



ST.HELENA GOVERNMENT

PROCUREMENT REGULATIONS

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PROCUREMENT REGULATIONS

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PROCUREMENT REGULATIONS

PART 1

INTRODUCTION AND SCOPE OF THE REGULATIONS

1 Introduction

- 1.1 These Procurement Regulations are intended to ensure value for money is obtained in the purchases of all goods, services and works within a framework of good purchasing practice and public accountability that places decision making at the appropriate level.
- 1.2 All *Officers* responsible for purchasing or disposal must comply with these *Procurement Regulations* and all supporting documentation.
- 1.3 These *Regulations* are issued by the Financial Secretary, with the approval of the Governor and will be subject to a detailed review at intervals not exceeding three years to ensure that the working arrangements of SHG are conducted in accordance with relevant legislation and current best practice.

2 Interpretation

- 2.1 Words in italics are defined terms, the meaning of which can be found in Part 8 of these *Regulations*.
- 2.2 For the purposes of these *Regulations*, where there is a requirement for communication to be in writing, this shall be deemed to include, where appropriate, other electronic means (e.g. e-mail or e-tendering) as well as hard copy.
- 2.3 The *Regulations* lay down minimum requirements and a more thorough procedure may be appropriate for a particular *Contract*.
- 2.4 In implementing these *Regulations* every *Officer* shall have regard to the Public Finance Ordinance.
- 2.5 Should there be any ambiguity in these *Regulations* then the interpretation of the Financial Secretary shall be final.

3 Scope

- 3.1 Any arrangement made by, or on behalf of SHG, that commits, or potentially commits, SHG to pay, or receive, more than £5,000 must comply with these *Regulations* regardless of how they are funded, other than:
 - a) Contracts of employment which make an individual a direct employee of SHG
 - b) Property transactions including the acquisition, disposal, or transfer of land or buildings.
 - c) Contracts that are entered into in a situation where SHG's Civil Emergency Plan has been activated for the provision of goods or services that are necessary to enable SHG to discharge its responsibilities in such a situation.
 - d) Where a *Purchase Order* is being placed to call off goods, services or works under a *Contract* which has been put in place under these or any prior *Regulations*
- 3.2 All purchases of goods, works or services where the *Total Value* is less than £5,000 are at the discretion of the *Accounting Officer* of the area holding the budget.

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4 Officer Responsibilities

- 4.1 *Officers* responsible for purchasing or disposal must comply with these *Procurement Regulations* and all relevant domestic and international legal requirements.
- 4.2 *Officers* must ensure that any *Agents, Consultants* and contractual partners acting on their behalf also comply.
- 4.3 All *Officers* are expected to: -
- a) Have regard to the guidance in the supporting *Procurement Services Manual*
 - b) Take all necessary legal, financial and professional advice.
 - c) Treat *Candidates* fairly, equally and open up contract opportunities to a wider market, generally through advertising in some form so as to generate competition.
 - d) Declare any personal financial or other interest in a *Contract* via the Declaration of Interest form on the SHG website.
 - e) Check whether there is an existing Corporate Contract, Framework Agreement or any other Agreement which can be accessed and provide favourable terms (e.g. Contracts set up by UK Government).
 - f) Keep bids confidential.
 - g) Complete a written *Contract* or *Purchase Order* before the supply of goods, services or works begin, which should be approved by a suitably authorised person in line with the *Scheme of Delegation*.
 - h) Appoint a *Contract Manager* with responsibility for ensuring the *Contract* delivers as intended.
 - i) Keep appropriate records of dealings with bidders and suppliers.
 - j) Pay due regard to the Procurement Policy and Strategy.
- 4.4 The Financial Secretary must ensure that:
- a) *Officers* comply with these regulations
 - b) Central registers are kept, within the parameters agreed by the *Procurement Board*, of:
 - All *Contracts* entered into within the scope of these regulations; and
 - All *Waivers* to these Regulations
 - c) Original, signed contractual documents are kept in a secure central location.

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PART 2

OBTAINING QUOTATIONS AND TENDERS

5 Total Value of a Contract

- 5.1 The *Regulations* that need to be followed for each *Contract* depends, in part, on the estimated *Total Value* of the *Contract* (as determined by the relevant *Accounting Officer*) to be let over its entire term including any possible *Extensions*.
- 5.2 For *Contracts* which are on a time and materials basis and it is not possible to make a reasonable estimate of the time or the materials that will be used then for the purpose of these *Regulations* the *Total Value* shall be deemed to be in excess of £50,000.
- 5.3 An *Officer* must not enter into separate *Contracts*, artificially disaggregate or select a method of calculating the *Total Value* in order to avoid or minimise the application of these *Regulations*.

6 Rolling Procurement Plan

- 6.1 For all *Contracts with a Total Value* over £5,000 the relevant *Accounting Officer(s)* shall submit to the Head of Procurement Services, on a monthly basis and in a format agreed by the *Procurement Board*, a rolling programme of *Contracts* that need tendering or reviewing to take up an *Extension* offer over the next 12 - 18 months.
- 6.2 The Head of Procurement Services, will review each request for inclusion on the *Rolling Procurement Plan*; and
- a) If the *Total Value* is less than £50,000, allocate a *Risk Classification* as either low, medium or high risk and place the goods/service/works on the *Rolling Procurement Plan*; or
 - b) If the *Total Value* is greater than, or equal to, £50,000, recommend a *Risk Classification* as either low, medium or high risk to the *Procurement Board* who will make the final decision as to the *Risk Classification* and place the goods/service/works on the *Rolling Procurement Plan*.
- 6.3 Should the Head of Procurement Services consider that any request for inclusion on the *Rolling Procurement Plan* (under £50,000) possesses any unusual features, or
- a) raises questions of principle or financial policy; or
 - b) might arouse particular public interest or publicity; or
 - c) concerns a matter of particular importance or sensitivity; or
 - d) it concerns proposals for outsourcing/divestment of existing SHG activity
- then they shall refer the matter to the *Procurement Board* for determination of the *Risk Classification*
- 6.4 The *Rolling Procurement Plan*, in a format suitable for publication to the general public, shall be published on the SHG website and updated at regular intervals not exceeding 3 months.

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7 Specifications

- 7.1 The *Accounting Officer* must prepare an appropriate *Specification* statement or terms of reference which sets out a clear and comprehensive description of the requirements with regard to the works, goods or services to be supplied.
- 7.2 When appropriate, all works, goods and services must be specified by reference to internationally recognised standards with the words 'or equivalent added'.
- 7.3 Named products or manufacturers must not be specified unless;
- There is a genuine requirement to be compatible with a named product or there is a compelling reason to do so; and
 - Procurement Board* has given *written* approval, which may either be a one off approval or a rolling approval that is time bound not exceeding 2 years.
- 7.4 The *Specification* should be measurable and as far as possible incorporate objective quality and performance criteria to enable those evaluating the *Quotation* or *Tender* to ascertain whether the requirements are being met.
- 7.5 The *Accounting Officer* must obtain appropriate professional and technical advice and assistance in the preparation of the *Specification* to ensure that it is a comprehensive document that expresses SHG's requirements and protects its interests.
- 7.6 Any third party who assists in the preparation of a *Specification* must not;
- be invited to *Tender* for the contract; or
 - assist or otherwise collude with any *Candidate*.
- a) Circumstances that are deemed to contravene the above must be submitted for review by Procurement Services and if deemed appropriate be approved by the Procurement Board.
- 7.7 Where appropriate, service *Specifications* must incorporate requirements in respect of:
- Professional or Industry accreditations to be held by the *Candidates*
 - Responsibility for the management, safeguarding and ownership of any data to be held and/or used as part of the *Contract*.
 - Consultation with service users.
 - Reporting to SHG on key service metrics e.g., complaints, response times.
- 7.8 For all procurements with a *Total Value* above £5,000 the *Specifications* shall be agreed, prior to publication, in accordance with the table below.

Risk Classification	Specification agreed by
Low	Accounting Officer
Medium	Procurement Services
High	Procurement Board

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8 Commencement of Procurement

- 8.1 No procurement with a *Total Value* over £5,000 may commence or *Contract* be awarded that has not been reviewed by the Head of Procurement Services, or the *Procurement Board* and a *Risk Classification* given.
- 8.2 Approval, in the format agreed by the *Procurement Board*, must be sought before the commencement of any procurement or purchase activity in accordance with the table below.

Risk Classification	Approval Required By
Low	Accounting Officer
Medium	Procurement Services
High	Procurement Board

- 8.3 In considering whether to approve an item or not the *Accounting Officer*, Procurement Services or *Procurement Board* shall address:
- Whether the matter fits with agreed, published corporate strategy.
 - Whether the matter fits the stated business requirement
 - Whether the specification or terms of reference for the matter being procured is fit for purpose. (i.e. robust without buying the “Rolls Royce”)
 - Whether a robust procurement process will be followed
 - Whether the funding has been appropriately approved.
 - Whether the potential savings opportunity is suitably ambitious
 - Whether any risk associated with the matter fits within an acceptable risk profile
 - Whether any legal considerations are appropriately identified and mitigated
 - Any Social, Economic, Ethical or Environmental considerations
- 8.4 For low risk Procurements the *Accounting Officer* use their discretion with regards to which Procurement route is appropriate.
- 8.5 For medium and high risk procurements the *Procurement Services/ Board* respectively shall approve which procurement process is to be followed based on the type and *Specification* of the proposed *Contract* in accordance with one of the following procurement processes:
- Quotations
 - Open Tendering
 - Via a Standing List
 - Single Tenders
 - Framework Agreement

9 Managing the Procurement

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- 9.1 For all procurements with a *Total Value* above £5,000 the procurement shall be managed and carried out by suitably qualified / experienced *Officers* in accordance with the table below.

Risk Classification	Procurement managed / carried out by
Low	Accounting Officer
Medium	Procurement Services
High	Procurement Services

10 Advertising Requirements

- 10.1 Where the procurement route requires an advert to be placed then the requirement shall be advertised, to ensure that;
- Public notice, in the form of a sufficiently accessible advertisement, is given.
 - The advertisement is open for sufficient time, depending on the complexity of the anticipated response, to ensure *Candidates* have time to produce a high quality response. The minimum time being 10 working days.
 - the notice expresses the nature and purpose of the contract;
 - state where further details may be obtained;
 - invite expressions of interest or *Tenders* for its execution; and
 - state the last date and time when expressions of interest or *Tenders* should be received, and who should receive it.
- 10.2 Where the *Officer* conducting the procurement considers potential *Candidates* located overseas may offer better value for money than local *Candidates* a sufficiently accessible advertisement must be published.
- 10.3 No *Contract* shall be advertised overseas, or *Quotations/Tenders* obtained from overseas, for any requirement that has not been advertised locally within the previous 6 months. It is permissible to advertise concurrently so long as no advantage is given to any *Candidate*.

11 Competition Requirements

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- 11.1 Where the procurement route requires competition then regardless of the *Risk Classification*, where the *Total Value* for a purchase is within the values in the first column below, the minimum competition requirement outlined in the second column shall be followed.

Total Value	Minimum Competition Requirement
Up to £5,000	At least 1 <i>Written Quotation</i> (<i>Officers should however ensure the market is regularly tested</i>)
£5,000 to £50,000	At least 3 <i>Written Quotations</i>
Over £50,000	Invitation to <i>Tender</i> with at least 4 responses

- 11.2 *Quotations* obtained via the internet are acceptable so long as the appropriate carriage, insurance, freight and customs duty are fully considered.
- 11.3 Should it not be possible to comply with the above competition requirements due to an insufficient number of suitably qualified *Candidates* being identified then, regardless of the *Risk Classification*, the Head of Procurement Services shall review the procurement and may, at his/her discretion, approve a reduced competition requirement.
- 11.4 All Procurements that have not met the competition requirement shall be reported for information to the *Procurement Board*, by the Accounting Officer, at the next available meeting

12 Preparation and Sending of Documents

- 12.1 All Invitation to Tender and requests for Quotation documentation shall include a clear specification of requirements, minimum standards, timescales, evaluation criteria and minimum mandatory pre-qualification criteria..
- 12.2 The *Award Criteria* and calculation methodology must be included within the *Invitation to Tender* or *Request for Quotation* documents.
- 12.3 A full set of *Quotation* or *Tender* documents must be sent, in *Writing*, to all those *Candidates* who have responded to the invitation.
- 12.4 All *Candidates* invited to submit a *Tender* or *Quotation* must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 12.5 If an amendment to the *Quotation* or *Tender* documents is required during the tender period the amendment must be provided to each recipient of the original *Quotation* or *Tender* documents with a request that the *Officer* conducting the procurement be notified of the receipt of the amendment.

13 Clarification Questions – Pre Tender Return

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- 13.1 Prior to the submission of a *Tender or Quotation*, interested parties may request clarification about any point in the documentation.
- a) All such requests must be in Writing
 - b) Any clarification provided must be in Writing and copied to all Candidates at the same time.
- 13.2 A *Written* record must be kept of clarification requests and responses provided.

14 Receipt of Quotations and Tenders

- 14.1 *Quotations and Tenders* shall comply and be submitted in accordance with the rules and instructions set out in the request for *Quotation or Invitation to Tender*. Those that do not comply shall be deemed non-compliant and rejected without any form of evaluation.
- 14.2 Prior to the *Closing Date* for the receipt of *Quotations or Tenders* the names of *Candidates* must not be disclosed to any other person.
- 14.3 Only in exceptional circumstances will a *Tender or Quotation* be considered that has not been received by the *Closing Date* stipulated. Approval to accept a late *Tender or Quotation* must be obtained, in *Writing*, from Head of Procurement Services. The *Procurement Board* must be notified, at the next available meeting, of all circumstances a late *Tender or Quotation* has been accepted giving the reasons for acceptance.

Submission in hard copy

- 14.4 All *Quotations or Tenders* shall be in *Writing* and shall be returned before the *Closing Date* as per the table below in a sealed envelope marked tender for the *services/works*.

Risk Classification	Returned to
Low	Accounting Officer
Medium	Head of Procurement Services
High	Head of Procurement Services

- 14.5 The *Accounting Officer or Head of Procurement Services* shall be responsible for the safekeeping of *Quotations and Tenders* until the appointed time of opening.
- 14.6 Each *Quotations or Tenders* returned shall:
- a) on receipt, be date and time stamped and be recorded on the tender log so as to subsequently verify the date and precise time it was received; and
 - b) be unopened and held securely in a locked cabinet so as to adequately protect and guard against amendment of its contents until such time as the *Quotations or Tenders* are officially opened.

Submission by email

- 14.7 All *Quotations or Tenders* returned via email shall be sent to the central *Quotations or Tenders* return e-mail address.
- 14.8 Each *Quotations or Tenders* returned shall, on receipt,:

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- a) be held securely in electronic form with the contents of the email unopened until such time as the Quotations or Tenders are officially opened; and
- b) be acknowledged in the form of an email back to the Candidate.

14.9 The date and time stamp of the email containing the *Quotations* or *Tenders* shall act as proof as to the date and time the *Quotations* or *Tenders* was received.

15 Opening of Quotations and Tenders

15.1 All *Quotations* and *Tenders* must be opened at the same time and only after the *Closing Date*.

15.2 *Tenders* must be opened in the presence of at least two *Officers* neither of whom can be involved in the direct management or supervision of the *Contract*.

15.3 Upon opening, a summary of the main terms of each *Tender* (such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Log*. The summary must be initialled by those present at the opening.

16 Evaluation of Quotations and Tenders

16.1 *Quotations and Tenders* must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *Officers* shall ensure that submitted *Quotation* and *Tender* sums are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

16.2 The arithmetic in compliant *Quotations* and *Tenders* must be checked. If arithmetical errors are found they should be notified to the *Candidate*, who should confirm which is correct or withdraw their *Tender*.

16.3 Any material or information provided by a *Candidate* in response to a request for *Quotation* or *Tender* that is not to be evaluated in accordance with the *Award Criteria* should not influence the *Award Decision* in any way.

16.4 Only information provided by a *Candidate* in response to a request for *Quotation* or *Tender* should be used in the evaluation of the *Quotation* or *Tender*. *Officers* must not make assumptions about a *Candidates* capability or say "but I know they can do this".

17 Suitability of Candidates

17.1 All *Candidates* responding to a request for *Quotation* or *Invitation to Tender* are to be suitably assessed prior to the award of a *Contract*. The assessment process shall establish that the potential *Candidates*, as a minimum, have sound;

- a) economic and financial standing; and
- b) technical ability and capacity; and
- c) ability to fulfil the requirements of SHG.

17.2 The *Head of Procurement Services* is to maintain, and publish internally, a list of all UK *Candidates* that have been *Credit Checked*, in the form agreed by the *Procurement Board*, together with an assessment as to whether the *Candidate* is suitable to trade with.

17.3 No *Contract* shall be signed, or order placed, with a UK *Candidate* that is not assessed on the above list as suitable to trade with without the prior written approval of the *Procurement Board*.

17.4 No *Contract* shall be signed, or order placed, with a *Candidate* outside of St Helena or the UK without the prior written approval of the *Head of Procurement Services*.

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18 Clarification Questions – Post Tender Return

- 18.1 The *Tender or Quotation* evaluators may seek post *Tender* clarifications from *Candidates* when these are material to identifying the successful *Tender or Quotation* but these must be documented, together with the responses received, and accompany the evaluation report.
- 18.2 Tender evaluations should include an explicit consideration of the tender value compared to the mean value of all supplied tenders. Specific reasons for the any significantly low tender bids should be explicitly reviewed and documented as part of the tender evaluation process.
- 18.3 The clarification procedure shall be managed in such a way so as not to give any *Candidate* an unfair advantage over other *Candidates* by allowing the *Candidate* to revise or enhance its original *Quotation or Tender*.

19 Negotiation

- 19.1 Post *Tender/Quotation* negotiation, with a view to obtaining adjustments in price, delivery or content is permitted, so long as;
- a) Negotiation is conducted with all *Candidates* who have a realistic possibility of winning the evaluation.
 - b) A negotiation strategy is developed and agreed prior to the negotiation session.
 - c) A team of at least two *Officers*, one of whom must represent the business area concerned and be able to provide appropriate technical input and one who is independent to the business area and who is experienced in commercial negotiation.
- 19.2 Under no circumstances shall any *Officer* use the negotiations as an opportunity to trade-off one *Candidates* prices against other *Candidates* prices in order to obtain lower prices.
- 19.3 It is also permissible to use the following tools/techniques to achieve best value
- a) Direct negotiation to a target price or available budget
 - b) Best and Final Offer
 - c) Reverse e-auctions

20 Award of Contract

- 20.1 All *Contracts* must be awarded to the *Candidate* who obtains the highest score in the evaluation of the *Award Criteria*.
- 20.2 An *Award Recommendation*, in the format agreed by the *Procurement Board*, must be documented in accordance with the table below.

Risk Classification	Award Recommendation
Low	Accounting Officer
Medium	Procurement Services
High	Procurement Services

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- 20.3 The *Award Recommendation* shall contain a declaration by the *Accounting Officer* or *Head of Procurement Services*, as appropriate, that they have ensured all relevant aspects of these *Regulations* have been complied with in connection to the *Contract* being awarded.
- 20.4 Approval, in the format agreed by the *Procurement Board*, must be sought before the *Award* of any *Contract* in accordance with the table below;

Risk Classification	Approval Required By
Low	Accounting Officer
Medium	Head of Procurement Services
High	Procurement Board

- 20.5 Additionally, should the *Quotation* or *Tender* sum be more than 30% greater than the anticipated cost, as detailed on the *Rolling Procurement Plan*, the *Award decision* shall be referred to the *Procurement Board*.
- 20.6 In considering the *Award Recommendation* the *Officer* or *Procurement Board* must assure themselves the *Award Recommendation* is sound and based on good technical and commercial grounds, consider all the information presented and obtain any further information that they may require. The *Officer* or the *Procurement Board* must then:
- Accept or reject the *Award Recommendation*; or
 - Request further information to allow the acceptance or rejection of the *Award Recommendation*; or
 - Request the *Tender/Quotation* be re evaluated (but not change the *Award Criteria*); or
 - if they consider that no *Quotations/Tenders* is satisfactory, refuse to accept any *Quotations/Tenders* and inform the *Accounting Officer* and *Head of Procurement* accordingly.
- 20.7 Where the *Officer* or the *Procurement Board* does not accept the *Award recommendation*, it must ensure that its reasons are clearly documented and kept as part of the tender register.
- 20.8 *Written* notification of acceptance of a *Quotation/Tender* must be sent to the relevant *Candidate* within 2 working days of the *Award Decision* being made.
- 20.9 *Written* notification of rejection of a *Quotation/Tender* must be sent to all the relevant *Candidates*, within 2 working days, with the offer of feedback on why the *Quotation/Tender* was rejected to help them identify why their *Quotation/Tender* was not successful.
- 20.10 If a *Contract* requires a guarantee or bond the guarantors must be notified by the *Accounting Officer* who must ensure that, after taking legal advice, the guarantee or bond is duly executed.
- 20.11 A record of the *Contract* must be placed on the *SHG Contract Register* by the *Head of Procurement Services* or in the case of low risk procurements the *Accounting Officer*.

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PART 3

REGULATIONS SPECIFIC TO DIFFERENT TYPES OF PROCUREMENT

21 Regulations specific to Open Tendering / Requests for Quotations

- 21.1 Open Tendering shall be the default method of obtaining requests for *Quotations / Tenders* where there are a number of suppliers readily available.
- 21.2 Where the competition requirements are not met due to insufficient *Candidates* responding to an open advertisement for a request for *Quotation* or *Invitation to Tender* the Head of Procurement Services may authorise the Procurement to continue provided he/she is satisfied that every effort has been made to comply with the *Regulations* and *Value for Money* criteria will be satisfied.

22 Regulations specific to Selective Tendering

- 22.1 Selective Tendering shall apply where requests for *Quotations* or *Invitations to Tender* for a *Contract* are to be limited to those *Candidates* whose names are included on the approved *Standing List*.
- 22.2 The establishment of a *Standing List* for a category of expenditure may be agreed by the *Procurement Board* when;
- a) there are a small number of *Candidates* available; and
 - b) *Procurement Board* considers greater *Value for Money* would not be achieved by Open Tendering.
- 22.3 At least 4 weeks before a list is first compiled, notices inviting applications for inclusion in the list shall be published in accordance with the advertising requirements of these *Regulations*.
- 22.4 *Candidates* wishing to have their details added to the list may also apply to the *Head of Procurement Services* at any time. The names of those meeting the pre-qualification requirements will be added to the list and the updated list published.
- 22.5 The *Standing List* shall:
- a) contain the names of *Candidates* that have successfully met, and continue to meet, the prequalification criteria agreed between the relevant *Accounting Officer* and Head of Procurement Services
 - b) indicate in respect of a *Candidate*, the categories of *Contract* and the maximum *Total Values* or amounts in respect of those categories for which approval has been given.
- 22.6 Requests for *Quotations* or *Invitations to Tender* for a *Contract* using the *Standing List* must be sent to all those *Candidates* who are on the list within the relevant category, amount or value.
- 22.7 The *Standing List* shall be reviewed by the *Head of Procurement Services* at regular intervals, not to exceed 2 years. At least four weeks before each review each *Candidate* whose name appears in the list shall be asked whether (s)he wishes their name to remain therein and notices inviting applications for inclusion in the list shall be published in the manner detailed within these *Regulations*.
- 22.8 *Procurement Board* may remove *Candidates* from the *Standing List* should they;
- a) Subsequently be unable to meet the prequalification criteria; or

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b) Fail to meet reasonable performance expectations.

22.9 All *Standing Lists* shall be published on the SHG website and updated at regular intervals not exceeding 3 months

23 Regulations specific to Single Tenders

23.1 Regardless of the *Risk Classification*, approval to use of this procedure must be obtained, as detailed in the table below.

Total Value	Approval by
£5,000 to £50,000	Head of Procurement Services
Over £50,000	Procurement Board

23.2 The use of this procedure to award a *Contract* directly to a *Candidate* without genuine competition shall only be used if it can be demonstrated one more of the following conditions can be met.

- a) An unforeseen *Emergency* involving danger to life or health or serious damage to property that requires goods or services to be obtained more urgently than would be possible if genuine completion was obtained.
- b) The goods or services can, for technical reasons, only be obtained from one supplier.
- c) Acquiring goods or services from a different supplier would result in incompatibility with existing goods or services or disproportionate technical difficulties.
- d) Where funding from an external body is time limited or includes a recommendation as to the supplier.

23.3 A lack of time to complete a procurement caused by inadequate forward planning is not a justified reason to use this procedure.

24 Regulations specific to Local Framework Agreements

24.1 The establishment of a *Local Framework Agreement* requires the approval of the *Procurement Board* regardless of the *Total Value* or *Risk Classification*.

24.2 Local Framework Agreements must only be used;

- a) for low value Goods (typically each item being less than £10 but the *Total Value* of goods bought under the *Local Framework Agreement* being greater than £5,000); and
- b) When the price of the goods changes on a day to day basis (typically food items or any other items typically bought on the high street); and
- c) When there are a number of suppliers of the goods.

24.3 *Local Framework Agreements* must not be for longer than 3 years.

24.4 At the time and point of sale the relevant *Officer* may choose which *Candidate(s)* on the *Local Framework Agreement* offers the most economically advantageous option(s).

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25 Regulations specific to Medical & Vet Supplies

- 25.1 Procurement of *Medical Supplies* of any value is not subject to the provisions of these *Regulations* provided that, for every new item added to the Health and Social Welfare Directorate Formulary, at least three written quotations are obtained prior to the initial procurement. Market testing for every formulary item must be undertaken at least every 2 years. In all instances, the Tender which offers the best value for money should be accepted. Quarterly reports must be submitted to the *Procurement Board* giving details of purchase valued at £50,000 and over.

26 Regulations specific to the procurement of Management Consultants

- 26.1 The *Accounting Officer* should consider whether the requirement is;
- a) A *Contract* for services with a Company or Individual that is required to deliver a service or outcome for a fixed or variable fee; or
 - b) A *Contract* of Employment with an individual who provides a service or outcome on a day rate.
- 26.2 All procurement of management consultants, via the *Contract* for services route, must be carried out in accordance with these *Regulations*.
- 26.3 All procurement of management consultants, via the *Contract* of employment route, must be carried out in full consultation with the Human Resources Directorate and in accordance with HR policies and procedures rather than these *Regulations*.

27 Regulations specific to Framework Agreements

- 27.1 The use of a *Framework Agreement* put in place by a UK or European public sector body requires the approval of the *Procurement Board* regardless of the *Total Value* or *Risk Classification*.
- 27.2 The use of this procedure shall only be used if it can be demonstrated all of the following conditions can be met:
- a) SHG is granted access to the *Framework Agreement* and signs an access agreement or similar document or the suppliers on the agreement are happy to operate in principle to the framework terms with SHG.
 - b) The method to select the supplier from the *Framework Agreement* is in accordance with the procedures detailed within the *Framework Agreement*.
 - c) Best value can be obtained over other Procurement routes.

PROCUREMENT REGULATIONS

28 Regulations specific to the Purchase of used Goods on Advantageous Terms

- 28.1 For the purchase of used Goods on particularly advantageous terms from either a supplier which is winding up its business activities on island, or the liquidator in an insolvency procedure, an arrangement with creditors, or are simply surplus to requirements the Procurement Board has the Authority to agree to such a purchase, or in the event of an auction submit a bid, without advertising or competition if the Board is satisfied the used Goods;
- a) Meet the strategic and operational business requirements of SHG and are not simply being purchased because they are offered on advantageous terms; and
 - b) Are fit for purpose; and
 - c) Are of reasonable quality (considering the age and price to be paid); and
 - d) Offer SHG better value for money compared with buying the items new from a recognised supplier
- 28.2 Every effort should be made to ensure any remaining manufactures warranty, spare parts, service agreements, service histories etc, if applicable, are transferred with the used Goods.
- 28.3 Applications for such purchases, satisfying the above, should be made to the Procurement Board for approval. No commitment to purchase the item should be given until approval is given by the Board.

PROCUREMENT REGULATIONS

PART 4

CONTRACT DOCUMENTATION

29 Form of Contract

- 29.1 All *Contracts*, irrespective of value shall be in a form agreed by the Attorney General, and shall, as a minimum, clearly specify the information detailed in the *Procurement Services Manual*.
- 29.2 *Contracts* for works, and any subsequent *Variation* or *Extension*, shall additionally include a provision for the use of retentions and liquidated damages.

30 Contracts based on Candidates Terms

- 30.1 Every effort should be made not to enter into a *Contract* based on *Candidates Terms and Conditions*.
- 30.2 In certain circumstances it may be necessary to use a *Candidates Terms and Conditions*. If so the written approval of both the Attorney General's office and *Head of Procurement Services* shall be obtained before formally entering into the *Contract*.

31 Contract Formalities

- 31.1 All Procurement of goods, works or services having a *Total Value* of £5,000 or greater requires a formal *Written Contract*.
- 31.2 All *Contracts* must be concluded formally in *Writing* and be signed by both parties before the supply, service or construction work begins. An *Award Letter* or *Letter of Intent* is insufficient.
- 31.3 The Officer responsible for securing signature of the *Contract* must ensure that the person signing for the other contracting party has authority to bind it.
- 31.4 It is expected that the other contracting party will sign the *Contract* in advance of SHG.
- 31.5 Where the *Contract* is:
- a) to be supported by a bond or guarantee; or
 - b) classified as high risk; or
 - c) in respect of a sum in excess of £100,000
- it shall be executed on behalf of the Government by a law officer.
- 31.6 All other *Contracts*, with a *Total Value* greater than £5,000, but less than £100,000, shall be executed on behalf of the Government by either the;
- b) Director of Health and Social Welfare; or
 - c) Director of Education; or
 - d) Director of Environment and Natural Resources; or
 - e) Airport Director; or
 - f) Chief of Police; or
 - g) Financial Secretary; or
 - h) Head of Procurement Services; or

PROCUREMENT REGULATIONS

i) A law officer

- 31.7 The individual signing a *Contract* on behalf of the Government shall ensure an original signed copy of the *Contract* is sent to the *Head of Procurement Services* within 7 days of the *Contract* being signed.
- 31.8 Original copies of all signed *Contracts* having a *Total Value* exceeding £5,000 shall be securely kept by the *Head of Procurement Services*. Uncontrolled electronic copies will be made available to all SHG employees who have a relevant interest in the *Contract*.

PROCUREMENT REGULATIONS

PART 5

WAIVERS, VARIATIONS, EXTENSIONS AND TERMINATION

32 Waivers

- 32.1 Should there be a cogent reason to do so the *Procurement Board* (or the Chair of the *Procurement Board* if there is a true unforeseen *Emergency*) has the power to *Waive* any part, or all, of these *Regulations*. A lack of time to complete a procurement caused by inadequate forward planning is not usually a cogent reason.
- 32.2 Should there be Political reasons or it be in the *Public Interest* to do so, the Governor has the power to *Waive* any part, or all, of these *Regulations*. All *Waiver* applications to the Governor must be made via the Chair of the *Procurement Board*.
- 32.3 If a *Waiver* allowing a *Contract* to be awarded without genuine competition is granted the *Officer* responsible for the *Contract* must demonstrate and record in *Writing* that the price obtained is not in excess of the market price and that the contract represents best *Value for Money*.
- 32.4 A *Waiver* must be applied for by using the documentation specified by the *Procurement Board*.
- 32.5 The secretary to the *Procurement Board* shall keep a register of all *Waivers* to these *Regulations*
- 32.6 A list of all *Waivers* which are granted shall be published on the SHG website and available for inspection by any member of the public.

33 Variations to the Scope of Contracts

- 33.1 All *Variation* requests must be made in the format agreed by *Procurement Board* and approved in accordance with the table below.

Risk Classification	Variation Approval
Low	Accounting Officer
Medium	Head of Procurement
High	Procurement Board

- 33.2 Where the *Risk Classification* is unknown (e.g. *Contracts* awarded prior to these *Regulations*) then the *Head of Procurement Services* will either give approval for the *Variation* or, at their discretion, refer the matter to *Procurement Board*.
- 33.3 Prior to the *Variation* of the scope of a *Contract*:
- A budget must be allocated for the expenditure
 - Value for Money* must be demonstrated

PROCUREMENT REGULATIONS

- 33.4 Should the cumulative additional goods, works or services within a *Contract* exceed 50% of the value of the original *Contract* then approval must be sought by the Procurement Board.
- 33.5 All *Variations* to the *Contract* must be formally documented in *Writing*, be sequentially numbered and legally executed by both parties and the original copies of all signed *Variations* securely kept by the *Head of Procurement Services*
- 33.6 Copies of all *Variations* will be made available to any SHG employee who has a relevant interest in the *Variation*.

34 Extensions to Contracts

- 34.1 All *Extension* requests must be made in the format agreed by the *Procurement Board*.
- 34.2 Where an *Extension* to an existing *Contract* is provided for within the terms and conditions of the *Contract* (and provided there has been satisfactory performance) approval for the take up the extension may be granted in accordance with the table below.

Risk Classification	Extension Approval
Low	Accounting Officer
Medium	Head of Procurement
High	Procurement Board

- 34.3 Prior to the *Extension* of a *Contract* the *Head of Procurement Services* or the *Procurement Board* must be satisfied that the *Extension* represents best value for money and is not being instigated solely to avoid or delay the requirement to conduct a procurement exercise.
- 34.4 On rare occasions it may be necessary on operational or financial grounds to *Extend* a *Contract*, where no *Extension* has been provided for in the existing *Contract*. There must be a clear justification for this which is not merely to avoid complying with the *Regulations* for tendering a new contract. Provided there is sufficient evidence to justify such an *Extension*, the *Procurement Board* may approve an *Extension* for a fixed duration.
- 34.5 All requests to *Extend* a *Contract* shall be made in sufficient time to allow a Procurement process to be completed should Head of Procurement Services or the *Procurement Board* decide not to grant the *Extension*.
- 34.6 After the expiry of the term of a *Contract* it may not be *Extended*.
- 34.7 All *Extensions* to a *Contract* must be formally documented in *Writing*, be sequentially numbered and legally executed by both parties and the original copies of all signed *Extensions* securely kept by the *Head of Procurement Services*
- 34.8 Copies of all *Extensions* will be made available to any SHG employee who has a relevant interest in the *Extensions*..

PROCUREMENT REGULATIONS

35 Termination

- 35.1 All early termination of *Contracts* with a *Total Value* above £5,000 must be approved by the *Procurement Board* and be based on the recommendation of the *Accounting Officer* and *Head of Procurement Services* having first obtained advice as to the financial and legal impact of the termination.
- 35.2 All early terminations of a *Contract* must be formally documented in *Writing*, and legally executed.
- 35.3 Copies of all signed early terminations shall be securely kept by the *Head of Procurement Services*

PROCUREMENT REGULATIONS

PART 6

OTHER REQUIREMENTS

36 Confidentiality

- 36.1 Apart from the debriefing required or permitted by these Procurement *Regulations*, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.

37 Records

- 37.1 Where the *Total Value* is greater than £5,000 the following records must be kept for at least seven years after the end of the *Contract* that is in a format easily accessible
- a) pre-tender market research
 - b) the invitations to quote/tender and *Quotations/Tenders* received.
 - c) the method for obtaining bids including, in the case of the Selective Tendering and / or Single Tendering routes, the justification for using them.
 - d) details of any *Waiver* granted together with the reasons for it
 - e) the *Award Criteria* in descending order of importance
 - f) the *Contracting Decision* and the reasons for it
 - g) the *Contract* documents
 - h) clarification and post-tender negotiation (to include minutes of meetings)
 - i) written records of communications with all *Candidates*.
 - j) all Variation, Extension and Waiver requests
 - k) all legally executed *Variations* and *Extensions*
 - l) post-contract evaluation and monitoring

38 Appeals

- 38.1 Appeals will only be considered if made before the expiry of 2 weeks from such time as the *Award Decision* is communicated to all unsuccessful *Candidates*.
- 38.2 Where a *Candidate* wishes to appeal against the *Contracting Decision* or has a complaint relating to the *Quotation or Tender* process then they must put the appeal/complaint in *Writing* to the *Head of Procurement Services*.
- 38.3 The Head of Procurement Services shall review all the necessary facts and inform the *Candidate* of their decision, in *Writing*, together with the reasons for that decision within 2 weeks of receiving the appeal.
- 38.4 Should the *Candidate* not be satisfied with the decision of the *Head of Procurement Services* they may request, in *Writing* and within 2 weeks of being informed of the decision, that the Chief Secretary reviews the decision.
- 38.5 Any decision of the Chief Secretary is final.

PROCUREMENT REGULATIONS

39 Bonds and Parent Company Guarantees

- 39.1 The *Head of Procurement Services* must be consulted about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:
- a) the *Total Value* exceeds £50,000; or
 - b) the award is based on evaluation of the parent company, or
 - c) there is some concern about the stability of the *Candidate*.
- 39.2 The *Head of Procurement Services* must be consulted about whether a Bond is needed:
- a) where the *Total Value* exceeds £50,000; and
 - b) it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the *Contract*, or
 - c) there is concern about the stability of the *Candidate*.

40 Foreign Currency

- 40.1 Officers should make all reasonable efforts to ensure *Quotations* or *Tenders* are in Saint Helena Pounds or Pounds Sterling.
- 40.2 If *Quotations* or *Tenders* include foreign currency content or are subject to exchange rate fluctuations, advice must be sought from the Head of Accounting Services.

41 Assets for Disposal

- 41.1 If the anticipated disposal value of surplus or obsolete stocks/stores or assets, other than land or buildings, is estimated to be:
- a) Less than or equal to £500 then the Accounting Officer shall determine the most appropriate disposal method.
 - Should the Accounting Officer determine the cost of disposal exceeds the likely income to be generated they may scrap the item.
 - b) More than £500 but less than, or equal to, £5,000 then the *Accounting Officer* shall sell the items to the highest bid received from either;
 - An advertisement in the local media; or
 - A public auction

Should no bids be received the *Accounting Officer* may dispose of the goods in the most economically advantageous way.
 - c) More than £5,000 then the method of disposal must be agreed with the Financial Secretary.
- 41.2 The sale of any goods shall be without any warranty and on an “as seen” basis and all income received for any such disposal must be paid into the Consolidated Fund.

42 Prevention of Corruption

- 42.1 *Officers* must not invite or accept any gift or reward in respect of the award or performance of any *Contract*.
- 42.2 *Any Officer* involved in a decision making capacity for a given procurement activity or *Contract* must give immediate *Written* notice to the Chair of the *Procurement Board* of any

PROCUREMENT REGULATIONS

Interest, financial or otherwise, that they may have in the said procurement activity or *Contract*.

43 Pre Payment / Stage Payments

- 43.1 Should pre payment or stage payments be required before SHG takes delivery of the goods, or risk transfers to SHG (as defined by the INCOTERMS), then *Written* authority must be obtained, regardless of the risk category, in accordance with the table below, prior to any agreement being made to do so. For construction projects stage payments will where necessary form part of the contract and be agreed by the Project Board and
- 43.2 For construction projects stage payments will where necessary form part of the contract and be agreed by the Project Team and the Head of Procurement or Procurement Board.

Total Value	Approval by
Up to £5,000	Accounting Officer
Over £5,000	Financial Secretary

44 Purchase Orders

- 44.1 A *Purchase Order*, in the official form, must be sent to successful *Candidate* after the formal *Contract* has been signed and in advance of goods, services or works being supplied.
- 44.2 The successful *Candidate* must quote the *Purchase Order* number on any correspondence and invoice(s).

45 Urgency

- 45.1 For urgent matters that cannot wait until a scheduled *Procurement Board* meeting the Chair of the *Procurement Board* shall either decide;
- That the matter is not urgent and can wait until the next scheduled meeting; or
 - To call an extraordinary meeting of the *Procurement Board* to discuss the urgent matter only; or
 - To seek approval from the *Procurement Board* members via a virtual process (e.g. email)

46 INCOTERMS

- 46.1 All *Contracts* for goods from overseas companies shall contain appropriate *INCOTERMS*.

47 Insurance

PROCUREMENT REGULATIONS

- 47.1 Should the Head of Procurement Services perceive a significant risk of loss or damage during shipment, then the goods shall be insured with a reputable insurance company to the value of the goods and sea freight.

48 Inspection

- 48.1 All vehicles and other high value items (over £5k) procured off Island must have an independent examination before being handed over to the shipping agent aboard (i.e. in the UK) – for standard vehicles this can be an RAC or AA inspection report. The report must be reviewed by the Accounting Officer and permission given to ship the vehicle before it is handed over to the agent.
- 48.2 With regards to specialists vehicles they must be examined and evidence provided that the vehicles are to the agreed specification as per the contract, again evidence must be provided and approved by the Accounting Officer before they are handed over to the shipping agent.

PROCUREMENT REGULATIONS

PART 7

CONTRACT MANAGEMENT

49 Managing Contracts

- 49.1 All *Contracts* must have a named *Contract Manager* for the entirety of the *Contract*.
- 49.2 *Contract Managers* must follow the Contract Management procedures set out in the *Procurement Services Manual*.

50 Risk Assessment and Contingency Planning

- 50.1 *Contract Managers* must for all *Contracts* classified as medium or high risk;
- a) Maintain a risk register during the *Contract Period*
 - b) Undertake appropriate risk assessments and for identified risks ensure contingency measures are in place and appropriate action taken.

51 Contract Monitoring, Evaluation and Review

- 51.1 *Contract Managers* must monitor all *Contracts* in respect of:
- a) Performance against the specification and *Contract terms*.
 - b) Contractual deliverables and outcomes.
 - c) The expenditure profile of the *Contract* v's available budget.
 - d) Any anticipated wider business benefits or *Contract* objectives.
 - e) User satisfaction with the goods, service or works delivered.
- 51.2 For all *Contracts* which are classified as high risk *the Contract Managers* shall;
- a) conduct a monthly/quarterly formal review with the successful *Candidate*.
 - b) submit and an annual report to the *Procurement Board* detailing the performance of the successful *Candidate* against the *Contract* objectives.
 - c) submit a final report to the *Procurement Board* at the end of the *Contract* detailing the performance of the successful *Candidate* against the *Contract* objectives.

PROCUREMENT REGULATIONS

PART 8

DEFINITIONS

Accounting Officer	As defined in the Public Finance Ordinance 2010 (or their delegated representative).
Award Criteria	The criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected.
Candidate	Any person, company or organisation who asks or is invited to <ul style="list-style-type: none"> • submit a Quotation or Tender; and/or • supply goods, services or works
Closing Date	The date and time a Expression of Interest, Quotation or Tender has to be submitted by
Contract(s)	A commercial agreement for the provision of goods, services or works between two or more individuals or organisations, which is legally enforceable.
Contract Manager	A named individual that “owns” the <i>Contract</i> and is responsible for ensuring the Contract delivers what is intended and is the focal point for internal stakeholders and the supplier. Sometimes called the Contract Officer within SHG
Credit Check(ed)	A formal review of a potential Candidates financial history, court judgements etc.
Delivery	For local purchases when the Goods arrive at the destination specified on the <i>Purchase Order</i> or collected from the supplier. For international shipments the INCOTERMS specify the point of delivery.
Emergency	Is something we have to respond to that involves immediate risk to persons, property or serious disruption to Government services as a result of something that cannot be reasonably foreseen.
Extension	An additional period of time at the end of the contract, when the requirement(s) are a repetition of the requirement(s) under the original <i>Contract</i> .
Local Framework Agreement	An agreement between one or more local suppliers (on island) which fixes the terms and conditions (but typically not prices, which can vary day by day) under which the supplier will enter into a specific contract with SHG but without any guarantee of volume.
INCOTERMS	Also known as International Commercial terms are a series of pre-defined commercial terms published by the International Chamber of Commerce that are widely used in International commercial transactions. INCOTERMS clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods.
Interest	Broadly defined as anything that might reasonably be regarded as affecting the Officer their relatives or friends, to a greater extent than other inhabitants St Helena. Examples include, but are not limited to, financial interest, employment interest etc.
Invitation to Tender	A suite of documents issued to <i>Candidates</i> who have expressed an interest to a procurement opportunity and is in the form required by these Regulations.
Medical Supplies	Items listed on the Health and Social Welfare Directorate Formulary.

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Officers	All staff within SHG who have a direct or indirect involvement with any procurement.
Procurement Board	Is the senior officer group within SHG responsible for providing the Governance, managing key activities and making decisions within the Procurement process and replaces the existing Tender Board. A separate Terms of Reference is available.
Procurement Services Manual,	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Procurement Regulations.
Public Interest	Enhances the "common well-being" or "general welfare" of the Island
Purchase Order	Is a commercial document issued by SHG, indicating types, quantities, and agreed prices for products or services the <i>Candidate</i> will provide. Sending a purchase order to a <i>Candidate</i> constitutes a legal offer to buy products or services
Regulations	These Procurement Regulations
Risk Classification	The classification given to a particular procurement by the <i>Procurement Board</i> . The classification shall be either low, medium or high risk
Rolling Procurement Plan	A rolling plan, owned by the <i>Procurement Board</i> , that sets out SHG's forthcoming programme of procurements over a rolling 12 – 18 month timeline.
Quotation(s)	A Quotation of price and any other relevant matter (without the Formal issue of an Invitation to Tender).
Standing List	<p>A list, owned by the <i>Procurement Board</i>, that contains the names of <i>Candidates</i> that have successfully met, and continue to meet, the prequalification criteria agreed between the relevant <i>Accounting Officer</i> and Head of Procurement Services.</p> <p>The list also indicates the categories of <i>Contract</i> and the maximum <i>Total Values</i> or amounts in respect of those categories for which approval has been given to individual <i>Candidates</i>.</p>
Specification	A <i>Written</i> statement, drawings and/or plans of SHG's requirements for works, goods and/or services that is sufficiently detailed to allow <i>Candidates</i> to submit a <i>Quotation</i> or <i>Tender</i> .
Tender	A <i>Candidates</i> response submitted in response to an Invitation to Tender
Total Value	<p>A genuine estimate of the value all payments to be made, or potentially to be made to the contractor via a single or series of transactions, for the whole of the contract period including any extension period.</p> <p>For feasibility studies, the value of the scheme or Contracts which may be awarded as a result to the same company that has undertaken the feasibility work.</p>
Value for Money	Value for Money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.
Variation	Anything which involves a change to the scope of a Contract There are typically 3 types of <i>Variation</i> .

PROCUREMENT REGULATIONS

	<ul style="list-style-type: none"> • “Foreseen” where the additional goods or services are referenced within the original <i>Quotation, Tender</i> or contract documentation. • “More of the same” where the additional goods or services are not referenced in the original tender or contract documentation. However the goods or services concerned are the same as previously supplied. • “New” where the additional goods or services are different to the goods and services detailed in the original contract where; <ul style="list-style-type: none"> – The goods or services cannot be obtained from anyone else for technical reasons – Failure to order from the same supplier will damage the ability of the supplier to deliver the original contract
Waiver or Waive	Permission not to apply one or more of the provisions in these <i>Regulations</i> .
Written, Writing	<p>The preferred method of communicating in writing is via an electronic means (e.g. e-mail or e-tendering)</p> <p>Should email not be available then printed “hard copy” should be used.</p>