assignments carried out in countries with similar cultures, administrative systems, and government organizations.
ii) For expatriate staff, in addition to capabilities in one of the official languages of the AU, local language requirements for adequate communication in the country of the assignment, if needed.
iii) In scoring national consultant staff, their knowledge of the language of the contract may be evaluated, instead of the local language.

19.1.4. Proposed Training Program

(a) Are the Objectives of the proposed Training Program and corresponding methodology clearly explained?

(b) Are of the proposed learning materials adequate for the target audience?

(c) Are the activities to be carried out under this component adequately articulated, and are all the organizational arrangements for implementation, supervision, evaluation of the results appropriate? etc.

19.1.5. Extent of Participation by nationals of AU Member States

(a) This sub-criterion covers only the quantitative aspect of participation by nationals of AU Member States. Qualitative aspects such as experience of national key staff are captured under various sub-criteria of the criterion "qualifications of proposed" (ref. sub-section 19.1.3 above).

(b) The maximum points allowed for this criterion will be allocated to each proposal in a proportion equal to the percentage share of nationals of AU Member States in the total work time proposed for key staff[22].

19.2. RATING SYSTEM

(a) In the RFP, the points assigned to a particular criterion (or sub criterion) indicate the maximum score (maximum number of points) that can be allocated to it. The actual score given by the evaluator indicates the degree to which the proposal being evaluated under that particular criterion/sub criterion meets the requirements. The level of responsiveness for each criterion/and sub criterion is rated on a scale of 1 to 100.

(b) Disparities in evaluators' relative generosity or severity in judgment and ratings can easily be magnified by the lack of common definitions of the requirements to be considered for each criterion and sub criterion.

(c) To make the scoring easier and more transparent, the rating scale of the level of responsiveness may be divided into a number of discrete grades, e.g., poor, satisfactory, good, and very good.

(d) Before opening the technical proposals, the BEC shall agree on the definition of a grade for each criterion (or sub criterion), i.e., establish what will be considered poor, satisfactory, good, and very good. Because each of the criteria (or sub criteria) refers to a different aspect of the proposal, the definition of grades will differ from one criterion to the next.

(e) Scoring technical proposals by this method offers the following advantages:
   i) It provides the BEC members with a shared definition of the grades, making the evaluation easier and comparable;
   ii) It reduces the risk of scoring inconsistencies and discretion;
   iii) It binds each committee member to justify his or her individual evaluation, based on a common definition of grades, discouraging intentionally biased evaluations;
   iv) It adds transparency and fairness to the evaluation process.

(f) The Procurement Unit/Officer shall help define the rating system before the technical proposals are handed over to the BEC to prevent bias occurring from knowledge of the content of the proposals. (ref. Annex IV for an example of evaluation of technical proposals using a rating system and predefined grades.)

19.3. SCORING OF TECHNICAL PROPOSALS

(a) After the rating system has been defined and technical proposals have been opened, the evaluation process is carried out as per the followings sub-sections:

[22] *Also consult the AU guidelines for the application of Margin of Preference*

19.3.1. Individual Evaluations

(a) To avoid BEC members influencing each other, the analysis of proposals shall be first carried separately by each member individually as follows:

i) Step 1. Reading the proposals: Each member of the BEC shall first read all proposals, without scoring them.
- This first review helps determine whether the proposals are free of significant omissions or deviations from the TOR or other key requirements of the RFP;
- it also allows BEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation.

ii) Step 2. Conducting individual evaluations and scoring: The evaluation of each proposal shall be based on the proposal as submitted without considerations that are outside the proposal itself.
- Each proposal shall be judged on its own merits (based on description of strength and weaknesses) and assigned an absolute—not comparative—grade and scored against predefined criteria and sub criteria.

- After each member has independently evaluated and rated all criteria and sub criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.

- Individual evaluators' results are recorded on the worksheets provided by the Secretary (format under Annex III).

19.3.2. Joint Evaluation

(a) After individual BEC members have completed their evaluation separately, the BEC shall convene to conduct a joint review and discuss the rationale for individual evaluations and scores as detailed below:

- Step 3. Identifying/Reconciling wide differences: Some evaluators tend to be generous while others will be rigid in their judgment and ratings. Such disparity does not matter, provided each evaluator is consistent (analysis of strengths and weaknesses vs grading/scoring) and differences in scores among evaluators are not too wide.

- Differences of more than 10% shall be reviewed and explained, because they are often caused by improper or inaccurate use of the rating system.

- Reconciling differences that are considered too wide may result in members revising some of their ratings and scores.

Step 4. Ranking of Technical of Proposals: Eventually, for each technical proposal, the BEC shall:
- comment on the strengths and weaknesses of the respective proposals against each criterion and reflect such judgement in a combined evaluation worksheet.
- calculate the average scores allocated to each criterion by respective evaluators
- identify unresponsive technical proposals (those below the minimum mark) and
- establish the ranking of the technical proposals.

Step 5. Identification of elements of negotiations: Issues to be clarified with the highest ranked consultant shall be identified for further discussions during contract negotiations, as appropriate.

19.4. TECHNICAL EVALUATION REPORT (TER)

(a) The Secretary of the BEC prepares a TER that shall record the scores given to each criterion/sub-criterion, as well as reflect the analysis of technical strengths and weaknesses or deviations from the requirements of the RFP.

(b) Consultants tend to question the decision when their technical proposals do not qualify, particularly when they are only a few points below the minimum mark. Therefore, if one or more proposals fail to meet the minimum qualifying mark, both individual and joint assessments must be adequately supported in the evaluation report.

(c) The PU submits the technical evaluation report along with all supporting documents to the Competent Authority for review and approval. The financial proposals shall not be opened until approval is granted.

19.5. APPROVAL OF TECHNICAL EVALUATION REPORT

(a) Subject to the above, the Competent Authority will review the Technical Evaluation report to verify that;

i. all steps of evaluation processes, including applicable evaluation/qualification criteria and methodology have been carried out in accordance with the AU procurement principles and specific procedural requirements of the RFP;

ii. decisions are adequately supported, with special attention to ensuring that any potentially controversial decision (e.g. rejection of proposals/disqualification of consultants) are fully documented and backed by adequate evidence that can withstand the test of any potential challenges from the impacted consultants.

(b) As a general rule, Approval Authorities shall not take active part in the bid evaluation process, except in fulfilment of their compliance verification function, as described above. However, where a Member of the IPC/LIPC/Tender Board takes part in the evaluation as a key expert, he/she will recuse him/herself from participating in the decision making on that item. Specifically, Approval Authorities shall not:

i) informally or otherwise recommend any consultants;

ii) instruct Bid Evaluation Committees (BEC) to decide in favor and/or detriment of any consultant or to change any of its recommendations one way or the other;

iii) instruct BEC to modify any of the RFP requirements (except in the context of cancellation and retendering);

iv) be involved in situations where they are, or could be perceived, as being party to, or "arbitrators" of, complaints from consultants or other stakeholders[23].

[23] *Ref. to the **Rules of Procedures for** IPC/LIPC for more detailed procedural guidance*

(c) Before granting approval to the TER, the Competent Authority must ensure that any written complaints made by consultants have been referred to the Office of the Internal Audit for review and appropriate resolution.

19.6. NOTIFICATION OF TECHNICAL RESULTS

(a) Under QCBS/LCS and FBS Methods: Upon receiving the approval to the Technical Evaluation Report, the PU shall simultaneously send written notifications to,

i) Consultants whose proposals did not meet the minimum technical score specified in the RFP, indicating that their financial proposals will not be opened after completing the selection process and Contract signing;

ii) Consultants whose technical proposals passed the minimum technical score, informing them of the date, time, and place for the public opening the financial envelopes. The opening date shall allow sufficient time for consultants to prepare to attend the opening session.

(b) The notification to each consultant shall provide information relating to the consultant's overall technical score, the analysis of strengths and weaknesses relative to each criterion/sub-criterion, and their corresponding scores.

(c) Under QBS Methods, if consultants were initially requested to submit financial proposals, the PU notifies the consultant with the highest-ranked technical proposal and indicates the date, time, and place set for negotiating the financial proposal and the contract. If only technical proposals have been received, the PU will request the highest ranked consultant to submit a financial proposal, within a reasonable time (one or two weeks).

CHAPTER 20 – FINAL EVALUATION AND RANKING OF PROPOSALS

20.1. PUBLIC OPENING OF FINANCIAL PROPOSALS

(a) On the date and time set specified by the RFP, the PU delivers to the BOC the financial proposals of those consultants who obtained the minimum qualifying mark for their public opening.

(b) The BOC verifies that the financial proposals have remained sealed before proceeding to the opening in the presence of those consultants' representatives who chose to attend.

(c) The name of the consultant, the technical scores, and the proposed prices are read aloud and recorded as each financial proposal is opened. No modification to financial proposals is permitted.

(d) All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

(e) Immediately after the opening session, the Secretary of the BOC prepares the minutes of the Meeting, which shall be signed by all members of the BOC.

20.2. EVALUATION OF FINANCIAL PROPOSALS

(a) The procedures for evaluating financial proposals described in this section are those of the Quality and Cost-Based Selection (QCBS) method.

(b) Most of the features described hereunder do not apply to the Consultant's Qualifications Selection (CQS) and Single Source Selection (SSS) methods, and the Quality-Based Selection (QBS) wherein only the selected consultant is asked to submit technical and financial proposals; Differences with the QCBS method will be outlined where appropriate.

(c) The purpose of evaluation of financial proposals is to ensure that they are free from errors, omissions and inconsistencies and to determine the determine the final cost and scoring of the financial proposal.

20.2.1. Arithmetic Errors, Omissions and Inconsistencies

(a) Arithmetical errors: In case of a discrepancy between a partial amount and the total amount or between the wording and figures, the former will prevail in both cases.

(b) Inconsistencies: If an activity or line item is quantified differently in the financial proposal than in the technical proposal (e.g., a technical proposal indicates the presence of the team leader at the assignment site for 12 months, but the financial proposal indicates only 8 months), this discrepancy shall be treated as follows:

i) In the case of a Lump-Sum Contract, the inconsistency shall be treated as an omission and no corrections are applied to the financial proposal in this respect.

ii) In the case of Time-Based Contracts, the BEC shall
- correct the quantification indicated in the financial proposal so as to make it consistent with that indicated in the technical proposal,
- apply the relevant unit price included in the financial proposal to the corrected quantity, and

- correct the total proposal cost by adding the corresponding amount of staff remuneration.

20.2.2. Currency Conversion/Scoring of Financial Proposals

(a) Where applicable, Financial proposals (as corrected for computational errors and omissions and/or inconsistencies) shall be converted to a common currency (UN) using the exchange rate, date, and source indicated in the RFP.

(b) The scores of the evaluated prices are then calculated according to the formula or method indicated in the RFP.

20.3. COMBINED EVALUATION/RANKING OF PROPOSALS

20.3.1. QCBS Method

(a) The Evaluation Committee weighs and combines the scores of the technical and financial proposals to obtain a final ranking of the proposals.

(b) The consultant whose combined technical and financial score is the highest is recommended for award subject to conclusive contract negotiations where applicable.

20.3.2. FBS Method

(a) Those financial proposals that exceed the budget indicated in the RFP shall be rejected and the Consultant who submitted the highest-ranked Technical Proposal that does not exceed the budget, shall be invited to negotiate the Contract.

(b) If adjustments made to correct omissions or inconsistencies raise the evaluated price over the available budget, this could lead to the rejection of a proposal.

20.3.3. LCS Method

(a) The Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score shall be invited to negotiate the Contract where applicable.

20.4. COMBINED TECHNICAL AND FINANCIAL EVALUATION REPORT

(a) After completion of the evaluation, the PU prepares the combined technical and financial report, which shall be reviewed and signed by each member of the BEC before submission to the relevant approving authority.

(b) The Report shall contain a summary of the selection process, including:

(i) A brief historical background information

(ii) A summary of the technical evaluation and technical scores;

(iii) A summary of the financial evaluation, financial and combined scores, as applicable;

(iv) The name of the successful (first ranked) consultant proposed for award;

(v) A summary of technical and financial aspects (as applicable) proposed for negotiations

(vi) All relevant tables and supporting documents.

(c) The successful consultant will be invited for negotiations only after approval of the combined technical and financial evaluation report by the competent authority.

(d) For avoidance of doubt, the competent authority is the authority under whose threshold, the procurement transaction falls as per the budget estimate.

20.5. APPROVAL OF COMBINED EVALUATION REPORT

(a) Before granting approval to the combined technical and financial evaluation report, the Competent Authority will ensure that any written complaints concerning the selection process have been referred to the OIO.

(b) In the absence of valid reasons for opposing the proposed final ranking the Competent Authority shall approve the proposed invitation for negotiations with the consultant ranked first.

(c) Where a procurement process has complaints, in writing, OIO shall provide written clearance that the issues have been investigated within 7 working days from such request.

CHAPTER 21 – NEGOTIATIONS

21.1. PURPOSE AND LIMITS OF CONTRACT NEGOTIATIONS

(a) The purpose of negotiations is to arrive at a mutually agreeable contract between the AU and the selected consultant.

(b) The parties will discuss the technical proposal submitted, agree on the detailed scope of work, negotiate financial terms, and discuss and finalize contract conditions. A good contract shall protect the interests of both parties in a balanced way.

(c) The purpose of technical negotiations (approach, methodology, work plan, and staffing) is to reconcile the consultant's proposal and the views of the BEC.

(d) The purpose of financial negotiations is to achieve consistency between the quality and the price of the offered services, and not just a price reduction at all costs. For instance, if staff rates proposed by a consultant are consistent with market rates for similar services, the only negotiable item would be the fee component of the rate, and this cannot be cut unreasonably.

(e) Depending on the selection method and proposed type of contract, technical and financial items that may be negotiated, include:
   i) scope of work;
   ii) technical approach and methodology;
   iii) work plan and activity schedule;
   iv) organization and staffing, and time schedule for key staff;
   v) deliverables;
   vi) counterpart staff; • counterpart facilities and equipment;
   vii) contract special conditions;
   viii) staff unit rates;
   ix) reimbursable expenses; and
   x) proposed contract price.

(f) Under QCBS/LCS and FBS, negotiations should include only technical aspects as price was already a selection factor. Unit rates such as staff remuneration or unit rates proposed for reimbursable expenses and proposal contract price cannot be negotiated unless there are exceptional reasons. For example, a price increase related to technical improvements can be negotiated on condition that the proposal remains the least costly.

(g) Under QBS, CQS and SSS, where price has not been a selection factor, negotiations can include both technical and financial aspects (including remuneration rates)

(h) The negotiation team shall not push for arbitrary reductions of price from consultants or force them to accept extensions of the scope of work without price adjustments.

21.2. NEGOTIATION PROCEEDINGS

21.2.1. Negotiation team

(a) For each procurement process where negotiations are required, there shall be a negotiation team comprising a minimum of two BEC members, who are familiar with the TOR, and preferably have prior experience in contract negotiations.

(b) The Negotiation Team shall be supported by the Procurement Officer in charge, who shall ensure that its members are fully briefed on the procedures and understand the scope and limits of the negotiations.

21.2.2. Invitation for negotiate

(a) The negotiations shall be held at the date and address indicated in the invitation to negotiate, which also outlines the agenda i.e., the main items to be negotiated.

(b) The Consultant's representative must have written power of attorney to negotiate and sign a Contract.

(c) Negotiations are based on a mutually agreed upon agenda composed of the main items to be negotiated, that is, methodology, work plan, key experts, Client inputs, financial terms, and special conditions of the contract.

(d) Typically, technical negotiations may include but not limited to (i) the availability of key experts (ii) the consultant's methodology and (iii) contract conditions.

(e) Financial negotiations will concern generally (i) consultant's remuneration if price was not a selection criteria (ii) taxes and any other financial aspects that require clarification

21.2.3. Technical Negotiations

(a) Technical negotiations should begin by considering the requests, comments, and suggestions made by the Evaluation Committee, and the recommendations of the decision-making authority.

(b) Since the quality of the technical proposal is the main factor in ranking the consultants, the discussion shall not substantially alter such quality to reduce the proposed price because doing so may affect the basis of the technical evaluation on which the ranking was determined.

21.2.3.1. Availability of Key Experts

(a) The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, propose a suitable replacement subject to para b) below.

(b) The substitution of Key Experts may be considered only if it is due to circumstances beyond the reasonable control of the Consultant, including inter alia,
- death or medical incapacity of the expert or
- failure of the AU to evaluate proposals within a reasonable processing time, or
- any other acceptable circumstances as determined by the AU negotiation team.

(c) In such case, the Consultant shall offer a substitute expert, who shall have equivalent or better qualifications and experience than the original candidate

(d) Failure to confirm all Key Experts' availability or to present a suitable replacement within the period of time specified by the negotiation team, may result in the cancellation of negotiations and the opening of new discussions with the next-ranked Consultant.

21.2.3.2. Proposed Methodology and Work Plan

- The technical approach, methodology, and work plan proposed by the consultant shall be discussed, taking into consideration observations of the BEC and/or the consultant's comments on the TOR.

- Any differences between the consultant's understanding of the TOR and the position of the BEC shall be examined in detail with a view toward reconciliation, without impacting the substance of the methodology or the basis for the ranking of the proposal.

- The consultant's technical proposal is not part of the contract. Therefore, once discussions are completed, the TOR should be revised to include any modification of the scope of work agreed upon between the AU and the consultant. The final TOR is included in the contract, and shall supersede both the original TOR and the RFP.

- The methodology and work plan agreed upon, including the activity schedule with the list of deliverables and the staffing schedule, are annexed to the final TOR and also form part of the contract.

- The composition of the consultants' team, the assignment of tasks, and the time schedule should be reviewed and agreement reached on the period of time each key member is expected to work in the field and at the home office.

- When a training program is a specific component of the assignment, it should also be discussed in all the necessary detail as any other component of the technical proposal.

- Negotiations should be limited to specific and justified requirements of the consultant.

21.2.4. Financial Negotiations

21.2.4.1. Remuneration rates

(a) When cost is not a factor of selection (QBS, CQS, SSS) and the BEC has reasons to believe that the staff rates proposed by the consultants are significantly higher than market rates, the Negotiations Team may request that the consultant provide cost breakdown to that justify such rates.

(b) The Negotiation Team shall have independent information on market rates for the type and level of expertise required under the assignment before engaging in such negotiations

21.2.4.2. Reimbursable expenses

Reimbursables are not negotiable under Lump-sum contracts.

21.2.4.3. Payment terms

(a) Payment terms, including amounts and schedule of payments, and/or payment procedures provided for in the RFP may also be discussed and agreed-on during negotiations for legitimate reasons.

(b) Consultant can be paid either at regular intervals, upon presentation of invoices under a time-based contract, or in line with agreed-on outputs, according to a payment schedule under a lump-sum contract.

21.2.4.4. Taxes

(a) Taxes shall be clarified during negotiations and deducted from the consultant's proposal if it had been mistakenly estimated by the consultant and included as separate amount in the financial proposal

(b) The contract should indicate the remuneration of the consultants separately from all identified local taxes payable under the contract.

21.2.4.5. Contract Conditions

(a) After discussing the financial proposal, the parties should discuss the clauses of the draft contract. The General and Special Conditions of Contract should be reviewed to ensure that both parties understand the contract terms and conditions and that they faithfully and clearly reflect the parties' agreement.

(b) The GCC cannot be changed. Special conditions are subject to negotiation. negotiations should be limited to specific and justified requirements of the consultants.

(c) When price is not an evaluation criterion, financial negotiations are conducted with the selected consultant to obtain best value for money and the best terms and conditions of contract.

(d) When price is a selection factor, the financial proposal of the highest-ranked consultant may be deemed unreasonably high compared to the cost estimate and/or the available budget. Reasons for such disconnect could be that
   i) the AU personnel in charge of cost estimation were not familiar with the market for the type of service or

   ii) the scope of the assignment may be too ambitious for the available budget.

(e) In such cases, the BEC may be allowed to negotiate a reduction of the contract price through a reduction in the scope and/or a re-allocation of risks and responsibilities between the AU and the consultant.

(f) However, any substantial reduction in the scope or contract provisions will require cancelation and re-tendering.

21.2.5. Conclusion of Negotiations

(a) After technical and financial negotiations are completed, the PU shall immediately record and reconfirm mutual understanding of the terms of agreement to remove any risk of ambiguities. If the issues to be negotiated are many and complex, significant points can be initialed by the parties as negotiations progress.

(b) Contract negotiations should end with both parties initialing the minutes of negotiations and a draft contract and its annexes. The draft contract should include all appendices required by the applicable standard contract form, providing the following information:

i) negotiated TOR, including the scope of the services, agreed upon methodology, organization chart, and program of activities indicating dates for completion of the various tasks;
ii) list of deliverables, indicating format, frequency and content, submission dates, and approval procedures;
iii) job descriptions of key personnel and the staffing schedule;
iv) list of services, facilities, and counterpart personnel to be made available by the AU, if any;
v) estimated contract amounts in foreign and/or local currency, indicating monthly rates for foreign and local staff and reimbursable expenses; and
vi) detailed training program if training is a specific requirement of the TOR.

(c) The PU shall provide the initialed minutes of negotiations and the draft negotiated contract to the relevant approving authority in sufficient time for review and approval.

(d) If the negotiated contract resulted in a substitution of key staff or any changes in the TOR and in the originally proposed contract, the BEC/PU shall highlight the changes and provide an explanation of the changes.

21.2.6. Failed negotiations

(a) If the negotiations fail, the PU shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond.

(b) If disagreement persists, the Negotiation Team shall terminate the negotiations informing the Consultant of the reasons for doing so. Subject to approval by the Competent Authority, the PU shall invite the next-ranked Consultant to negotiate a Contract.

(c) Once the Negotiation Team commences negotiations with the next-ranked consultant, it shall not reopen the earlier negotiations.

21.3. APPROVAL OF NEGOTIATIONS/SIGNING OF CONTRACT

(a) The Procurement Officer prepares the minutes of negotiations, for review/signature by the members of the negotiation team and the consultant.

(b) The Procurement Officer then uses the signed minutes to prepare a draft negotiated contract, which is submitted to the Competent Authority for approval.

(c) Following approval of the draft contract, the Procurement Unit will:
i) send the draft contract to the successful consultant, along with a request to sign and return within a specified time.
ii) Have the contract signed by the representative of the AU
iii) Keep the contract duly signed by both parties in the designated unique procurement file.
iv) distribute copies as follows:
- One confirmed copy to the Consultant
- One copy to the Office of the Legal Counsel
- One copy to the concerned Business unit

CHAPTER 22 – CONDITIONS OF SELECTION OF INDIVIDUALS

22.1GENERAL CONDITIONS

(a) Individual consultant and Individual Service Providers may be engaged only when the following conditions are met:

i) The assignment is of a temporary nature and the outputs are measurable and the tasks capable of being performed and completed within a limited and specified period of time;

ii) The need for the required services cannot be met from within the current staff resources of the Business Unit owing to inadequate capacity;

iii) The services performed clearly relate to programmed or mandated activities in the work programme of the Business Unit concerned and/or special legislative or programming decisions;

(b) Individual consultants and Individual Service Providers may not be engaged as a means of applying a probationary period to candidates prior to offering them a staff appointment;

(c) Individual Service Providers shall not perform the functions of regular and continuing staff members, and shall not be involved in decisions affecting the status, rights and entitlements of staff members.

(d) The services to be provided by consultants or Individual Service Providers should not duplicate work or activities already done, being done or about to be done by other staff members.

22.2 Contracting of family members and spouses

(a) Spouses, and other family members of staff members may be contracted simultaneously on individual Consultancy and individual Service Provider contracts, provided that:

i) They are fully qualified for the assignment and were selected in accordance with the competitive selection process requirements as stipulated under sub-section 23.1.1 of Chapter 23;

ii) They are not superior or subordinate in the line of authority to their spouse or other family member, or where a conflict of interest could be perceived because of the nature of the work;

iii) They are not participating in any review or decision-making process that affects the status or entitlements of their spouse or family member, or vice versa.

(b) Spouses of heads of departments, offices and missions may not be engaged as consultants or individual contractors in the same department, office or mission.

22.3 CONTRACTING OF FORMER AND RETIRED STAFF MEMBERS

(a) A former or retired staff member may be engaged as an Individual Consultant or Individual Service Provider subject to the following provisions:

i) A minimum of a twelve (12) months break is applied between separation or retirement of the former or retired staff member and reengagement on an individual contract.

ii) The former or retired staff member is not reengaged to perform the functions of the same post from which he or she separated or retired.

iii) The former staff member did not separate from the AU for any of the following reasons:

- abandonment of post,
- misconduct,
- dismissal,
- non-renewal or termination for unsatisfactory service, and/or
- resignation in lieu of disciplinary action.

iv) There are no other qualified and readily available candidates to perform the required functions, and the engagement of the former or retired staff member will not adversely affect the career development opportunities of existing staff members.

(b) The reengagement of a former or retired staff member is subject to clearance by the Office in charge of Human Resources Management.

(c) The fees payable to a former staff member shall not be based on the level of remuneration that he or she held before separation, but rather on the nature and complexity of the assignment performed, subject to the limitations specified below.

22.4 Criteria used to select individuals service providers and consultants

a. Individual service providers and individual consultants are selected on their qualifications, experience and competency for the assignment.

b. Selection may be on the basis of references or through comparison of qualifications and experience among those expressing interest in the assignment or approached directly by the AU.

c. Individuals employed by the AU as Consultants must meet all relevant qualifications and be fully capable of carrying out the assignment.

d. Capability is judged on academic and professional background, experience, knowledge of local conditions and culture, administrative systems, and government organisation, and language skills as appropriate.

22.4.1 Stages in the Selection Process

a) The selection process for individual service providers and Individual consultants comprises the following stages:

i. preparation of the terms of reference and contract format;

ii. preparation of the estimated budget;

iii. preparation of the short list;

iv. evaluation of qualifications and experience;
v. negotiation of fees and contract terms;
vi. signing of contract; and
vii. supervision and evaluation of services.

b) Once the short list is established, the BEC on the basis of the curriculum vitae and other relevant information available to it, evaluate the qualifications and experience of each consultant, particularly in the field of the assignment concerned and classify them by order of merit.

c) The criteria to be used in the evaluation are the following: (numerical ratings are given as examples)
   i. general qualification and suitability for the task to be performed 35%
   ii. experience in the specific assignment described in the terms of reference 50%
   iii. Gender and age (women and Youths) 10
   iv. language proficiency..... 5%

d) The AU shall contact the first ranked candidate on the list and, if he/she is available, fees and contract terms shall be negotiated.

CHAPTER 24 - CONTRACT MANAGEMENT

24.1. INTRODUCTION

(a) Contract Management is a post award function, which consists of ongoing monitoring and management of the Vendor's performance and obligations under the Contract. It includes managing the relationship with the Vendor, providing feedback to the Vendor regarding its performance, as well as dispute resolution, if necessary.

(b) The objective of contract management is to ensure that all parties to the contract fully meet their respective obligations as efficiently and effectively as possible, so that the AU achieves value for money.

(c) Good Contract Management is critical in achieving Value for Money while ensuring that the interest and reputation of the AU are protected from unwarranted liabilities.

24.2. CONTRACTUAL RISK FACTORS[24]

(a) Good Contract management is the ability to take the appropriate preventive measures and remedial actions to tackle risks that may impact negatively the vendor's ability to perform as per the AU's expectations.

(b) Contractual issues may originate from many sources, notably, shortcomings in solicitation/contract documents, poor evaluation of bids/proposals, and/or weak contract supervision.

24.2.1. Solicitation Documents

The poor quality of solicitation documents is often a major cause of the vendor's failure to understand or assume its contractual obligations. Shortcomings that may be observed in this regard include:

i) Poor quality of the design/specifications/Terms of reference;
ii) Inconsistencies among various sections of the solicitation documents (e.g. drawings Vs. technical specs; special conditions of contract Vs. Termes of Reference or specifications etc.);
iii) Insufficient attention to requirements that are critical for AU's interests (e.g. insurances, manufacturers' authorizations, performance securities etc.);
iv) Failure to provide adequate remedies (e.g. penalties for failing to meet functional guarantees);
v) Unclear price adjustment provisions.
vi) Absence of pricing mechanism for non B.O.Q. items (additional work) in civil works contracts.
vii) Inexistent or inadequate dispute resolution mechanisms, etc.

24.2.2. Evaluation of Bids

(a) Shortcomings in the evaluation of bids or proposals may include,

i) The acceptance of conditional bids/proposals that deviate substantially from the requirements;
ii) Failure to properly assess bidders' qualifications
iii) Failure to detect deliberately wrong or false documents submitted by bidders;
iv) Failure to detect collusion schemes among bidders, etc.

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[24] Ref. to the *AU Procurement Risk Management Register for further details on related risks.*

24.2.3. Contract Execution

(a) Even if the pre-tendering and tendering phases have been properly handled, contract execution may still be source of many concerns if the contract is not adequately supervised.

(b) Some of the key weaknesses that may negatively affect the efficiency of contract management, include:
   i) the lack of the relevant technical expertise among the members of the team in charge of contract supervision, or their unfamiliarity with the contract conditions;
   ii) Yielding under undue pressure or solicitations from the vendor or other stakeholders;
   iii) leniency towards vendors (e.g., easily accepting deviations from the requirements and/or failure to enforce applicable remedies);
   iv) failure to take adequate measures to prevent and or resolve potential sources of contractual disputes
   v) failure to properly document decisions/critical events during contract supervision, etc.

24.3. ROLES AND RESPONSIBILITIES IN CONTRACT MANAGEMENT[25]

24.1.1. Contract Supervision Vs Contract Administration

(a) The Contract Management function entails various activities, which fall into two main categories of due diligence, i.e.,

   i) Contract Supervision which is the ongoing monitoring and management of the Vendor's performance as per the Contract, including managing the relationship with the Vendor, providing feedback to the Vendor regarding its performance, as well as dispute resolution, if necessary

   ii) Contract Administration, which is the ongoing post-award monitoring of the administrative aspects of the contract and processing related administrative due diligence.

(b) Despite this distinction between administrative and supervision tasks, contract management entails a concerted involvement of both the concerned Business Unit and Procurement Units, who shall strive to work collaboratively to ensure that:

   i) all contractual obligations of the AU are planned and performed without undue delay, and

   ii) procured Goods are delivered/installed, Services are performed and/or Works completed per the contract terms and conditions.
      a. In time
      b. Within allocated budget and
      c. As per the required quality.

24.1.2. Role of the Business Unit

(a) The designated representative of the Business unit (staff member, and/or external technical specialist) would be responsible for supervising the technical aspects of contract execution, including, inter alia:

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i) Ensuring the quality of deliverables (verification of compliance with technical specifications, functional guarantees, inspections and tests, etc.);
ii) Taking preventive or swift remedial action as appropriate to minimize any delays, unnecessary costs or substandard quality of goods, works or services;
iii) Prevention and/or resolution of disputes;
iv) Documenting all contract management decisions, including vendor performance evaluation, and transmission of related records to the Procurement Unit for safekeeping;
v) Measuring the performance of the vendors pre-award, implantation and post awardVendor appraisal and rating for the assignment performed
vi) Any other tasks to ensure that the contract is executed within the agreed time/cost, and as per the agreed quality.

(b) Issues related to interpretation of Contract provisions shall be referred to the Procurement Unit that issued the Contract.

24.1.3. Role of the Procurement Unit

(a) The procurement Unit/ contract specialist /Officer is responsible for administrative aspects of contract management, including:
i) keeping track of the main contract milestones (effective date; deadlines for delivery, installation, payment, warranty period etc.) and updating the Contract Management Register, as appropriate;
ii) Initiating and preparation of all documents necessary for Payment of vendors with strict timelines in accordance with the contract milestones and terms of payment of the contract or purchase orders

iii) verification of contract securities and insurance policies, as applicable, and taking appropriate measures for maintaining their validity throughout contract execution until close-out;

iv) drafting contract amendments for approval by the relevant authorities;

v) Collection and safekeeping contract management records and updating regularly the Contract Register to reflect key contractual milestones and critical events;

vi) Helping in the resolution of disputes in consultation with the business unit and the Office of the Legal Counsel;

vii) Initiating/coordinating contract close-out procedures in consultation with all the concerned parties;

viii) Any other administrative tasks as dictated by the specific circumstances of the contract.

24.1.4. Role of the Finance /Office in Charge of Finance

(a) The role of the Finance Directorate is three-fold
i) Safekeeping and Monitoring of Securities and Retention monies

ii) Verification and Prompt Payment of invoices submitted by vendors

iii) Safekeeping of financial records for reporting and audit purposes

24.4. CONTRACT AMENDMENTS & RENEWAL

(a) All modifications to costs, quantities, delivery timescales and other material terms and conditions of contracts must be approved by a competent authority.
(b) Any contract amendment on cost shall not exceed 25% of the original contract value.
(c) For the purposes of 24.4 (a) above, the competent authority shall he the authority which approved the initial Contract.
(d) The amendments shall be confirmed in a formal contract amendment and the Procurement Unit shall:

  (i) identify and agree with the Business Unit and the Vendor the specific terms and conditions of the contract which are to be modified;
  (ii) prepare and submit a contract amendment for approval by the same authority that approved the original contract;
  (iii) obtain from the Vendor any necessary modifications to the performance security, if applicable;
  (iv) arrange for signature of the contract amendment by the same signatories as the original contract;
  (v) record the relevant contractual changes in the Contract Register;
  (vi) distribute copies of the amendment in the same way as the original contract.

(e) Amendments to a Contract, if required, shall be numbered serially, commencing with Amendment No. 1. Each amendment shall identify the Contract to which it refers by number, subject and date.
(f) The nature of the amendment shall be clearly described and include a statement that all other terms and conditions of the Contract shall remain unchanged. The procedures for signing an amendment are the same as those for the original Contract.
(g) The Business unit shall obtain a confirmation of Availability of Funds from the office in charge of financial management for any increase in the funding requirement;

(h) If deemed necessary, contracts may be renewed or extended, in which case, this shall be done prior to their expiry to ensure continuity of service delivery, but also that the services are governed by current and valid conditions of contract.
(i) It is important that the Procurement Unit considers the amount of time that will be required to renew or extend a contract to avoid a lapse in services. Ideally an IT based contract management and reporting system should be used to alert Procurement Staff of key dates for contract extension, validity of surety documents, etc.
(j) Before issuing an amendment that renews a contract, the Procurement Officer shall ensure that that a satisfactory Vendor Performance report is prepared by the Business Unit and kept on file.
(k) Contracts shall not be increased or extended as a means for unduly avoiding competitive Solicitation for the requirement.
(l) A for service contracts, a Contract shall be deemed renewed automatically if it's not terminated. This shall apply to unique services such as software subscriptions which if not cancelled, automatically will roll over.

24.5 CONTRACT RENEWAL

Contract Renewal involves the extension of a contract for another term over a period based on the good performance of the vendor for the assignment initially contracted to execute. Contract renewal is different from contract amendment which covers changes in contract terms and conditions or any change.

Contract Renewal shall follow the relevant procurement procedures based on the following justifications:

- The work was satisfactorily performed and was appraised by the contract team
- That it will not be renewed after one plus two terms making it three consecutive times.
- The new contract renewal must carry the new procurement or contract number for the current financial year procurement plan
- Direct contracting procedures may be used for renewal of the contract for another term/period.
- Contract renewal requires the use of contract template and not an addendum to the contract which is used for amendment to the contract.
- Contract renewal required fund availability and budget confirmation

24.6. CONTRACTUAL REMEDIES

(a) Remedies are the means by which a contractual right is enforced or by which the breach of a contractual right is prevented or compensated.

(b) When the Contract is not being performed properly, or Vendor Performance is otherwise unacceptable, the Contract Manager may apply remedies as per contract provisions, such as:
   i) Denial of approval or acceptance of defective work, or sub-standard materials;
   ii) Rejection of non-performing staff;
   iii) invoking liquidated damages;
   iv) Penalties for failure to meet functional guarantees (plant);
   v) payment withholding provisions;
   vi) Forfeiture of the Performance Security;
   vii) terminating the Contract; and initiation of arbitration.

(c) When considering any contract remedy, seeking feedback from the Vendor is recommended as a prudent practice. The Vendor should be given an opportunity to provide evidence against pursuing the remedy.

(d) The Contract may be terminated by the AU for various reasons as per the terms and conditions spelt out in the contract.

(e) In such an eventuality, the AU shall ensure that all the Vendor's legitimate claims have been properly addressed, and all amounts due have been paid as per the terms and conditions of the contract.

(f) Prior consultation with the OLC/another entity as applicable, is recommended in relation to contract termination and the preparation of all related correspondence.

24.6. RESOLUTION OF CONTRACTUAL DISPUTES

(a) Contractual disputes can be costly for both parties in terms of delays, money and resources devoted to their resolution. Therefore, every effort shall be made to prevent any potential sources of disputes, including:
   i) Abiding by all AU's obligations in a timely manner (e.g., prompt review and payment of contractor's invoices, when due);
   ii) Maintaining regular written communication with the Vendor;
   iii) Keeping complete records of all decisions and exchanges of communications with the Vendor during contract execution;
   iv) Giving preference to amicable resolution of disputes rather than jumping to arbitration or litigation.

(b) Contractual disagreements can be addressed using the following incremental process:

i) Stage 1: The contract team (Contract Supervisor & Contract Administrator) communicates with the Vendor directly to explore possibilities for a mutually beneficial solution.

ii) Stage 2: If the contract team (Contract Supervisor & Contract Administrator) is unable to resolve the dispute amicably, it shall notify the Procurement Unit, who will review the situation in consultation with OLC, or the legal office of another AU entity, as applicable.

iii) Stage 3: Arbitration is the last recourse for dispute resolution and should only be pursued in consultation with OLC.

(c) Considering the privileges and immunities of the Union, in particular the immunity from legal process, AU Contracts shall provide for disputes between the AU and its vendors to be resolved amicably;

(d) In the absence of such amicable settlement, disputes may be resolved by final, binding arbitration in accordance with the UNCITRAL Arbitration Rules. In reaching its decision, the arbitral tribunal should apply general principles of international commercial law;

(e) Because of the inherent uncertainty of the result of arbitration and its effect on the relationship between the AU and the Vendor, the AU seeks to resolve disputes amicably and without the need for arbitration whenever possible;

(f) When it becomes apparent that a dispute with a Vendor has arisen and has not been resolved by the business unit and/or by the Procurement unit, as mentioned above, the Procurement unit shall send a memo to the OLC seeking their advice.

(g) The memo shall set forth the Procurement Unit's proposed strategy for addressing the dispute and all relevant information concerning the dispute, including:

i) a chronology of events,
ii) the status of the dispute,
iii) the disputed amount or amount claimed, if any,
iv) possible consequences of the dispute (e.g., financial, operational, political, reputation/image of the AU).

(h) The memo shall also include copies of all relevant documentation and, if the matter is urgent, a deadline for OLC's response.

(i) Following receipt of OLC's legal opinion, the Business unit/Procurement Personnel authorized to conduct negotiations shall enter into negotiations with the Vendor in accordance with OLC's legal opinion.

(j) Any negotiations shall be conducted by a minimum of the contract manager, a Procurement and OLC, Personnel. The OLC should be requested to participate in any negotiations involving legal issues, especially if the other party has their counsel present.

(k) The terms of any agreement reached shall be drafted by the Procurement Unit and transmitted to OLC for vetting.

(l) Upon receipt of all required approvals, the Procurement unit shall request the OLC to prepare a settlement and release agreement for all claims settled. The Procurement Unit shall forward the settlement documentation to the Vendor for signature, following which the Competent authority) of the AU shall countersign the agreement.

(m) The Business Unit and Procurement Unit are, each, responsible for ensuring that the procurement case file contains a description of their respective dispute resolution activities, stating exactly what was discussed and how the dispute was resolved.

24.7. PAYMENTS

(a) The AU has a responsibility to make payments promptly in accordance with the contract. Payment delays would not only undermine the reputation of the AU, but would entail higher cost of business for the AU as bidders would tend to factor such delays in their prices.

(b) The review and approval of payment applications by the Business Unit shall be therefore backed by a well-established mechanism for the verification and approval of payment documents, including inter alia,
   (i) Verification of unit rates, prices and quantities;
   (ii) Verification of supporting documents (invoices; interim payment certificates; monthly statements; actual re-measurement; timesheets; proofs of actually incurred expenditures etc. as applicable);
   (iii) Existence of required approvals (duly certified monthly statements & interim payment certificates; signed timesheets; Engineer's approvals etc.);
   (iv) Price adjustment – applicability; verification of correct reference to applicable indexes & weightings (for materials, labor, equipment);
   (v) Administrative verification of invoices (correct name, address, ID information & bank account of the payee);
   (vi) Consistency of payment requests with payment milestones in the contract;
   (vii) Check deduction of the appropriate percentage recovery of advance payment and double payments etc.

AU shall endeavor to pay its Suppliers and within reasonable time to be defined in Service Level Agreements (SLAs).

24.7.1 Advance Payments

a) These are payments made to a Contractor/supplier before the AU receives any Goods or Services from the Contractor/supplier. They pose an obvious risk if the Contractor/supplier fails to perform or deliver.

b) In order to protect the AU's interest against such risks, advance payments should be made provided that duly executed and valid Bank guarantee has been received from the Contractor's/Supplier's Bank or an approved insurance company.

c) When an advance payment is deemed necessary and appropriate by a Procurement Unit and the Business Unit, its value will be determined based on appropriate risk analysis and the requisite guarantees from the Bidder will be obtained before payment is made. Advance payment shall not exceed 20% of the Contract sum.

d) Notwithstanding the requirement for a guarantee, there are circumstances in which it is normal commercial practice to make up-front payment in the absence of a guarantee, such as insurance premiums, conference registration, hotel booking, lease rental, periodical subscriptions, payment for software licenses, internet and connectivity services and warranty services.

24.7.2 Recovery of Advance Payment

a) Under certain conditions, the Commission may agree to pay for partial delivery of the goods or upon completion of clearly defined milestones for services or works, provided adequate security for the advance or progress payment is establish.

b) Advance payments are cleared when services or goods are received by the Commission; and Goods Received Note (GRN)/Service Entry and invoice, raised by stores and procurement unit respectively.

c) A full order value shall be raised for contracts where advance payment is required linking the advance payment to a single contract/order.

d) Where advance payment is less than 100% of the full order (contact) price, Procurement Officer shall ensure that the invoice for the next payment includes the advance component earlier made.

e) Where an advance payment is paid 100% of the order/contract price, the invoice shall be raised as soon as the goods are received by the Union.

f) Procurement unit shall indicate, in all payment request if there is outstanding advance payment to be recovered.

g) Age analysis report on advances to vendors shall be produced by finance and shared with procurement unit for reconciliation. This control shall apply also to office where procurement is performed by finance function.

h) At the end of year, the budget shall carry forward the budget for advances for which GRN are not issued.

24.8. CONTRACT MANAGEMENT RECORDS

(a) Once a Contract has been signed, the Procurement Unit shall open a contract Management folder in the original procurement case file maintained in the Procurement archives.

(b) The Contract management file shall at a minimum contain the documents relating to all post contract award activities which includes copy of signed Contract, copy of Performance Security; Contract Administration documents (any subsequent amendments, claims and disputes resolution activities; correspondence, Vendor Performance Evaluation Report);

(c) The Procurement Unit shall also maintain a Contract Management Register, i.e., a current log of all contracts, which indicate;

i) the description/purpose of the contract
ii) the concerned Business Unit,
iii) the name and nationality of vendors,
iv) the commencement and expiration dates of the contract,
v) the contract amount,
vi) the date and amounts paid,
vii) an evaluation of the Vendor's performance

24.9. CONTRACT CLOSURE

(a) Contracts end when all deliverables have been completed successfully as per agreed terms and conditions and final payment has been released.

(b) However, the reality may not always be as straightforward as there are many administrative formalities and precautions that are required in order to formally end a contract.

Such administrative steps are referred to as contract close-out procedures are an important function of contract management whose main purpose is to protect the interest of the AU by ascertaining internally that there are no outstanding matters that may potentially result in losses for the AU.

(c) The Procurement Unit shall have a contract closeout checklist, listing all the required administrative steps that must be completed to close out a contract. Such steps will depend upon the type and/or nature of the contract

(d) For procurements involving large construction works, the close-out file will be reviewed to ensure the adequacy of the Vendor's legal documents, including the Vendor's general release, insurance certificates, surety's release, maintenance bonds, etc.

(e) Once the Contract has been duly closed, it shall not be reopened for any cause. If the Business Unit require additional deliveries of goods or services, a new Requisition shall be sent to the Procurement Unit.

CHAPTER 25 - MANAGEMENT OF WORK'S CONTRACTS

25.1. INTRODUCTION

(a) The management of works contracts is often complex due to factors that could not be foreseen at the start of the work. The degree of complexity depends on the type or size of contracts. There are two main types of works contracts, namely:

i) Admeasurements contracts (Bill of Quantities), which represent the vast majority of Civil Works contracts, which are essentially fairly large and complex. Progress is determined by measuring the quantities of works actually performed; payments are based on these measured quantities multiplied by the respective unit rates quoted by the Contractor (in the priced bill of quantities);

ii) Lump sum contracts (Activity Schedule), which are mostly used for smaller works contracts because the assumption is that the risk of variation in quantities is minimal. The contract is split in milestones or activity schedules and payments are made on the basis of percentage completion of each activity;

iii) Construction or works contracts: these can take various forms, with the most common listed below. The method of procurement shall be dependent on the type and value of contract to be put in place. Minor Works Contract: basic or routine works (RFB);

- Short Form Construction: relatively basic or routine works
- Measure Price Construction: complex works to be paid on a measured price basis
- Lump Sum Construction: Complex works to be paid on a lump sum basis
- Design and Build: for contracting both design and build.

(b) If the resources required for close, continuing attention to all the day-to-day supervision duties for large/complex/high risk activities, are not available internally, the AU shall turn to Project/ Construction Managers who will oversee day-to-day works activities on behalf of the AU[26].

(c) For simpler works contracts, this responsibility may be handled directly by the AU's own technical staff if available internally.

(d) The following sections deal with some of the key aspects in works contract management, with a focus on the management of admeasurement contracts, which represent the majority of civil works contract.

25.2. PRELIMINARY DUE DILIGENCE

25.2.1. Internal Arrangements

(a) The appropriate internal arrangements shall be made in preparation for the adequate management of large or complex works contracts, including:

(a) [26] *The services of Project* Managers shall be procured using the appropriate method of selection of consultants

i) Appointing and assigning specific tasks to the individual or the team responsible with the specific duties during the contract management process. The tasks assigned to each individual shall be consider the specific experience, expertise and workload of concerned staff.

ii) Establishing internal procedures (hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, etc.);

iii) Establishing the coordination arrangements with third parties (identification of contact persons in other agencies, contractors, end users, beneficiaries, etc.).

25.2.2. Advance Payment

(a) If required or prescribed in the contract, he AU may make an interest-free advance payment for mobilization and cash flow support, after receiving:
(b) a valid Performance Security and
(c) an unconditional bank guarantee in amounts and currencies equal to the advance payment.

(d) The Engineer shall deliver to the AU and to the Contractor an Interim Payment Certificate for the advance payment

(a) Advance payment should fulfil condition set forth under 27.4.1

25.2.3. Verification of Securities
25.2.3.1 Verifications of Bank guarantees

(a) It is the responsibility of the Procurement Unit to ensure that the interest of the AU is adequately protected by bank guarantees (advance payment security, performance security) provided by the Contractor. Accordingly, the Procurement Unit shall:

i) Verify that the text of the securities does not contain any material deviations from the agreed format (e.g. conditions that would render the security invalid or make it harder to forfeit).
ii) Submit the securities to AU's own bank for verification of the authenticity of the signatures of the issuing bank.
iii) Ensure that the performance security always covers the period of time stipulated in the Contract and the stated percentage of the Contract Price (and its subsequent increases).

(b) The performance security shall be extended whenever an extension of time is awarded and/or the Contract Price is increased.

25.2.3.1. Verification of Insurance Policies

(a) The Procurement Unit in conjunction with the Finance department shall verify the following aspects to ensure that all insurance policies presented by the contractor suitably protect the AU against the risks they are supposed to cover under the contract:

i) Issuing company – is the issuer of the policies a properly established and reputable insurer?
ii) Amount and Coverage– does the insured amount properly cover the whole of the Works as requested by the conditions of contract? – does the policy fully cover all general and specific risks that may occur on the site?
iii) Validity – is the policy valid for the entire period requested by the Contract (i.e. including Defects Liability Period in civil works contracts)? Did the Contractor submit the proof of actually paying the premiums to the insurance company?

iv) Insured parties – does the policy expressly name both the AU and the Contractor as jointly insured? Policies where only the Contractor is insured are not acceptable as they transfer the entire risk on the AU.

v) Exclusions – maybe the most overlooked aspect in an insurance policy. Exclusions are basically events (risks) that are not insured i.e. if the works are destroyed following the occurrence of an excluded event, the insurer does not pay for the damage. The Procurement Unit shall always check the exclusions of the policies and shall request directly from the insurance company confirmation about the exact list of exclusions and their applicability.

vi) Deductibles – these represent the amounts that the insured party has to cover from its own funds when an insured event occurs. Higher deductibles will cost less in premiums but also in higher risks, because the insured party would need to cover more of the damage. The Procurement Unit shall therefore check the adequacy of the deductibles and set a ceiling that the Contractor could reasonably cover from its own resources

vii) Terms and conditions - The Procurement Unit shall pay special attention to any conditions attached that may render the policies invalid under certain circumstances or events –such as

- prior notification requirements and any other clauses that may affect the rights of the AU under the terms of the policy.
- Special attention shall be paid in the case of contract modifications because the insurers may require to be notified whenever changes to the scope of works occur.
- The same applies to extensions of time for completion –The Procurement Unit shall make sure that the policies are properly extended to cover the new reality of the contract.

25.2.4. Kick-off Meeting

(a) Regardless of the degree of outsourcing of the contract management function, the Business Unit must retain ownership, to ensure that working relationships with the contractor help steer the process towards successful implementation.

(b) The Contract Management Team, including the experts shall meet with the Contractor as soon as the Letter of Acceptance is issued, to ensure that all parties involved in the contract implementation share the same understanding of:

i) their rights, roles and responsibilities derived from the contract documents;
ii) their respective expectations;
iii) the implantation timeframe & of any particular constraints to implementation.

(c) The kick-off meeting shall focus on identifying and addressing any potential obstacles to smooth contract implementation, notably on the following critical aspects:

i) Establishing the communication procedures - The parties shall agree on

- the mechanisms and frequency of communications between the Contractor, the Supervising Engineer and the AU (where applicable), and
- the frequency of formal site meetings between the representatives of the Contractor and Engineer.

ii) Defining the escalation procedures in case of bottlenecks or other critical situations that are potential sources of disputes;

iii) Setting the circumstances of the AU giving the Contractor right of access to and possession of the Site.

25.2.5. Access to and Possession of Site

(a) As soon as practicable, and usually after submission by the Contractor of the performance security and advance payment guarantee, the designated AU representative, the Contractor and the Supervising Engineer shall have another formal meeting (on Site) by which the AU formally gives the Contractor access to and possession of the Site.

(b) Depending on the status of the Site (property of the AU, of a local community or third parties), the protocol for the hand-over of the Site shall be signed by the relevant parties (if the owners had not already transferred the appropriate rights to the AU).

25.2.6. Contractor's Mobilization

(a) The AU's representative/Supervising Engineer shall monitor closely the status of Contractor's mobilization on site to ensure that the contractor is promptly notified of and asked to remedy
   i) any delays in the agreed mobilization schedule; or
   ii) deviations in quantity: does the Contractor have all necessary equipment and construction materials to complete the works according to the specifications and schedule? and
   iii) deviations in quality – e.g. unacceptable accommodation, first-aid or sanitary facilities; inadequate storage facilities for the equipment & materials brought on site etc.

(b) The AU would be entitled to forfeit the advance payment guarantee in case of failure by the contractor to mobilize up to the value of the advance payment or according to its own Mobilization Schedule.

25.2.7. Commencement of Works

(a) The Commencement Date shall be the date at which the following precedent conditions have all been fulfilled:
   (i) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities in the Country;
   (ii) delivery to the Contractor of reasonable evidence of the AU's Financial arrangements
   (iii) Possession of the Site given to the Contractor together with such permission(s) as required for the commencement of the Works; and
   (iv) receipt by the Contractor of the Advance Payment provided that the corresponding bank guarantee has been delivered by the Contractor, and
   (v) the Engineer's recording the agreement of both Parties on such fulfillment and instructing to commence the Works is received by the Contractor.

(b) Upon commencement of the works supervision activities shall focus on ensuring that the scope of work is skilfully adhered to, and the project is successfully delivered,
   - In time
   - Within allocated budget (contract amount) and
   - As per the required quality.

25.3. TIME MANAGEMENT

(a) The AU's representative/Supervising Engineer shall monitor the progress of works to proactively identify and remedy any potential sources of delays in consultation with the Contractor.

(b) Equally important is the ability to analyze the delay upon occurrence and decide on the applicable remedies and/or allocation of responsibility between the parties and the resulting impact on their respective obligations under the contract.

(c) The answer to these important contractual decisions depends on whether the delay falls into the respective categories of non-excusable, excusable or concurrent delays.

25.3.1. Non-Excusable/Sanctionable Delays

(a) Delays within the contractor's control and are usually non-excusable. They are often the result of fault, negligence and/or omissions of the contractor.

(b) In such cases the representative of the AU/Supervising Engineer shall take swift action to

i) notify (in writing) the contractor of the default (default determination) and
ii) enforce liquidated damages as per the applicable contract provisions

25.3.2. Excusable and/or Compensable Delays

(a) Whether a delay is considered excusable depends on the language of the particular clause in the contract. In any case, three elements are critical in determining whether an excusable delay has occurred, namely:

i) The delay must arise from unforeseeable causes (i.e., unknown to the contractor when the contract is entered into)

ii) The event must be beyond the control of the contractor. For example, where there has been unusually severe weather. –Generally, adverse weather is that which is abnormal in comparison to the previous weather patterns at the same location for the same time of year.

iii) The delay must be without the fault or negligence of the contractor, i.e., the delay shall not be caused by acts or omissions of the contractor.

(b) The combination of the above elements would relieve the contractor from responsibility in the damaging consequences of the delay, in which case, the contractor is entitled to extension of time to account for the delay.

(c) Compensable delays are those caused by a representative of the AU, and for which the AU is responsible for both time and cost impacts. These types of excusable delays may arise from:

i) express orders of representatives of the AU, e.g., suspensions of work for the AU's convenience, written change orders, etc., or,

ii) some act of or failure to act of AU's representatives which causes a compensable suspension of work, e.g.,
- delay in making the site available,
- Delay in issuing notice to proceed beyond date needed by contractor to perform work efficiently.
- conflicting or defective specifications.
- Delay in obtaining authorizations, which could only be obtained by the owner.

- delay in issuing necessary approvals that are pre-requisites to starting or pursuing the works,
- undue delays in the inspection process, or
- undue interference with the contractor's work.

(d) In such cases, the contractor is entitled not only to an extension of time, but also compensation for resulting cost increases.

(e) Entitlement to compensation may be expressly stated in a specific contract clause, but if not, there is an implied obligation of each party not to hinder, delay, or make more expensive the performance of the other party.

(f) However, in order to be compensated for delays, a contractor must demonstrate that the delay is unreasonable in duration.

25.3.3. Concurrent Delays

(a) These are situations where both parties have caused delays that have an equal impact on completion, which are impossible to apportion or separate.

(b) In such cases, neither party is responsible to the other-- the contractor may not recover its increased costs (no compensation) and the AU may not enforce liquidated damages.

(c) However, if the responsibilities of the parties in the delay are clearly identified, losses attributable to each party's delay will be assessed and the damages apportioned accordingly.

25.4. COST MANAGEMENT

25.4.1. Variations

(a) A variation (sometimes referred to as a variation instruction, variation order (VO) or change order), is an alteration to the scope of works in a construction contract in the form of an addition, substitution, or omission from the original scope of works.

(b) In large civil works projects variations can be very significant, whereas on small building contracts they may be relatively minor. Whether small or large, construction projects will inevitably depart from the original tender design, specifications and drawings for a variety of reasons, including, inter alia:

i) need to take advantage of technological advancement (newer or better materials),
ii) change in site conditions, geological anomalies,
iii) non-availability of specified materials, or
iv) simply the need to correct shortcomings in the design.

(c) Whilst some variations are unavoidable, it is wise to minimize potential variations and subsequent claims by ensuring that uncertainties are eliminated before awarding the contract. This can be done by:

i) Undertaking thorough site investigations and condition surveys.
ii) Preparing concise drawings, bills of quantities and specifications, providing for all reasonably foreseeable situations and ensuring that
   - legislative requirements are properly integrated into the project.
   - risks are properly identified.
   - designs are properly coordinated before tender.
   - the contract is unambiguous and explicit.

- the contractor's rates are clear.

(d) Variations are often sources of dispute, either in valuing the variation, or agreeing whether part of the works constitute a variation at all, and can cost a lot of time and money during the course of a contract.

(e) Variations may give rise to additions or deductions from the contract amount. The valuation of variations may include not only the work described in the variation instruction, but also other expenses that may result from the variation, such as the impact on other aspects of the works. Variations may also (but not necessarily) require adjustment of the completion date.

(f) Valuations of variations are often based on the rates and prices provided by the contractors in their bid, provided the work is of a similar nature and carried out in similar conditions. This is true, even if it becomes apparent that the rates provided by the contractor were higher or lower than otherwise available commercial rates.

(g) Variations may also be valued by:

i) Agreement between the contractor and the Supervising Engineer;
ii) The cost consultant provides estimates, if any;
iii) A variation quotation prepared by the contractor and accepted by the client;
iv) By some other method agreed by the contractor and the Supervising Engineer.

(h) In any case, variations need to be carefully analyzed and duly justified from a technical and economical perspective. Therefore, the Project manager/supervising engineer shall abide by a number of due diligence requirements when analyzing a variation, including:

i) Checking if it's an actual variation and not a mere change in quantities following re-measurement;
ii) Verification of supporting documents (how appropriate or necessary are the proposed variations);
iii) Check how the variation was valued (i.e. existing contract rates were correctly used or new rates were based on fair market prices etc.);
iv) Check if a change in unit rates would be appropriate or required according to the Contract;
v) Check if the time impact (extension of time for completion) was correctly assessed and is duly justified;
vi) Check if the variation doesn't require an amendment to the Contract (all variations that involve changes in unit rates, bill items or in the scope of works shall be included in contract amendments).

25.4.2. Recovery of Advance Payments (Works)

(a) The Supervising Engineer and AU's financial staff (office in charge of financial management) shall ensure that advance payments are recovered through percentage deductions from the interim payments as follows:

i) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent of the Contract Amount less Provisional Sums;

ii) deductions shall be made at the amortization rate stated in the Special Conditions of Contract and in the currencies and proportions of the advance payment until such time as the advance payment has been fully recovered;

25.4.3. Retention Contract Funds

(a) Contracts for works may provide for a percentage of each periodic payment to be held as retention money to ensure performance by the contractor until final acceptance.

(b) The rate of retention to be withheld from all certificates or stage payments for works completed shall be specified in the contract. When used as a guarantee, it shall not exceed 5% of the contract value.

(c) Instead of the AU retaining part of their payments, contractors may be allowed to replace retention money with an equivalent security in the form of a Bank guarantee after provisional acceptance.

(d) The balance of any Retention monies or retention money guarantee shall be released to the contractor once the defects liability period has ended.

25.5. **QUALITY CONTROL**

25.5.1. Site Visits

(a) The AU's designated representatives or inspection Team shall maintain a close watch on what actually happens on site and conduct visual or physical inspections as often as necessary to cover the following minimum aspects:

i) Progress of works against planned schedule;
ii) Quality of works;
iii) Deployment of staff / labor (is the number of people actually working on site sufficient to have the works completed on time);
iv) Implementation of adequate Health and safety measures with regard not only to the Contractor's personnel, but also to the public;
v) Is the Environmental Management Plan being enforced appropriately?

25.5.2. Provisional Acceptance/Taking Over

(a) The Inspection Team of the business unit/Engineer shall perform a series of due diligence to ensure that the works as completed meet all quality requirements before acceptance and taking over of the completed facility or plant. Such due diligence shall include at a minimum, the following actions

i) Check if all functional guarantees of the completed facility/plant are met and all tests on completion have been successfully passed, as applicable;
ii) Ensure that the Contractor is promptly notified of and remedies any defects in due time.
iii) Ensure that the Performance Security/Retention Money/ Bank Guarantee and insurance policies (where applicable) are kept valid and enforceable for the duration of the Defects Liability Period;
iv) Ensure proper succession planning (who takes over the works; do they have funding for the proper care and maintenance; do they know what to do in case of defects during the warranty/defect liability period, etc.)

25.5.3. Warranty and Guarantee Register

(a) The contract specifications may require that individual warranties or guarantees be furnished for various installed equipment or building systems. For each completed contract requiring warranties, the Office in charge of Assets Management shall develop a Warranty and Guarantee Register, which is a status form listing:

i) Each individual item of equipment and system for which a warranty or guarantee is specified (roofing, doors, sealants, etc.);
ii) The pertinent section in the contract specification;
iii) The name of the company providing the warranty;
iv) The expiration date of the warranty; and
v) The address of the providing company.

25.5.4. Final Acceptance

(a) After the warranty Period, the following actions shall be performed as pre-requisite to final acceptance of the completed facility or plant:

i) Check how the Contractor fulfilled its duties during the warranty period;
ii) Ensure the Contractor has no outstanding obligations, duties or debts;
iii) Release Performance Security/ Retention Money Bank Guarantee;
iv) Release Final Payment (if applicable).
v) Formally close the contract

25.6. DOCUMENTING SUPERVISION ACTIVITIES IN WORKS CONTRACTS

(a) The following documents may be required to properly document supervision activity and facilitate the resolution of any contractual disputes in civil works contracts:

i) Measurement logs (in BOQ Contracts)– all quantities shall be re-measured by the Engineer and payment to the Contractor shall be made only for the quantities actually measured (which may differ from the quantities in the Contract);
ii) Activity reports – daily, weekly, monthly reports showing in tabular format quantities of work done, number of staff and equipment involved, consumption of materials, testing and samples etc. The reports shall also mention any specific events, incidents, weather conditions etc., (including photos).
iii) Issues Log – a record of all issues (including any deviations from the specifications or conditions of contract) that occurred during the execution of works, with appropriate description and indication of the date, cause, remedial measures to be taken, responsible party, status of remediation etc.
iv) Variation Orders – critical documents that justify changes in quantities, prices and time for completion resulting from variation orders.
v) Inspection and Control Logbook – a record of all inspections, audits and controls performed by any party (concerned business unit, environmental agency, financial control, local authorities etc., as applicable)
vi) Correspondence with the Business unit, Contractor (e.g. filed instructions) and third parties (Government agencies, local authorities, controlling bodies, end users, etc.).

25.7. CLOSE-OUT OF WORKS CONTRACTS

25.7.1. Close-out process

(a) It is the responsibility of the business unit to establish that the work under a contract has been completed and to inform the Procurement Unit that the contract is ready for administrative closeout.

(b) Upon such notification, the Procurement Unit shall ensure that all the necessary steps are taken for the administrative closeout, including the following (as applicable):
   i) Resolution of all contract changes, claims, and final quantities delivered;
   ii) Determination/recovery of liquidated damages;
   iii) Review of the insurance claim file by the Office of the Legal Counsel/Procurement unit to determine if funds need to be withheld from final payment to cover unsettled claims against the contractor;
   iv) Settlement of all subcontracts by prime contractor;
   v) Performance of all inspections (and acceptance tests, if any) by the Supervising Engineer/Project manager, with appropriate documentation;
   vi) Notice of Substantial Completion or Notice of Completion;
   vii) Contractor Performance Report;
   viii) The submission of all required documentation by the contractor, including such items as:
      - Final reports
      - Final payroll records and wage rate certifications
      - Spare parts list
      - Manufacturer's Warranties and Guarantees
      - Final corrected drawings
      - Operation and maintenance manuals
      - Catalogues and brochures
      - Resolution of final quantities (admeasurement contracts)
      - Final invoice
      - Consent of Surety to release final payment to Contractor
      - Contractor's Affidavit of Release of Liens
      - Contractor's General Release (releasing the recipient from any further liabilities/claims under the contract)
      - Maintenance Bond (if applicable)

25.7.2. Proof of Insurance Coverage

(a) For all contracts requiring the Vendor to maintain insurance for its products or services (e.g., professional liability or product liability insurance) the Procurement Unit shall obtain proof of insurance from the contractor as part of the closeout process.

(b) The Procurement Unit will be required to maintain these documents as "active" files until such time as the insurance requirement ceases under the terms and conditions of the contract; i.e., these insurance terms will continue past (survive) the final contract payment.

25.7.3. Final Payment

(a) The Procurement Unit/Officer must be sure that all administrative steps have been accomplished prior to final payment. PU/Officers shall make use of a contract closeout checklist to ensure that all applicable aspects are covered in the closeout process.

(b) The business unit must ensure that all required inspections have been performed by the inspection and receiving Committee and a memorandum has been received certifying to the satisfactory

completion of the contract, which includes all required documentation from the contractor before authorizing final payment or the release of any funds being retained under the contract.

(c) Business units shall pay careful attention to those types of documents that are often problematic, such as warranties. in fact, these warranty documents shall be made a pay item in their contracts when the contract pay items are being established so that the contractor will be motivated to deliver the documents in a timely manner, and there will be no dispute as to the proper amount that is to be paid for these items.

25.7.4. Contractor's General Release

(a) As part of the contract closeout process, Inspection Committee or team shall send the contractor a closeout letter that includes the contractor's "general release" ,after inspection of the works carried out.

(b) This document shall be a standard statement vetted by the OLC for use on all of AU contracts. The release will state that for the final contract amount agreed to by both parties, the contractor releases the AU from any and all claims of every kind arising directly or indirectly out of the contract.

(c) The release may also contain a certification that the contractor has paid its subcontractors and suppliers for all their labor, materials, services, etc., furnished under the contract. The release is to be signed by a corporate official authorized to bind the contractor.

(d) The general release is important to obtain prior to final payment because it assures the recipient that there will be no further claims from the contractor once the final payment has been made.

(e) The contractors' signed release shall be reviewed by the OLC if the contractor makes any changes to the recipient's standard release language that was sent to the contractor for signature.

(f) Il will however be necessary for the Business Unit and the contractor to have resolved all open issues of a financial nature prior to the execution of the release (change orders, claims, liquidated damages, etc.), and this resolution of all outstanding claims is an important step in the contract closeout process.

25.7.5. Retainage and Contractors Who Quit Work

(a) Occasionally a construction contractor may "walk away" from a project that is almost complete, refusing to sign a general release and foregoing final payment. This situation may occur

i) when the contractor lacks sufficient financial incentive to complete the contract; e.g., if the "punch list"[27] is large and there is very little retention money left, the contractor may profit by refusing to correct the punch list items and leave the retention money with the AU. Or,

ii) the contractor may have been awarded another contract that requires the reassignment of most of its personnel and construction equipment to another job.

(b) Whatever the reason, recipients shall anticipate this possibility by carefully estimating the amount of retainage in such a way that it represents twice the amount of the punch list work and undelivered items (manuals, drawings, spare parts, etc.).

[27] *The punch list is a document prepared near the end of construction project listing work not conforming to contract specifications that the contractor must complete prior to final payment*

CHAPTER 26 - MANAGEMENT OF GOODS AND NON-CONSULTING SERVICES CONTRACTS

26.1. MANAGEMENT OF GOODS CONTRACTS

26.1.1. Introduction

(a) The management of goods contracts is much simpler than for civil works contracts. It generally consists of monitoring the delivery schedules of all purchases to ensure that the right goods are shipped delivered, dispatched or collected on time.

(b) It entails several sub-activities including, inter alia,
   (i) Receiving reports on any pre-shipment inspection of the procured goods and contacting the supplier in writing requesting rectification of any discrepancies or deficiencies.
   (ii) Contacting the supplier or shipper to identify the causes of any delay in shipment;
   (iii) Undertaking customs clearance and payment of handling fees at the port of entry for imported goods, as applicable.
   (iv) Receiving and inspecting the goods upon arrival and Upon, initiating any insurance claims, as applicable.
   (v) reporting to the Competent Authority where appropriate any failure by the Supplier in his contractual obligations
   (vi) Processing the payment of the supplier's invoices
   (vii) Initiating formal administrative closure of the contract
   (viii) Ensuring the safekeeping of all records documenting all the above events and activities etc.

26.1.2. Pre-shipment inspection

(a) When pre-shipment inspection of goods is specified in the contract, the Procurement Unit shall take appropriate action, in consultation with the concerned Business Unit, to ensure, as applicable

   i) the appointment and dispatch of the AU Technical Team to the suppliers' premises, or
   ii) the timely recruitment of a third-party inspection agent.

(b) Inspection agents shall be recruited through an appropriate method of selection for consulting firms.

(c) Such recruitment should be planned in advance and included in the procurement plan to ensure that the Inspection agent is on board sufficiently in advance prior to the shipment of the procured goods.

(d) The inspection Agent or Technical Team shall carry out the inspection to ensure that the goods being shipped are in strict conformity with the contract requirements (quantity, quality, packing, marking etc..).

26.1.3. Transport/Delivery

26.1.3.1. Delivery of Internationally Procured Goods

(a) When goods are procured from abroad, the conditions for their delivery and the respective obligations of the AU (buyer) and the Supplier (Seller) are defined in the contract through the use of International Contract Terms popularly known as Incoterms.

(b) Incoterms are Trade Terms, which tell the parties what to do with respect to carriage of internationally procured goods from the seller (supplier) to the buyer, and export & import clearance formalities.

(c) The choice of Incoterm also indicates when the Goods are considered delivered, i.e., when the property of the Goods has been legally transferred from the Seller to the Buyer, along with all the risks and costs associated with such transfer.

(d) It is therefore very important to understand the legal implications of the choice of incoterms in connection with the international goods contracts, in order to manage the contractual relationships between the supplier and the AU.

Delivery of Locally Procured Goods

(a) Depending on the particular circumstances of each contract, the delivery, i.e., the legal transfer of property of goods procured locally, and associated risks may be made in two ways, as spelled out in the special contract conditions, including

i) The AU arrange for pick-up the goods at the supplier's premises, e.g., warehouse and transportation at its own premises (e.g. AU Stores Unit). Such case, the respective buyer/supplier obligations are similar to those of the Ex-Works incoterm, or

ii) The supplier delivers at the AU's premises (e.g. the AU Stores Unit or other place named in the contract). In such case, the goods are transported at the Suppliers' risk and cost and transfer of property is legally established upon receipt, inspection and acceptance by the Stores unit and/or the Inspection and Receiving Committee, as applicable.

26.1.4. Receipt of Goods

(a) The Stores Unit is responsible for the receipt of goods except under works contracts where construction materials are delivered directly to the site.
(b) On delivery by the Supplier, the Stores Unit shall:
   i) Receive the goods into temporary storage.
   ii) Examine the apparent condition of the goods and packing.
   iii) sign on the delivery note/shipment documents to acknowledge receipt.
   iv) Receive and register the invoices, and other documentation from the supplier or shipper.
   v) Retain invoices and other documents pending processing (through the Procurement Unit) to the Accounts Department for payment following the report of the Inspection and Receiving Committee (IRC).
   vi) Arrange notification to the IRC and to the Supplier of the date and time of the formal inspection of the delivery.

26.1.5. Inspection/Acceptance

(a) The Inspection and Receiving Committee shall meet within three days following the arrival of the goods, and in the presence of the Supplier's representative and will:
   i) Examine the documentation and packaging for compliance with the contract.
   ii) Request the Supplier to open the packages (or arrange opening of the packages at the Supplier's expense).

iii) Examine and analyze the goods for conformity with the agreed delivery list, specifications and/or the samples provided;
iv) Perform relevant tests to check if all functional guarantees are met before operational acceptance of complex or specialized equipment;
v) Reject all goods/equipment that are damaged or do not conform to the specifications/samples or did not pass the required tests of operational acceptance, as applicable;
vi) Prepare the Inspection Report, with descriptions, specifications and quantities of the goods examined, and the reasons for accepting or rejecting the goods;
vii) Release accepted goods to the Stores Unit for permanent or temporary storage;

(b) The Inspection and Receiving Committee Report shall be forwarded to

i) the Procurement Unit for record purposes,
ii) the Stores Unit for raising Goods Received Note (GRN), and
iii) the designated Contract Manager to apply appropriate remedies for rejected goods/equipment, and/or for processing of payment to the supplier, as applicable.

26.1.6. Payment of Goods Contract

26.1.6.1. Payment for Goods supplied from abroad

Goods shipped from abroad may be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country as follows;

1. On shipment: The larger portion of the Contract Price of the Goods shipped (e.g., Eighty (80) percent or any other percentage specified in the Contract) may be paid, upon submission of the following mandatory documents:

   - Shipping Documents such as (as applicable)
     - negotiable bill of lading or,
     - a non-negotiable sea way bill or,
     - an airway bill or,
     - a railway consignment note or,
     - a road consignment note.

   - Other documents (as applicable) such as
     - insurance certificate,
     - Manufacturer's or Supplier's warranty certificate,
     - Pre-shipment inspection certificate issued by nominated inspection agency,
     - Supplier's factory shipping details etc.

2. On Acceptance: The remaining portion of the Contract Price of Goods received (between 10 and 20%) shall be paid upon submission of the suppliers' claim supported by the acceptance certificate issued by the Inspection and Receiving Committee declaring that the Goods have been delivered as per the Contract terms and conditions.

26.1.6.2. Payment for Goods supplied from within the country

(a) Goods supplied from within the country are usually paid (100%) upon receipt, inspection and acceptance of the Goods by the AU, regardless of their being pick-up at the Supplier's premises or delivered at AU premises.

(b) Sometimes (e.g., in complex equipment) only a partial payment (e.g. 80%) is made upon receipt/acceptance of the goods. The remaining portion can be subjected to the completion of associated services (e.g. installation and commissioning, including running tests).

(c) For simple payments against invoices, the Procurement Unit shall forward a request for payment to the office in charge of financial management with the following attachments:
   (i) invoice from the Supplier;
   (ii) Goods Received Note; issued in the system
   (iii) calculation of any penalties for rejected goods, and any liquidated damages if allowable under the contract;
   (iv) copies of the contract document, records of approval and financial authorizations.

(d) The Procurement Unit shall keep a copy of the request for payment in the relevant contract management file.

26.1.7. Close-out of Goods Contracts

(a) The close out is initiated when the Business Unit notifies the Procurement Unit by memorandum confirming that

   i) all required deliverables (goods and associated services) under the contract have been received, inspected and accepted as being in conformance with the purchase order/contract specifications.
   ii) final invoice has been approved for payment
   iii) There are no outstanding claims or disputes

(b) Upon receiving the above memorandum, the Procurement Unit shall prepare and circulate the contract close-out form to the relevant parties for their input.

(c) Any security (e.g., Performance Security) shall be returned in accordance with the terms of the Contract and the security instrument, together with any samples, if applicable.

(d) An inspection/tests/acceptance form shall be in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation.

(e) There must also be documentation attesting to final payment by the accounts payable department.

26.2. MANAGEMENT OF NON-CONSULTING SERVICES CONTRACTS

(a) Managing the contractual relationship with service providers comprises a discrete set of responsibilities and activities, which fall under the responsibility of the Contract Manager designated by the Facility Management and Administration Unit.

(b) The designated Contract Manager shall:
   (i) Monitor the activity to ensure levels of service (completion, as per schedule, cost and quality) are maintained throughout the contract.
   (ii) Contact the service provider to identify the causes of any failings in performance or failure to meet agreed targets.
   (iii) Report to the Procurement Unit any continued breach by the service provider of his contractual obligations with copy to the Office of the Legal Counsel.

(iv) Ensure prompt approval of invoices submitted by the Service Provider as per the agreed terms and conditions the invoice claim;
(v) Prepare interim and/or final performance evaluation report, as applicable
(vi) Notify the Procurement Unit of any proposed contract amendments, and advise when contract close-out is due.

CHAPTER 27 - MANAGEMENT OF CONSULTING SERVICES CONTRACTS

27.1. COMMON ASPECTS IN CONSULTING SERVICES CONTRACTS

27.1.1. Contract Management Team

(a) Concerned Business units shall designate a counterpart Contract Manager with adequate technical qualifications, managerial experience, and power of authority to supervise the consultant's work.

(b) In large and complex assignments, a steering committee composed of high-level representatives of the AU and of the consultants, may be formed to exercise arm's length supervision over the assignment through the counterpart Contract Manager and the consultants' team leader.

(c) The steering committee can be particularly useful when the Business unit and the consultants need to coordinate their work with other business units and or agencies of the AU.

(d) The opportunity to report on a regular basis to such a committee can facilitate collaboration and understanding between the Business unit and consultants regarding important contractual issues.

27.1.2. Contract effectiveness/commencement of the Services

(a) The Contract shall come into force and effect on the date of the Client's notice to the Consultant

i) confirming that the effectiveness conditions have been met and
ii) instructing the Consultant to begin carrying out the Services.

(b) The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the specified number of days after the Effective Date

27.1.3. Consultant's Mobilization

(a) To enable consultants to begin work promptly, the AU shall arrange for supervision of the assignment, in particular,

i) appoint the Contract Manager and counterpart staff within the business unit;
ii) prepare office space, vehicles, and other inputs to be supplied by the AU, as applicable;
iii) inform all concerned institutional parties (other business units or agencies etc.);
iv) make advance payments, as applicable; and
v) obtain authorizations (work permits, visa etc.), data, or background material.

(b) The Procurement Unit shall verify that all applicable conditions are met by the AU to allow the Consultant to commence work without undue delays. -

27.2. MANAGEMENT OF CONTRACTS WITH CONSULTING FIRMS

(a) The management of contracts with consulting firms is different in many respects depending on whether the contract is time-based or lump-sum.

27.2.1. Supervision of Time-Based Contracts

(a) Under a time-based contract a tight supervision is required to ensure that the assignment is completed within the time and the budget ceiling and as specified in the TOR.

(b) The designated Contract manager supervises the assignment by:

i) Monitoring the timely submission of and reviewing progress reports (time management)
ii) monitoring the use of key staff employed, and related time sheets (costs management)
iii) deciding on possible modifications of the scope of work
iv) monitoring the quality of deliverables (progress reports and other out-puts as applicable) and preparing interim and/or performance evaluation reports (quality management)

27.2.1.1. Time Management

(a) With some limited flexibility, the contract requires consultants to adhere to a schedule of deliverables, including a set of reports.

(b) Generally, the inception report prepared by the consultant may flag the consultant's concerns regarding the schedule of deliverables and/or make request/suggestions as to the timely feedbacks/ approval of deliverables.

(c) The Concerned Business Unit/designated contract Manager shall pay careful attention to those concerns but shall not commit to unrealistic schedules that cannot be met under current AU internal business processes.

(d) Delayed progress reports may be a warning sign of serious issues that might impact the direction and progress of the assignment and the sooner these issues are known the better.

(e) Therefore, upon acceptance of the Inception Report and commencement of the work, the Business Unit/CM shall make every effort to monitor the timely submission of deliverables and to provide prompt review/comments of such deliverables to avoid any undue slippage in the agreed schedule.

27.2.1.2. Cost Management

(a) Under time-based contracts, the consultant provides services on a timed basis according to quality specifications, and consultant's remuneration is based on
i) agreed upon unit rates for consultant staff multiplied by the actual time spent by the staff in executing the assignment and
ii) reimbursable expenses using actual expenses and/or agreed unit prices.

(b) Under this system, consultants may take advantage of an inefficient/lax supervision or in collusion with the supervising staff itself, during the implementation stage, to

i) seek unjustified contract extensions or payments with no justification;
ii) make unjustified changes of experts or billing more staff months than actually worked;
iii) provide less service than agreed upon under the contract without informing the client;
iv) seek unjustified increases of consulting staff to work on the assignment, or misrepresent a need for extension of time etc.

v) billing for senior, costlier personnel while the actual work is done by less qualified staff (unauthorized staff substitutions).

(c) This type of contract requires the Business Unit to supervise consultants closely and to be more involved in the execution of the assignment to avoid the above issues and the associate cost overruns.

(d) This type of contract requires significant administrative capacity and the Business Unit, shall be fully aware of who from the consultant's team is working on the assignment, and the nature of each expert's task[28].

27.2.1.3. Quality of Deliverables

(a) The TOR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports.

(b) There is need to verify that the consultant team does spend the requested time with the AU counterpart staff (especially if knowledge transfer is among the agreed achievements.

(c) Depending on the assignment, progress reports may be delivered monthly or bimonthly. The Business Unit/CM shall verify the quality of each report, as follows:

i) Quality of Inception Report: The Business Unit/CM shall review carefully this report to verify the mutual understanding of the work to be performed, and avoid that the conduct of the assignment is negatively influenced by erroneous and/or undisclosed assumptions and/or expectations from both sides.

ii) Quality of Interim Reports: Since the recommendations of an interim report may affect subsequent phases of the assignment, it is important that it is carefully reviewed by the Business Unit/CM to avoid that the results of the assignment are negatively influenced by erroneous interim conclusions.

iii) Quality of Draft Report: The draft report shall be distributed for review to all relevant departments which could be affected by the outcome of the assignment, for review of the following aspects

- Clarity, i.e., the report shall be well structured free of inconsistencies, simple and yet specific enough to outline key observations that call for action. For all major reports, an executive summary is recommended as a separate volume, which shall present the key aspects of the main report, for management attention.
- Credibility: The findings and conclusions shall be factually supported by documentary or other credible evidence
- Relevance: The report shall explain the relationship between the TOR and the focus of the report on one hand, and the relevance of the recommendations to the issues raised.
- Practicality: The recommendations shall be realistically implementable considering the particular context of the assignment.

[28] *Key staff are normally named in the contract, and their tasks outlined.*

iv) Quality of the Final Report: Observations from all the concerned stakeholders on the draft report shall be collected by the Business Unit/CM and communicated in a consolidated form to the consultant for incorporation in the final report.

- Consultants alone are responsible for their findings and conclusions; although changes may be suggested by the Business Unit/CM, consultants shall not be forced to make such changes.
- The preferred way to handle significant disagreements on technical matters is to ask the consultant to substantiate dissenting views in the report itself, i.e., to note AU's recommendations for changes, together with the reasons for not accepting such changes.

27.2.1.4. Quality of Overall Performance

(a) Poor performance shall not be tolerated, and the consultants shall act quickly to comply with a reasonable request to improve the performance of the team or to replace any particular staff member who is not performing adequately.

(b) Any mistake or incomplete work on the part of the consultants shall be remedied at no cost to the AU. If the Consultant fails to take adequate corrective actions, the Business Unit/CM may consult with and request the approval of the Competent Authority to terminate the contract.

27.2.2. Management of Lump-Sum Contracts

(a) Lump-sum contracts are easy to administer and require little technical supervision because:
   i) no matching of consultant's inputs (e.g., staff hours, reimbursable expenses etc.) to payments is required and
   ii) the risk of assignment cost overruns is left with the consultant since remuneration is fixed for the duration of the contract, and
   iii) no physical or price contingencies are normally provided since external factors generally are not expected to influence (delay or substantially change) the outcome of the advice or study being provided.

(b) However, it can increase the risks for the AU with regard to the quality of the advice or deliverable. Because fees are fixed, the Consultant's incentive may be to reduce inputs compared with those they had originally planned so as to increase profit margins.

(c) This incentive can be offset by the ability of the Business Unit/CM to assess and enforce quality standards regarding the final output or advice provided by the consultant.

(d) In highly specialized fields, the Business Unit/CM can seek the input of peer reviewers (e.g. from other business units or externally) in the assessment of the quality of deliverables and ensure that important issues are completely covered.

(e) In addition to the quality concern, the Business Unit/CM shall also monitor progress to ensure that deliverables are submitted and reviewed/approved/paid as per agreed schedule.

(f) Payments are made in accordance with a contractually agreed-on schedule at the delivery of an agreed-on product (e.g., design or tender document, drawings, feasibility studies etc.)

(g) If payments are made against a schedule of percentage of work completed, then, as a minimum, a progress report and supporting evidence that the planned work has been completed satisfactorily should be submitted.

27.3. MANAGEMENT OF CONTRACTS WITH INDIVIDUALS

27.3.1 Preliminary due diligence

27.3.1.1 Documentation to be provided to or by the consultant or individual contractor

(a) Individual consultants and contractors shall not commence work or travel until the relevant individual contract has been duly approved, signed by both parties and returned to the responsible Business Unit, together with the required documents and certifications as stipulated below:

(b) The Procurement Unit shall ensure the following is complied with when employing individual consultant or individual contractor, as appropriate:
   i) That the individual contract including the terms of reference is signed;
   ii) A statement of good health for self-certification, including a reference to applicable inoculations and the need for the individual to procure health insurance coverage is available;
   iii) Where travel beyond commuting distance to any duty station(s) with a hardship classification, a letter requesting proof that the medical or health insurance covers medical evacuations and treatment.
   iv) All Individual consultants and contractors will have to confirm that they are responsible for obtaining health insurance coverage at their own expense;
   v) Where travel is involved, travel and ticketing information, including travel authorization, as appropriate, as well as, where applicable, a security clearance form and/or an application for an AU introductory or invitation letter;
   vi) Authorization for direct deposit form, detailing bank account and/or similar information;
   vii) Designation, change or revocation of beneficiary form.

27.3.1.2 Certification of good health

(a) The Procurement Unit shall ensure that before commencing work, and as soon as practicable following the signature of the contract, the individual consultant or contractor
(b) Submits a statement of good health and take full responsibility for the accuracy of that statement, including confirmation that he or she has been informed of the inoculations required for the country or countries to which travel is authorized.[29]

27.3.1.2 Verification of Health Insurance Coverage

(a) The Procurement Unit shall ensure that the Individual consultants/contractor provides proof that he or she is in possession of medical or health insurance that includes medical treatment during the period of the contractor's services and

[29] *No certificate of good health is required when the consultant or individual contractor works solely from home for less than 30 days*

(b) if the Individual consultant and contractor is required to travel beyond commuting distance to any duty station(s) with a hardship classification, that the medical or health insurance covers medical evacuations and treatment

(c) The contractor warrants the accuracy of any such statement of good health, including but not limited to confirmation that the contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

27.3.2 Payments of individual consultants and contractors

(a) Individual consultants or contractors may be paid at a daily, weekly or monthly rate, or on a lump-sum basis, which represents the total value of the services to the Union.

(b) Payment of fees established on a lump-sum basis shall normally take place upon certification by the authorised AU official of satisfactory completion of the work and/or delivery of outputs.

(c) Instalments. The payment of instalments should be directly linked with satisfactory deliverables at specific time intervals, as certified by the manager. The final instalment may not be less than 10 per cent of the total value of the contract and will be payable only upon satisfactory completion of the services and the manager's certification thereof.

(d) Unsatisfactory or incomplete deliverables. The payment of fees is subject to the satisfactory completion of services and the certification of the Hiring Business Unit to that effect, at the appropriate milestones.

(e) If the service is carried out partially, a determination shall be made as to what amount, if any, is to be paid, based on that part of the work completed.

27.3.3 Termination of Individual Contracts

(a) An individual contract may be terminated by the AU or by the individual consultant/contractor in accordance with the Contract.

(b) Unsatisfactory or incomplete output or failure to conform to the required standards of conduct shall lead to termination of service for cause, without prior notice, at the initiative of the AU.

28.1. EVALUATION OF PROCUREMENT PERFORMANCE

(a) The Procurement Unit for each Entity will compile the data collected from various sources into a single annual procurement report, which shall include as a minimum.

i) Data of all contracts signed during the reporting period, together with an analysis of trends observed compared to previous years in terms of:

- compliance with the approved procurement plan
- timeliness of procurement processes with a highlight on where delays are most common
- level of participation observed with an analysis of causes of low competition if any

ii) Conclusions and recommendations for improvement

(b) Any deviations from the provisions of the Manual shall be highlighted in the report, together with recommendations for corrective measures.

28.2. EVALUATION OF VENDORS' PERFORMANCE

(a) The evaluation of Vendor Performance is the assessment of the Vendor's fulfilment of its contractual obligations.

(b) For each contract with a value equal or above the IPC approval authority, Business Unit/Contract Managers must complete and submit for their Manager's approval, a vendor's performance evaluation form, within one (1) week of the following occurrences:
i) certification of the final invoice submitted by the vendor, or
ii) termination for any reason prior to the Contract end date.

(c) Notwithstanding the above limit, business units shall prepare a vendor performance evaluation regardless of the dollar value in case of unsatisfactory performance.

(d) The vendor's Performance evaluation shall be based on the assessment of the following factors:

i) Fulfilment of agreed delivery schedule;
ii) Responsiveness to requests for rectification of deficiencies; if any
iii) Quality and/or Quantity of goods or services provided;
iv) Adherence to professional and/or ethical standards.

(e) Vendors' Performance evaluation reports can be an important reference point for future source-selection decisions and shall therefore be carried out with objectivity and fairness, as follows:

i) Objectivity: Unsatisfactory performance evaluations shall be supported by documentary evidence such as written notifications and reminders. Contributing factors non-attributable to the Vendor or beyond the vendor's control (e.g., the AU's untimely payment of vendor's invoices or undue delays in providing the necessary approvals for the vendor to proceed etc.), shall be given due consideration, as applicable.

ii) Fairness: Concerned vendors, shall be given the opportunity to respond in case of unsatisfactory performance evaluations, before submission in SAP for Manager's approval.

(f) Procurement Officers are also responsible for advising on the appropriate course of action in case of unsatisfactory performance evaluation, as follows:

i) Vendors who were not responsive to calls for remedial actions upon notification of the deficiencies, shall be removed from the Suppliers' Register, for a specified period of time, after which they shall be re-evaluated for readmission.

ii) Vendors with a history of poor performance (at least two unsatisfactory evaluations) during the last two or three budget years preceding a particular competitive bidding, shall be disqualified from that competition, subject to this provision being included as a qualification criterion in the solicitation documents.

Signed this day of 13/09/2024

Moussa Faki Mahamat

Chairperson of the African Union Commission

ANNEXES

ANNEX I – THRESHOLDS FOR PROCUREMENT METHOD

CATEGORY I: Organs, Institutions and Peace Support Missions /Operations

Threshold	Type of Competition	Solicitation document
Up to USD4,000	Non-competitive or limited competition	RFQ
Above USD4,000-100,000	Limited Competition or Open	RFQ/RFB/RFP*
Above 100,000	Open Competition (Limited or non-competitive may apply where there is sufficient justification)	RFP/RFB/RFQ

Note: Procurement of all consultancy services should be through Open Competition method (except where justification is provided following guidelines on exceptions under provisions of this manual)

CATEGORY II: Regional, Liaison, Representative Offices, Specialized & Technical Agencies

Threshold	Type of Competition	Solicitation document
Up to USD2,000.00	Non-competitive or limited competition if desired.	Non-Competitive/RFQ
Above USD2,000-50,000	Open or Limited Competition	RFQ/RFB/RFP*
Above 50,000	Open Competition (Limited or non-competitive may apply where there is sufficient justification)	RFP/RFB/RFQ

Note:

1. The above thresholds may be revised for a specific Emergency situation following authorization and approval by the Accounting Officer.
2. The thresholds for procurement methods by AU Grant recipients shall be determined by the Accounting Officer on a case by case basis following procurement capacity assessments and depending on the exigencies of the Grant Program.
3. Grant recipients shall be considered as category II institutions unless the Capacity assessment, as provided in the Grants Manual, determines otherwise.

ANNEX II: AUTHORITY LEVELS FOR APPROVING CONTRACT AWARD

I. AUC		
S/N	Threshold (USD)	Approving Authority
1	Up to 2,000	Procurement Officer
	Above 2,000 - 15,000	Chief of Procurement Unit
2	Above 15,000.00 - 50,000.00	Head of Supply Chain Division
3	Above 50,000.00 - 100,000.00	Director, Operations Support Services Directorate
4	Above 100,000.00 – 1,500 000.00	AUC - Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
II. ACDC		
S/N	Threshold (USD)	Approving Authority
1	Up to 10,000.00	Head of Procurement
2	Above 10,000.00 - 50,000.00	Director Management and Administration
3	Above 50,000.00 - 100,000.00	Director General or Delegated Authority
4	Above 100,000.00 - 1,500,000.00	Africa CDC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
III. AUDA - NEPAD		
S/N	Threshold (USD)	Approving Authority
1	Up to 10,000.00	Head of Procurement
2	Above 10,000.00 - 50,000.00	Director Operations/Administration
3	Above 50,000.00 - 100,000.00	The Chief Executive Officer
4	Above 100,000.00 – 1,500 000.00	AUDA-NEPAD Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
IV. PAP		
S/N	Threshold (USD)	Approving Authority
1	Up to 20,000.00	Head of Procurement / Deputy Clerk
2	Above 20,000.00 - 100,000.00	Clerk of Parliament
3	Above 100,000.00 – 200,000.00	PAP Internal Procurement Committee
4	Above 200,000.00 - 1,500,000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board

V. AfCFTA		
S/N	Threshold (USD)	Approving Authority
1	Up to 10,000	Head of Procurement
2	Above 10,000.00 - 50,000.00	Director of Administration and HRM
3	Above 50,000.00 - 100,000.00	Secretary General or Delegated Authority
4	Above 100,000.00 – 1,500 000.00	AfCFTA- Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
VI. APRM		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Procurement
2	Above 15,000.00 - 20,000.00	Director in charge of Procurement function
3	Above 20,000.00 - 100,000.00	Chief Executive Officer
4	Above 100,000.00 - 200,000.00	APRM Internal Procurement Committee
5	Above 200,000.00 - 1,500,000.00	AUC Internal Procurement Committee
6	Above 1,500,000.00	AU Tender Board
VII. AfCHPR		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Procurement
2	Above 10,000.00 - 50,000.00	Registrar
3	Above 50,000.00 – 200 000.00	AfCHPR Internal Procurement Committee
4	Above 200,000.00 – 1,500 000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
VIII. ACHPR		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Procurement
2	Above 15,000.00 - 50,000.00	Executive Secretary
3	Above 50,000.00 – 200,000.00	ACHPR Internal Procurement Committee
4	Above 200,000.00 - 1,500,000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
IX. AU-ABC		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Executive Secretary

2	Above 15,000.00 - 200,000.00	AU-ABC Internal Procurement Committee
4	Above 200,000.00 – 1,500 000.00	AUC - Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
	X. ECOSOCC	
S/N	Threshold (USD)	Approving Authority
1	Up to 20,000.00	Head of Administration, HR & Finance
2	Above 20,000.00 - 50,000.00	Head of Secretariat
3	Above 50,000.00 - 200,000.00	ECOSOCC Internal Procurement Committee
4	Above 200,000.00 - 1,500,000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board

XI. ACERWC		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Administration
2	Above 15,000.00 - 50,000.00	Executive Secretary
3	Above 50,000.00 – 200 000.00	ACERWC Internal Procurement Committee
4	Above 200,000.00 – 150 000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
XII. PEACE KEEPING MISSIONS / OPERATIONS		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Administration
2	Above 15,000.00 - 50,000.00	Head of Mission Support
3	Above 50,000.00 – 100,000.00	SRCC / Head of Mission
4	Above 100,000.00 - 200,000.00	Local Internal Procurement Committee
5	Above 200,000.00-1,500,000.00	AUC Internal Procurement Committee
6	Above 1,500,000.00	AU Tender Board
XIII. LIAISON, REGIONAL & REPRESENTATIVE OFFICES, SPECIALISED AND TECHNICAL AGENCIES		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Head of Administration
2	Above 15,000.00 - 50,000.00	Head of Office / Mission
3	Above 50,000.00 – 100,000.00	Local Internal Procurement Committee
4	Above 100,000.00 - 1,500,000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board
IVX. NEWLY CREATED ORGANS**		
S/N	Threshold (USD)	Approving Authority
1	Up to 15,000.00	Delegate responsible for Administration
2	Above 15,000.00 - 30,000.00	Interim Head of Organ
3	Above 30,000.00 – 100,000.00	Director, OSSD (AUC)
4	Above 100,000.00 - 1,500,000.00	AUC Internal Procurement Committee
5	Above 1,500,000.00	AU Tender Board

(i) The above thresholds shall apply during the first six months of setting up the Organ. Substantive thresholds shall be approved by the Accounting Officer on a case by case basis depending on the structure.

(ii) Specific approval authorities may be granted by the Chief Controlling Officers through delegation of authority memos, to individuals with high authority and extensive experience in administrative matters.

VX. USER EXECUTED PROCUREMENT		
S/N	Threshold (USD)	Approving Authority
1	Up to 20,000.00	Director of the Business Unit, and Chief of Staff, Deputy Chief of Staff.
2	Above 20,000.00 - 25,000.00	Commissioners (Where applicable) of the Business Unit

The threshold for User Executed Procurements (UEP) shall apply to all Entities.

ANNEX III: THRESHOLD FOR INSPECTION COMMITTEE

CATEGORIES	THRESHOLDS
Category I. Organs, Institutions and Peace Support Missions /Operations	US$50,000 and above
Category II. Liaison, Regional & Representative Offices, Specialized and Technical Agencies	US$10,000 and above

ANNEX IV- EXAMPLE OF RATING SYSTEM

RATING SYSTEM: Agreeing on a rating system and defining the grades requires a thorough knowledge of the TOR, the main technical issues to be covered by the assignment, and the qualifications expected from the consultants. The proposed definition of the respective grades shall be taken as general guide for the evaluation of technical proposals. Care and judgment shall be exercised in selecting elements of definitions that are relevant to each type of assignment.

SCORING: After the BEC members have agreed on a common rating system, each evaluator shall score the technical proposals in two steps.

- First, the level of responsiveness of the proposals to each of the criterion/sub criterion is estimated on a percentage scale.
- Second, each percentage rating is multiplied by the maximum number of points assigned to the relevant criterion/sub criterion to obtain the score.

CRITERIA	Maximum Score	RATING SYSTEM				
1. Specific Experience Relevant to the Assignment	7 pts	Because sub criteria are usually not provided for this criterion given its relatively small assigned weight, the specific experience will be evaluated as a whole, using the grades set out in the below table.				
		Grades (Level of responsiveness)	Definition of Grades	Rating	Scoring	
		Poor	NOT APPLICABLE: As consultants have been short-listed based on their experience, they are all capable of undertaking the assignment and their level of responsiveness to this criterion should not normally be rated less than satisfactory.; nevertheless, some specific aspects of the qualifications may make a consultant more suitable than others	NA	NA	NA
		Satisfactory	The consultant has good experience in the field of assignments similar to the one being considered. The consultant is experienced in the use of standard approaches and methodologies required for the assignment but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues; or capacity building). The consultant's permanent staff are adequate.	70%	70/100 x 7	4.9 pts

CRITERIA	Maximum Score	RATING SYSTEM				
		Good	The consultants have extensive experience in the field of the assignment and have worked in countries with similar physical and institutional conditions, including similar critical issues. The consultants have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.	90%	90/100 x 7	6.3 pts
		Very Good	The consultants have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The consultants are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The consultants operate according to well-established Internal Quality Management procedures.	100%	100/100 x 7	7 pts
2. Quality of Proposed Methodology	30 pts	The quality and adequacy of the proposed methodology and work plan are evaluated by the following three sub criteria: (a) Technical approach and methodology (b) Work plan (c) Organization and staffing				
		Grades (Level of responsiveness)	Definition of Grades	Rating	Scoring	
		Poor	(a) Technical approach and methodology (20 Pts max.): The technical approach or the methodology (or both) envisaged to carry out important activities indicated in the TOR is inappropriate or very poorly presented, indicating that the consultant has misunderstood important aspects of the scope of work. The list of contents of the Quality Plan (if required in the TOR) is missing. (b) Work plan (15 pts max): The activity schedule omits important tasks; the timing of activities and correlation among them are inconsistent with the approach or methodology proposed. There is a lack of clarity and logic in the sequencing. (c) Organization and staffing (10 pts max.):			

CRITERIA	Maximum Score	RATING SYSTEM	
		Satisfactory	The organization chart is perfunctory, the staffing plan is weak in important areas, and the staffing schedule is inconsistent with the timing of the most important outputs of the assignment. There is no clarity in allocation of tasks and responsibilities. The proposed specialists have never worked together as a team. (a) Technical approach and methodology (20 Pts max.): The way to carry out the different activities of the TOR is discussed generically. The approach is standard and not specifically tailored to the assignment. Although the approach and methodology are suitable, they do not include a discussion on how the consultant proposes to deal with critical characteristics of the assignment. The list of contents of the Quality Plan (if required in the TOR) is provided, but it is generic and does not reflect the specific features of the assignment (b) Work plan (15 pts max): All key activities are included in the activity schedule, but they are not detailed. There are minor inconsistencies between timing, assignment outputs, and proposed approach. (c) Organization and staffing (10 pts max.): The organization chart is complete and detailed, the technical level and composition of the staffing arrangements are adequate, and staffing is consistent with both timing and assignment outputs.
		Good	(a) Technical approach and methodology (20 Pts max.): The proposed approach is discussed in detail, and the methodology is specifically tailored to the characteristics of the assignment and flexible enough to allow it to adapt to changes that may occur during execution of the services. The list of contents of the Quality Plan (if required in the TOR) is tailored to the specific characteristics of the assignment. (b) Work plan (15 pts max): The work plan responds well to the TOR; all important activities are indicated in the activity schedule, and their timing is appropriate and consistent with the assignment outputs. Moreover, the interrelation between the various activities is realistic and consistent with the proposed approach. There is a fair degree of detail that facilitates understanding of the proposed work plan. (c) Organization and staffing (10 pts max.):

CRITERIA	Maximum Score	RATING SYSTEM	
		Very Good	In addition to the definition above in "satisfactory," the staff is very well balanced (that is, they show good coordination, clear and detailed definition of duties and responsibilities, not too many short-term experts, not too many generalists, staff skills and needs are matched precisely, and they enjoy good logistical support). Some members of the project team have worked together before to some extent. (a) Technical approach and methodology (20 Pts max.): In addition to the requirements listed above under "good," important issues are approached in an innovative and efficient way, indicating that the consultants have understood the main issues of the assignment and have outstanding knowledge of new solutions. The proposal details ways to improve the results and the quality of the assignment by using advanced approaches, methodologies, and knowledge. A detailed description of the Quality Plan is provided in addition to its list of contents (if required). (b) Work plan (15 pts max): In addition to the requirements listed above under "good," decision points and the sequence and timing of activities are very well defined, indicating that the consultants have optimized the use of resources. A specific chapter of the proposal explains the work plan in relation to the proposed approach. The work plan allows flexibility to accommodate contingencies. (c) Organization and staffing (10 pts max.): Besides meeting all the requirements for a "good" rating, the proposed team is integrated, and several members have worked together extensively in the past; a detailed explanation of the AU's role and integration in the assignment is provided. The proposal contains a detailed discussion showing that the consultants have optimized the use and deployment of staff with efficiency and economy, based on the proposed logistics.
		If the consultants' approach and methodology do not fully satisfy all the conditions set forth by the definition of one of the grades, but the grade under consideration appears to reflect the overall adequacy of approach and methodology better than the lower one, the upper grade should be assigned.	
3. Qualifications of Proposed Key Staff	45 pts	The qualifications and competence of key staff are generally evaluated using the following three sub criteria recommended by the PM and as specified in the RFP: a. General Qualifications b. Adequacy for the Assignment c. Experience in the Region and language	

CRITERIA	Maximum Score	RATING SYSTEM				
		Grades (Level of responsiveness)	Definition of Grades	Rating	Scoring	
		Poor	a) General Qualifications (10 pts max): The proposed expert has less than 10 years of relevant experience.	40%	40/100 x 10	4 pts
			b) Adequacy for the Assignment (20 Pts max.): The proposed expert has never or only occasionally worked in a position similar to the one required under the assignment. His or her qualifications do not match closely the assigned position. (For instance, the position requires a highly experienced project manager, while a relatively junior professional with brief experience is proposed.)		40/100 x 20	8 pts
			c) Experience in the Region and Language (5pts max): The proposed expert has never or only occasionally worked in countries similar to the one of the assignment, and his or her knowledge of one of the official languages of the AU and the local language is insufficient to properly communicate orally and in writing.			
		Satisfactory	a) General Qualifications (10 pts max): The proposed expert has 10 years or more of overall working experience relevant to the assignment, with relevant academic education and training.			
			b) Adequacy for the Assignment (20 pts max): The experience of the proposed expert fits the assigned position; in the past 10 years or more, he or she has successfully held positions similar to the one proposed for the assignment in at least one project of a similar nature. The proposed expert's skills			

CRITERIA	Maximum Score	RATING SYSTEM	
			(either professional or managerial, as the proposed position may require) are adequate for the job. c) Experience in the Region and Language (5 pts max): The expert has worked in countries with cultural, administrative, and organizations similar to the AU; his or her knowledge of one of the official languages of the AU is adequate.
		Good	a) General Qualifications (10 pts max): The proposed expert has more than 15 years of overall working experience; a substantial part of that experience relates to consulting assignments similar to the one under consideration; the expert's professional achievements, such as position within the firm and level of responsibility, have steadily increased over time. b) Adequacy for the Assignment (20 pts max): The qualifications of the expert are suitable for the proposed position; over the past 10 years, he or she has held several similar positions in similar assignments; the expert's skills (either professional or managerial, as applicable) are fully consistent with the position and characteristics of the assignment. c) Experience in the Region and Language (5 pts max): In recent years, the expert has worked in the region of the assignment for at least one year; and he or she is fluent in one of the official languages of the AU, as well as in the local language.
		Very Good	a) General Qualifications (10 pts max): The proposed expert has more than 20 years of specialized experience in the field of the assignment and is recognized as a top expert in

CRITERIA	Maximum Score	RATING SYSTEM
		his or her field. The specialist is fully up to date on the state of the art of the discipline b) Adequacy for the Assignment (20 pts max): In addition to the criteria under "good," the expert has qualifications and experience that substantially exceed the requirements for positions similar to the one being considered. c) Experience in the Region and Language (5 pts max): In addition to meeting the above definition of "good," the expert has detailed, direct knowledge of the region/country and the language resulting from years of professional experience in the region/country.
4. Training (Capacity-Building) Program	8 pts	
5. Extent of participation by nationals of AU States among key staff	10 pts	

ANNEX V: FEE AND REMUNERATION LEVELS FOR INDIVIDUAL CONSULTANTS AND CONTRACTORS

A. General

1. Subject to the overriding consideration of quality, as a rule the fees payable to a consultant or individual contractor will be the minimum amount necessary to obtain the services required by the Union. Using the guidelines provided below, duly authorized managers may negotiate and establish fees payable to a consultant or individual contractor, provided the fees are within the scope of their authority.
2. In each office of the Union, duly authorized officials, shall have the delegated authority to assess and formally determine the level of remuneration for a proposed consultancy.

B. Determination

3. An assignment under a consultant or individual contractor contract does not carry with it a level or grade with respect to an AU salary scale. Nonetheless, on the basis of the factors listed below, it should be possible to estimate the AU's system equivalent of the level of the assignment to ensure equity and consistency of fees for consultants and individual contractors. When setting the consultant's or individual contractor's rate of remuneration, the following factors should be considered:

(a) Level of work in terms of responsibilities and complexity of the assignment;
(b) Degree of specialization required by the assignment;
(c) Knowledge, qualifications, experience and skills required;
(d) Fees paid to the consultant for previous assignments with the AU.

4. Once the equivalent level of the assignment has been estimated, a fee range, for the purpose of negotiating the contract with the consultant or individual contractor, may then be determined within the minimum and maximum of the level on the basis of the complexity of the assignment and the degree of specialization, knowledge, qualifications, experience and skills required.

C. Fee range

5. The fee range associated with a particular level of assignment is based on:
   a. the current gross annual salary scales applicable to staff in the Professional and higher categories;
   b. levels of expertise and professional capacity linked to grades in the salary scale; and
   c. special circumstances, including hardship involved in the performance of the work assignment.
6. The following are the fee ranges:

Level A. This level is established for the engagement of support services not available in the AU related to assignments or technical tasks of a narrow scope for which limited technical skills or experience are required.

Level B. This level is typically used for assignments of moderate complexity with either broad scope or limited depth or restricted scope and considerable depth that have an impact on the performance of systems, processes and team(s) within the Union. This level is

typically used for individuals with a specialized degree or training and several years of relevant experience in one of the substantive, technical and/or administrative fields of the Union.

Level C. This level shall be authorized to engage an individual with extensive relevant professional experience requiring specialized or technical knowledge and skills. Individuals at this level will be expected to develop new approaches, techniques or policies and/or design guidelines, standard operating procedures and a project's theme. Individuals would be engaged in assignments of broad scope and considerable depth that will have an impact on the overall execution of programmes or service of a function or various interrelated areas. Expected outputs of the consultancy at this level may relate, inter alia, to providing technical support; leading group dynamics; and undertaking report drafting or project-wide proposals.

Level D. This level shall be authorized to engage highly specialized individuals with extensive relevant experience and the highest level of expertise in the corresponding area of work or programme for which they are engaged. The individual's services, work and recommendations, for example, may form one of several contributions to the accomplishment of a crucial programme or service or functional area of a broad scope, involving high complexity and impact. Some of the expected deliverable outputs would primarily relate to the following:

- providing functional leadership and expert advice;
- preparing intricate and complex technical papers to working groups;
- undertaking the drafting of reports or proposals for projects of a large scale or a broad scope.

The individual's assigned duties may relate to large-scale programmatic and operational activities involving large commitments of staff and funds.

Level E. This level can be authorized only by the Office of Human Resources Management. The level is reserved for essentially very exceptional arrangements related to services and work to be obtained from a well-known, worldwide authority in a highly specialized area. Normally, these types of engagements may result in programmatic and/or operational activities involving either large commitments of staff and funds or an exceptionally complex programmatic scope, which would carry a significant impact on delivery in terms of strategy, operational reengineering and planning analytics, usually of an unusual complexity and/or sensitive nature. This level would be aligned to the Deputy Chairman/Controlling Officer or the equivalent ungraded levels for high-level representatives.

6. Once the fee range is established, the monthly and daily fee rates are calculated by the Office of Human Resources Management and the resulting figure is rounded up to determine the minimum and maximum of the fee range. The fee range is updated periodically in accordance with revisions of the salary scale for the Professional and higher categories based on the annual gross base salaries.

7. Remuneration at daily rates is used for short-term contracts (less than 3 months duration). The fees (salary, social cost and overheads incurred during the performance of the Assignment with the exception of reimbursable expenditure) are calculated on the basis of a daily rate applied to the working days at

the location of the Assignment, as well as to travel days when required by the AU on working days. Fees and per diem (accommodation and subsistence expenses) are paid based on the terms and conditions of payment in the Contract. Accommodation expenses shall be documented by the Consultant. In certain cases, other types of reimbursable costs may be paid upon presentation of supporting documents by the Consultant pursuant to the Contract and within limits and practices acceptable to the AU; these are expenditures related to work tools (duplication and/or translation of documents, and miscellaneous materials and/or equipment).

8. Monthly Lump Sum Remuneration is used for medium and long-term contracts (3 months duration and above). The remuneration is determined on the basis of a monthly lump sum rate including fees, accommodation and subsistence allowances, and the payment of fees is made in accordance with the terms and conditions of the Contract. Furthermore, the Consultant/Contractor receives a per diem for all missions he might be required to undertake outside the place of Contract implementation.

10. The international Individual consultant and contractor fee ranges' daily and monthly rates are set out in detail below. The fee ranges do not apply to individual service Providers; for those individuals, the salary scales for staff continue to be the reference point to determine the level of remuneration.

Consultants and Individual Contractor Fee Ranges: daily and monthly rates:

Levels		Daily rate (USD)	Monthly rate (USD)
A	Minimum	180.00	3 867.00
	Maximum	240.00	5 012.00
B	Minimum	240.00	4 939.00
	Maximum	380.00	7 870.00
C	Minimum	390.00	7 328.00
	Maximum	560.00	10 572.00
D	Minimum	620.00	10 754.00
	Maximum	750.00	13 040.00
E	Minimum	860.00	14 339.00
	Maximum	980.00	15 779.00

11. Proposals for individual contracts with rates above level D must be referred to the Deputy Chair AUC for review and a decision. The submissions for rates above level D must include appropriate justification in respect of the tasks involved (complexity of the assignment, number of workdays involved, duration/period, specific task deliverables, work coordination aspects, reporting duties, etc.).

ANNEX VI: PROCUREMENT TIMELINES

OPEN COMPETITION

S/N	Steps	Timelines AU Procurement Manual
1.	❖ Preparation of Solicitation documents	Within 10 days
2.	❖ Invitation to the Solicitation Document and Advertisement	Max 60 days after readiness of solicitation Document at each stage
3.	❖ Opening and Closing of Bids/EOIs/Proposals/Quotations	1 working day as a good practice
4.	❖ Shortlisting and Evaluation of Bids/proposals (for each stage of shortlisting/Evaluation approval)	Within 21days
5.	❖ Approval and Award (for each stage of approval)	Within 14 days
6.	❖ Contract Preparation	Within 5 days
7.	❖ Contract Vetting	Within 5 days (TBA)
8.	❖ Contract Signing	Within 7 days
9.	❖ Contract Implementation and closure	Based on agreed duration
10.	❖ Complaints Investigation handling	Within 10days (TBA)

Limited Competition

S/N	Steps	Timelines AU Procurement Manual
1.	❖ Preparation of Solicitation documents	Within 5 days
2.	❖ Invitation to the Solicitation Document	14 days after readiness of solicitation Document
3.	❖ Opening and Closing of Bids/EOIs/Proposals/Quotations	1 working day as a good practice
4.	❖ Evaluation of Bids/proposals/Quotations (for each stage of shortlisting/Evaluation approval)	Within 21 days
5.	❖ Approval and Award (for each stage of approval)	Within 14 days

6.	❖ Contract Preparation	Within 10 days
7.	❖ Contract Vetting	Within 7 days
8.	❖ Contract Signing	Within 7 days
9.	❖ Contract Implementation and closure	Based on agreed duration of contract
10.	❖ Complaints Investigation handling	Within 10 days (TBA)

Direct Award

S/N	Steps	Timelines AU Procurement Manual
1.	❖ Preparation of Solicitation documents	5-10 days
2.	❖ Invitation to the Solicitation Document	Within 7days days after readiness solicitation Document
3.	❖ Opening and Closing of Bids/EOIs/Proposals/Quotations	1 working day as a good practice
4.	❖ Evaluation of Bids/proposals/Quotations (for each stage of shortlisting/Evaluation approval)	Within 7 days
5.	❖ Approval and Award (for each stage of approval)	Within 10 days
6.	❖ Contract/Purchase Order Preparation	Within 10 days
7.	❖ Contract Vetting	Within 7 days if applicable
8.	❖ Contract Signing	Within 7 days if applicable60
9.	❖ Contract Implementation and closure	Based on agreed duration of contract
10.	❖ Complaints Investigation handling	Within 10 days (TBA)

Key:

1. Days means working days*

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