



# **Eastern Caribbean Telecommunications Authority (ECTEL)**

## **Telecommunications Universal Service Guidelines**

**July 2008**

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# 1 INTRODUCTION

This document provides guidelines for the efficient implementation of Universal Service in telecommunications in Member States of the Eastern Caribbean Telecommunications Authority (ECTEL). In particular, the document outlines the broad policy framework for Universal Service implementation and sets out the required standards and procedures for proper management of the Universal Service Funds in the ECTEL Member States.

The bases for development and use of the Guidelines are derived from the Telecommunications Acts (2000) and Telecommunications (Universal Service) Regulations (2008).

The Guidelines were developed through the Telecommunications and ICT Development Project implemented by ECTEL, and they have been prepared following extensive research and consultations.

Section 2 of the document provides an outline of the broad policy objectives and the scope of Universal Service implementation in the ECTEL Member States and Section 3 provides guidelines on the management, administration and financial accounting for the Fund. Section 4 provides guidelines for the preparation of the Operating Plan and Budget and Section 5 provides guidance on the submission, appraisal and selection of projects. Section 6 contains the guidelines by which the National Telecommunications Regulatory Commission (hereinafter referred to as the “Commission”) will solicit bids and award contracts for designated projects, Section 7 focuses on guidelines for Project Implementation and Monitoring and Section 8 addresses matters relating to Disputes and Protests associated with operation of the Fund.

## **2 OBJECTIVES AND SCOPE OF THE UNIVERSAL SERVICE FUND**

### **2.1 General Principles and Objectives**

The main goal of the Universal Service Fund (USF) is to support the provision of Universal Service in telecommunications throughout [Member State]. According to the Telecommunications Act, Universal Service includes the provision of:

- (a) public voice telephony;
- (b) internet access;
- (c) telecommunications services to schools, hospitals and similar institutions, and the disabled and physically challenged; or
- (d) other service by which people access efficient, affordable and modern telecommunications.

Accordingly, the Fund shall be available to support the expansion of affordable access to these services to locations and user groups that do not currently have sufficient access.

In addition, according to the Telecommunications (Universal Service Fund) Regulations, the Fund shall provide financial support to projects that address one or more of the following objectives:

- (a) encourage efficient access to and use of telecommunication networks and services throughout [Member State], with special focus on rural, under-served and maritime areas, with a goal to help promote social, educational and economic development;
- (b) ensure the reasonable availability and affordability of basic and advanced telecommunications services, including voice telephony and Internet access, as well as broadband connectivity at the community, household and individual levels, particularly where the commercial telecommunications market may be unable to deliver such services in a financially viable manner independently, as well as to the physically challenged, elderly, and indigent communities;
- (c) provide support for the introduction and expansion of telecommunications services to schools, health facilities and other organizations serving public needs;
- (d) promote technological innovation in the telecommunications sector.

## **2.2 Priority Objectives and Criteria for Use of Fund**

To fulfill the goal of Universal Service, the Commission shall identify and define specific projects, for which the Fund may provide financial support. Also, the Fund shall seek to promote self-sustaining projects to the greatest extent possible. The Commission may, according to the procedures set forth in the USF Guidelines, establish priorities and criteria as to the identification and selection of preferred projects. Internet access is an increasingly essential telecommunications service. The growing availability of affordable broadband capacity allows for the consideration of projects that promote expanded Internet connectivity, including broadband service deployment. Such projects shall generally fall within one or more of the following six (6) categories:

### **i. Affordable Universal Access to Basic Telephone Service**

The Commission shall evaluate the availability and affordability of basic voice telephone services, either fixed or mobile, to the population of [Member State], and shall determine to what extent any significant gaps remain in either public or individual/household access to such basic service. Where such gaps exist, the Commission may utilize the Fund to help promote expansion of network coverage and service delivery in these areas, and/or for targeted user groups (e.g, rural populations, single-headed households, the elderly, and those living in poverty) for whom affordable basic telephone service is not available or accessible.

### **ii. Access to Internet Service and Broadband Connectivity**

The Commission may utilize Fund resources to help support Internet and broadband network and service expansion in those areas where such deployment may not be fully commercially viable for the private telecommunications market alone.

### **iii. Universal Access via Community Access Points**

The Fund may be used to support the establishment of Community Access Points in locations where public access to such services is unavailable or insufficient. Community Access may include commercial or non-profit “telecenters”, as well as connections to public institutions such as schools and hospitals, which may offer telecommunications services at affordable prices.

### **iv. Affordable Access to Individuals with Special Needs**

The Commission may also utilize the Fund to help support projects which promote and facilitate the use of telecommunications services by individuals with special needs, through the use of specialised equipment, software and protocols.

**v. Capacity Building and Training Components in Fund Projects**

The Commission may incorporate requirements to provide human resource training or capacity building components as a distinct component of the activities to be financed. Such activities shall not constitute the entire or primary focus of any Fund project, but may rather represent a supporting element to complement infrastructure or facility oriented projects.

**vi. Development of Local Information Content and Applications**

The Commission may also incorporate, as a component of Fund projects, funding to help support the development of locally relevant information content and/or applications, to be delivered via telecommunications networks and services facilitated by the Fund. Such activities shall not constitute the entire or primary focus of any Fund project, but may rather represent a supporting element to complement infrastructure or facility oriented projects.

### **2.3 Fund Targets for Telecommunications Sector Development**

The following specifications represent target objectives for the medium-term development of the telecommunications sector in [Member State]. These targets may not necessarily be entirely achievable through the intervention of the Universal Service Fund, but they shall serve as benchmarks to measure current status and progress toward the overall goals of the Fund.

1. Basic fixed telephone service: Every household in the country should have the option of subscribing to fixed line telephone service, at prevailing, affordable tariffs (i.e., service should be available). All towns and villages, as well as regularly used roads and other public locations, should have some form of public access telephone service available within a reasonable distance.
2. Mobile telephone service: Mobile telephone signals should be available and adequately functional in areas where persons live, work, visit, travel, or explore should be covered, with exceptions for the most remote and costly locations. All mobile network services should include both voice telephony and data network access, with the most advanced technology in as many locations as possible.
3. Internet access: All households and businesses throughout the country should have the ability to subscribe to Internet service.. Such Internet service should be at sufficient transmission speed to allow full use of all common Internet features (web, e-mail, file transfer, etc.) There should be public/community Internet access points available in towns and villages.

4. Broadband access: Broadband Internet connections should be available in towns and major villages. Households and businesses in these locations should be able to subscribe to broadband access at reasonable prices. Broadband access should continue to expand to more remote areas and smaller villages as the market expands, technology improves, and costs decline, with a goal of universal broadband access throughout the country.
5. Telecommunications in schools, hospitals and similar institutions: All schools, hospitals and similar institutions should have access to both basic telephone and Internet services, ideally with broadband access in as many locations as possible.
6. Needs of the Physically Challenged: In all public locations (telecenters, libraries, public telephones, Government offices, etc.) there should be customized facilities, which would enable the use of telecommunications services by person who are physically challenged so that those persons can fully utilize telecommunications services. Such facilities should also be available for the physically challenged to use in their homes wherever needed at affordable prices and with all appropriate technical support.
7. Needs of the elderly: In public locations commonly used by the elderly there should be customised telecommunications facilities. Such facilities should also be available for the elderly in their individual homes as well as in nursing homes and other such institutions at affordable prices and with appropriate technical support.
8. Needs of the Indigent: The determination of which groups or classes of persons constitute the “indigent” should be based on criteria or guidelines established by the relevant social service agencies in the Member State. Telecommunications services should be made available to the indigent at prices affordable to them.



### **3 FUND MANAGEMENT, ADMINISTRATION, ACCOUNTING**

This section describes the management structure and administrative responsibilities for the Fund within the Commission, including the accounting procedures required to collect, maintain, and disseminate the funds.

#### **3.1 Fund Account Management**

The Fund shall be managed by the Commission, in accordance with the Regulations and these Guidelines. In the administration of the Fund the Commission shall ensure that:

- the Fund remains fiscally sound, and confirm revenue, cost, and financial performance projections;
- the collection of Fund Contributions from telecommunications providers in accordance with the Telecommunications (Universal Service Fund) Order;
- timely disbursement of subsidy and other eligible payments as per service contracts and the Fund's certifications according to payment milestones;
- The Fund's financial accounts and records are maintained;
- The Fund's Annual Report is prepared

#### **3.2 Fund Accounting**

The following sections provide guidelines for the Fund's accounting procedures, including Fund financing, Fund account management, collection of Fund contributions, Fund administration financing, Fund disbursements, reports and audits.

##### **i. Collection of Fund Contributions**

The Fund shall be financed primarily by the monies collected from telecommunications providers as stipulated in the Telecommunications (Universal Service Fund) Order. Additional funds may be received from direct Government appropriations, or in the form of grants donations, or other contributions made by individuals or legal entities.

The Fund contribution to be collected from telecommunications providers shall become effective on the date set by the Telecommunications (Universal Service Fund) Order issued by the Minister.

The Fund Administrator shall have the responsibility to monitor and ensure contributions are made in accordance with the Telecommunications (Universal Service Fund) Order.

The Fund Administrator shall maintain a record of the Fund Contributions due to the Fund and collected from all telecommunications providers, indicating:

- The verified gross revenues by year;
- The amount of Fund Contribution due for the current year;
- The Fund Contribution amounts collected;
- Fund Contribution amounts outstanding.

The Fund Administrator shall notify the Commission promptly regarding any Fund Contributions that are not received in due time and regarding any disputes as to amount of Fund Contributions.

Non-payment of a provider's contribution to the Fund shall constitute a breach of the provider's license liable to sanctions under Section [ ] of the Telecommunications Act.

## **ii. Fund Bank Accounts**

The finances of the Fund shall at all times be kept in separate accounts from other Commission's finances, and shall be transparently maintained and operated as such.

All monies accruing to the Fund shall be kept in a specially designated Fund Bank Account, separate and independent from any other bank accounts of the Commission.

There shall be no commingling of Fund finances and any other finances at any time.

The Fund Bank Account shall be managed in accordance with financial management policies and procedures approved by the Commission.

The Commission shall specify the authorised signatories to the Fund Bank Account.

## **3.3 Fund Disbursements**

Disbursements from the designated Fund Bank Account shall be restricted to payments for eligible expenditure under the categories specified below:

- (a) Approved budgeted administration expenses;
- (b) Approved payments for Fund projects.

Fund finances shall not be used for any other purpose including collateral of any sort and shall be kept available for meeting eligible expenditure.

The Commission shall maintain separate accounting records for the Fund. Such records shall be maintained in accordance with International Accounting Standards.

### **i. Operating Expenses of the Fund**

The Operating Budget shall be used for operating expenses of the Fund and shall not exceed 10% of the annual budget of the Fund.

On a quarterly basis the Commission may disburse budgeted amounts from the designated Fund Bank Account to the Commission's operating account to reimburse eligible Fund administration expenses.

Eligible operating expenses of the Fund include:

- Salaries, emoluments, remunerative packages and allowances for Fund Administrator and other staff employed to work on Fund matters;
- Office equipment specifically and directly related to requirements of Fund administration;
- Administrative and operational costs specifically and directly related to requirements of Fund administration;
- Costs of carrying out technical, socio-economic or demand studies pertinent to the development of the Operating Plan;
- Consultancy or advisory contracts directly related to Fund activities;
- Financial audit costs of the Fund.

### **ii. Payments for Fund Projects**

Financial support from the Fund to a telecommunications provider shall be awarded in the form of a fixed price contract.

The award may be disbursed by the Commission in one or more payments to correspond to milestones established under the Service contract for each project. The proposed payment installments shall be set out in the Service Contract.

Disbursements for Fund Projects may be in the form of reimbursements or advances. The Commission shall make disbursements only after disbursement conditions in the Service Contract have been met. The Fund Administrator shall prepare and manage all payment certifications, which shall certify that the contractor have met the obligations or milestones specified in their Service Contracts.

#### Reimbursements

The Fund may reimburse the telecommunications provider for eligible expenses that the provider has pre-financed pursuant to the Service Contract.

### Advances

The Commission may, in cases it deems appropriate provide, make an advance payment of no greater than 20% of the total project budget to a contractor. Advances shall be subject to reimbursement or a lien against equipment purchased in cases where a contractor fails to meet its obligations under the service contract. The contractor may be required to provide supporting documents to the Commission to show that advances have been used to finance eligible expenses.

## **3.4 Reports and Audits**

### **i. Annual Fund Report**

The Fund Administrator shall be responsible to prepare and submit an Annual Fund Report to the Commission. The Annual Fund Report should include the operating and financial highlights of the Fund.

The Annual Fund Report shall describe the status of Fund Projects, identifying each project, its goals and plans, status of implementation, and amounts disbursed for project implementation. The report may also provide an assessment of the impact or effectiveness of each project. Additionally, the Annual Fund Report shall indicate the overall progress of the Fund in moving the telecommunications sector toward the identified targets and general objectives of the Fund. Difficulties, challenges, or new developments that may influence Fund activities may also be addressed in the annual report.

The Fund Administrator shall conduct follow-up studies of expenditures and maintain up-to-date accounting records to ensure proper Fund allocations and adequate resources at all times. The Fund Administrator is also responsible to prepare and provide periodic progress reports and any other reports necessary for an annual independent audit of the Fund accounts and records.

The annual financial statements of the Fund shall be prepared in accordance with International Accounting Standards and shall comprise the following:

- 1) Balance sheet
- 2) Income and Expenditure Statement
- 3) Cash Flow statement
- 4) Notes to the Accounts: to include a summary of accounting policies and all information necessary for the accounts to present a true and fair view of the operations of the Fund.

**ii. Annual Financial Audit**

The Commission shall appoint a firm of independent and reputable external auditors to carry out the annual financial audit.

The Terms of Reference for the external auditor shall, at a minimum, include preparation of the following:

- 1) Audit Opinion on the Fund financial statements and notes thereto;
- 2) Audit Opinion on compliance with Fund purpose i.e. whether funds are being used solely for the approved purposes;
- 3) Audit Opinion on procurement procedures used, as to whether they were appropriate for the particular projects in accordance with these guidelines;
- 4) Management letter containing Internal Control recommendations.

The annual audit shall be completed within six months of the end of the financial year.

## 4 FUND OPERATING PLAN AND BUDGET

### 4.1 Operating Plan

The Commission shall establish, on an annual basis, a Fund Operating Plan. The Operating Plan shall summarize the current state of development of telecommunications in the country, and shall set forth the broad objectives, targets, and types of projects that the Fund may seek to promote during the current operating year. The Fund Operating Plan shall also include a budget outlining the resources available to support projects during the year, and the intended allocation of these resources.

Once approved by the Commission, the Operating Plan shall be made available for inspection by interested parties.

Specifically, each year's Fund Operating Plan shall include the following elements.

Introduction: Summary of key points of the Fund Operating Plan, including market status, recent developments, overall Fund Budget, and objectives for the upcoming year. A standard overview and background discussion on the purpose and mandate of the Fund should also be included, for readers who might not be familiar with the Fund.

Summary market assessment: Summary review of the status of telecommunications development in the country, including identification of key targets and areas where the use of Fund resources might be of value. This assessment shall also take account of existing projects, including prior years' Fund Projects, and the contribution and progress they are making toward sector development goals.

The following indicators may be used to assess the status of the market and need the for Fund intervention: (a) service penetration, (b) geographic coverage (c) affordability of connectivity (d) affordability of service

In conducting this market assessment, the Fund Administrator shall be responsible for the following tasks:

- § Identifying and collecting data on the telecom sector from operators and other sources;
- § Developing and maintaining databases of key data, updated regularly;
- § Reviewing various studies and reports on telecommunications sector economic conditions, including network construction and operating costs, market demand, and changing industry dynamics, taking account of differences across regions and among different types of users, communities, and institutions.

Priority goals: Definition of the priority goals or targets for the present year, which shall be the basis for project solicitations and ultimate selection. Goals may be as specific or general as the Commission chooses for a given year, depending upon whether it seeks to focus attention narrowly upon a particular development target (e.g., schools, the disabled, etc.), or whether it will be open to a more broad range of potential projects during the upcoming year.

Budget estimates: Summaries of available resources for new projects in the upcoming year. This includes total Fund assets at the beginning of the year, projected collections for the year, commitments and expected disbursements for prior approved projects, and estimated allocations for new projects to be approved during the year. Budget amounts for Fund administration, and total expenditures must be within available funds.

## 4.2 Budgeting Process

Before the end of the financial year, the Commission shall prepare budget forecasts for the Fund for the following financial year, subject to the Fund Operating Plan.

The Commission shall prepare separate budgets for Fund Projects and Operations.

The key steps involved in budgeting and Fund allocation exercises include:

- Estimating total Fund resources for the fiscal year, based on contribution forecasts, Fund assets and other revenue sources;
- Determining total resources available for Fund administration and for Fund Projects;

For Fund Project Budget

- Preparing high-level preliminary estimation of amounts to be allocated to each major category or program of activity during the fiscal year, based on general policy priorities and results of initial market assessment. (Example: allocating specific proportions of the funds to such areas as voice network expansion; broadband Internet projects; and community access centers.)
- Identifying Fund expenditure commitments for existing project contracts, other capital and expense commitments, and contingency budgets);
- Calculation of net available funds for the fiscal period, as well as forecast of anticipated future fund levels in subsequent periods

For Operating Budget

Preparing preliminary estimates of amount to be allocated for various expense categories including, salaries and emoluments, general administration, travel, market assessments, financial audits and consultancies.

## **5 SUBMISSION, APPRAISAL AND SELECTION OF PROJECTS**

### **5.1 Submission of Fund Projects**

At the beginning of each operating year, the Fund Administrator shall initiate the process of identifying projects to be considered for funding within the operating year. This process will include (i) solicitation of proposals from telecommunications service providers and other interested parties, and (ii) development of proposals for projects identified by the Commission. This provision does not preclude the Commission from identifying and soliciting projects at any other time during the operating year.

The process of soliciting project proposals from telecommunications service providers and other interested parties could be done through (i) public meetings, (ii) online advertisement/solicitation, (iii) public announcements, (iv) advertisements or, (v) appropriate promotional activities

#### Application Forms for Project Proposals

The Fund Administrator shall make available an application form for submission of project proposals. The application form shall indicate the basic information required, including:

- a. Name of entity proposing the project
- b. Contact details of proposing entity
- c. Nature of Project (with a drop down menu of the categories of possible project for funding)
- d. Summary of Project objectives
- e. Outline of Project proposals
- f. Target groups
- g. Expected Project inputs
- h. Estimates of Project costs and benefits.

The Commission shall establish and make public a deadline for submission. The public announcement of the deadline should include the place for submission of the proposals.

The Commission shall prepare and make public the criteria to be used in the evaluation of the Project Proposals. The relevant criteria shall be limited to the evaluation to ensure that the project proposals address the stated objectives of the Fund and the established priorities for the operating year.



## **5.2 Project Appraisal and Selection**

The Commission shall review all project proposals received within the required time frame, and shall select the project(s) to be financed by the Fund according to the procedures outlined below.

The Commission may consider establishing ad hoc committees to advise and assist the Fund Administrator in the appraisal and selection of projects. The composition and terms of engagement of such committees shall be determined by the Commission.

The Commission shall not appoint persons to an ad hoc committee who may have foreseeable economic interests in the outcome of a decision to be taken on any fund-related matter. Any person who is chosen to sit on an ad hoc committee and has a material interest in the outcome of any Fund-related matter shall disclose his interest to the Commission and shall be disqualified from sitting on the ad hoc committee.

### **Preparation of Short-list**

The Fund Administrator shall conduct a preliminary appraisal of the project proposals received. This preliminary appraisal will be based on the criteria published in the public invitation for submission on project proposals.

Based upon the preliminary appraisal, the Fund Administrator shall recommend a “short-list” of projects to be considered for Fund financing during the operating year.

The Commission shall make the final determination of the project proposals to be included in the short-list, based upon the recommendations of the Fund Administrator.

### **Expanded Project Appraisals**

The Fund Administrator shall undertake expanded project appraisals for all project proposals selected by the Commission for the short-list of candidate Fund Projects for a given operating year. The expanded project proposals will be used to determine which projects will be recommended for Fund support during the operating year.

In conducting these expanded project appraisals, the Fund Administrator may rely upon input and assistance from other Commission technical staff, outside experts, and ECTEL. The Fund Administrator may also conduct any necessary public inquiries to obtain further information about the scope, nature, and costs of a proposed project, in particular through requests for information or public consultations with relevant stakeholders.

Expanded project appraisals shall generally follow the format, and include the information and analysis illustrated below:

1. **Policy Priorities** – Determines whether the objectives of the project are in keeping with the policy objectives and priorities of the Fund.
2. **Technical Feasibility and Requirements**: Evaluate and identify the technical and institutional components of the project to define a general idea of the various elements that would be required for a telecommunications provider to implement the project as defined. While alternative technologies and architectures may be proposed by different providers, a baseline set of assumptions as to the default approaches likely to be used should be determined, to serve as a basis for assessing the economic and financial structure of the project.
3. **Institutional Requirements**: These should also include any institutional arrangements that will be necessary, such as the size and nature of the organization(s) and personnel required to operate the proposed services.
4. **Financial Analysis**: Estimate the initial capital investment and other, start-up expenditures necessary to launch the project. Provide a breakdown of these costs by location and service unit as appropriate. Estimate annual recurring expenses for operations, maintenance, and support needed to maintain the ongoing delivery of the services over a 5 year period. Prepare estimated forecasts of the annual service revenues that will be generated by the project, and will offset some of its costs. Forecasts should attempt to take into account expected revenue growth for a period of at least 5 years.

Based upon the capital and operating cost estimates and the revenue forecast, develop a business case analysis of the approximate net present value (NPV) of the project for a five year period. The value of this result should be negative (i.e., costs should be greater than revenues), otherwise the project shall be considered commercially viable, and hence not eligible for Fund support. The contribution of the Fund will be the cumulative deficit in NPV terms as determined by the Commission.

5. **Economic and Social Cost-Benefit Analysis**:

Prepare an assessment of the economic and social benefits to the user population, and to the country as a whole, that would be likely to result from implementing the proposed project. While many aspects of the benefits may be difficult to quantify, they should at least be identified and discussed, in comparison with the project's subsidy cost, to give the Commission a basis for evaluating the potential impact of the project. Expected benefits should be described in reasonably consistent terms across different project appraisals, to allow meaningful comparison of different types of projects

## **6. Risk Analysis**

Identify the most likely threats to the project and analyze the related vulnerabilities of the project to these threats. This may involve evaluating existing physical and environmental and other unexpected changes including political social and other external threats. The analysis should involve the impact of such threats on the projects overall performance and what approach will be required for the management of such risks. The risk management shall involve the plans or actions that are required to ensure that those risks are controlled.

### **5.3 Final Project Selection**

Based on the expanded project appraisals, the Fund Administrator shall prepare recommendations to the Commission as to the priority projects to be financed during the operating year. The recommendations shall be subject to the constraint that the total cost of the combined recommended projects shall not exceed the available Fund Project Budget amount for the relevant time period.

The final set of project appraisals and recommendations shall then be presented to the Commission for review and consideration in the selection of projects to be financed under the current Operating Plan.

The Commission shall make final selections of the project(s) to be financed during the operating year, within the available Fund Project budget. The Commission shall publicly announce the project selections, providing a summary explanation of the reasons for the choices.

## **6. PROCEDURES FOR SOLICITING AND EVALUATING BIDS**

### **6.1 Overview of Procedures**

Fund Projects shall normally be awarded on the basis of open competitive bidding procedures implemented by the Commission in accordance with these Guidelines. However in certain limited circumstances the Commission may use a method of procurement other than competitive bidding.

The Commission shall determine which method of procurement is appropriate for each project and manage the procurement process in accordance with the requirements and procedures set out in these Guidelines.

Apart from the open competitive bidding procedure, the Commission may apply a restricted bidding procedure, a sole source procurement procedure or an emergency procurement procedure.

Restricted bidding may be used where the estimated cost of the project is less than EC\$250,000.00

Where the Commission determines, in agreement with ECTEL that there is only one economically feasible source to undertake a particular Fund project the Commission may use sole source procurement.

The Commission may make emergency procurements for a Fund Project without bidding or prior notice when there exists a threat to public health or public safety, or when immediate expenditure is necessary to prevent or minimize serious disruption in services.

### **6.2 Project Terms of Reference**

The Fund Administrator, with assistance from ECTEL as necessary, shall prepare detailed Terms of Reference for each project to be financed. The Terms of Reference shall include the following:

- § Background information on the project;
- § A detailed description of the services to be provided under the project;
- § Service location(s) and beneficiaries. This shall include the precise geographic locations and target user groups that are to be provided by the Fund services, and all relevant details concerning the required scope and availability of the services in those locations;

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- § Financial Parameters. The Commission may, at its discretion, disclose the estimated cost of the project;
- § Information on the timing and scheduling of the project;
- § Legal and Regulatory terms and conditions that will apply to the telecommunications provider selected to deliver the project.

## **6.3 Open Competitive Bidding**

### **Request for Proposals**

The Commission shall develop a Request for Proposals (RFP) for each project that is subject to Open Competitive Bidding. The RFP shall include:

- i. The Terms of Reference for the project;
- ii. Instructions to bidders regarding the steps required to participate in the bidding,
- iii. The terms and conditions that shall apply to the procurement,
- iv. The procedures and criteria for the bidding, evaluation, and award processes,
- v. A sample of the service contract to govern the implementation of the project; and
- vi. All other relevant information necessary to comply with bidding requirements.

### **Service Contract**

The Commission shall specify in the RFP a Service Contract to be executed between the Commission and the winning bidder, which shall establish the winning bidder's obligation to implement the Fund Project, the Commission's obligation to pay the corresponding contract award, and all related necessary matters. Contractors that are awarded Fund Projects must comply with the terms and conditions of the Service Contract. Service contracts shall include the following:

- § Payment Milestones
- § Reporting Requirements
- § Sanctions for Non-Compliance

### **Provisions for the Contract Bond**

The Commission may specify in the RFP a form of financial security to be submitted to the Commission by a winning bidder for a Fund Project to secure its Fund Project obligations (the "Contract Bond"). Such Contract Bond shall be in the form of a stand-by Letter of Credit or other such financial instrument issued by a financial institution that is acceptable to the Commission.

The specified form of Contract Bond shall contain, at a minimum:

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- the required amount of the Contract Bond;
- details of the events triggering forfeiture of the Contract Bond; and
- the date by which the Contract Bond will be released by the Commission.

All Contract Bonds shall be released by the Commission in accordance with the requirements specified in the Service Contract.

### **Public Notification**

Following identification of projects to be funded and elaboration of Requests for Proposals, the Commission shall publicly issue an Invitation for Bids (IFB) inviting all qualified interested parties to participate in the bidding process. The public release of the Invitation for Bids shall include, at a minimum:

- § Public notices in newspapers of wide circulation and on the Commission's website;
- § Notifications to firms that have previously expressed interest in bidding for Fund Projects;

The Commission shall provide electronic and printed copies of the RFP to potential bidders who submit requests for the RFP. The Commission may charge a nominal fee for this service.

### **RFP Clarifications**

Potential bidders may submit to the Commission, written questions and requests for clarifications on the RFP, via post, fax, or electronic mail. All questions and requests for clarifications along with all responses shall be circulated to all parties that have formally registered their interest in bidding for the project, as well as on the Commission's website.

The Commission may also conduct a Bidder's Conference following the release of the RFP, at which all interested parties may learn more about the project and the bidding process. The Bidder's Conference may also allow for the clarifications to be provided on aspects of the RFPs.

At its sole discretion, the Commission may modify or revise the Terms of Reference or Request for Proposals for a project based upon comments, concerns, or other feedback from potential bidders, to ensure an effective outcome. Any such modifications shall be competitively neutral, and shall only be made to correct or improve elements of the original documents that may have been unclear or inaccurate, but may not substantially change the nature and scope of the project.

### **Bid Bond**

The Commission may require that bidders submit a Bid Bond together with their proposals. The purpose of such a Bond is to ensure that bidders are committed to the integrity, timeliness, and validity of the competitive procurement, and to avoid unnecessary defaults during the competition. Where a Bid Bond is required, such a requirement shall be indicated in the Request for Proposals.

The Bid Bond shall be for a fixed dollar amount no greater than 10% of the funds available for the project, and should remain valid until 30 days after the scheduled date for award of the contract. Terms and conditions associated with the requirement for a Bid Bond may include that a bidder may forfeit its Bid Bond if it drops out of the competition after submitting a proposal and before the selection of a winning bidder, or if a bidder is selected and fails to execute a contract to deliver the services.

Bid Bonds may not be required for projects which are estimated to cost EC\$250,000 or less.

### **Bid Opening**

For each project, the date, time, details and procedures for the opening of Bids shall be clearly stated in the Request for Proposals.

The Fund Administrator shall be responsible for coordinating the bid opening process in accordance with the provisions of the Request for Proposals.

### **Evaluation of Bids**

Upon receipt of proposals, the Fund Administrator shall coordinate the evaluation of all bids received. The Commission may co-opt independent evaluators to examine and evaluate the bids. However, the Commission shall be responsible for selection of the winning bidder.

The criteria to be applied in the evaluation of bids and any points award system to be used in the evaluation shall be clearly set forth in the Request for Proposals for each project.

The Fund Administrator shall prepare a written report on the bid evaluation process, which shall provide details on the examination and evaluation of the bids received. The report shall also name the winning bidder selected by the Commission.

The Commission shall notify bidders of the results of the bidding process. The Commission shall also publish the results of the evaluation.

## **Contract Award**

Upon selection of the winning bidder, the Commission shall notify the winner of its intent to award a contract according to the terms of the successful proposal. The contract shall be awarded within twenty-one days of the identification of the winning bidder. The contract shall conform to the sample contract provided in the Request for Proposals.

If a winning bidder does not execute the required contract, the Commission may award the contract to the second ranking qualified bidder. If the second ranking bidder is no longer prepared to undertake the project, or if in the Commission's judgment the award of the contract to another bidder would fail to achieve the project goals sufficiently, the Commission may cancel the competition upon the failure of the initial winning bidder to execute a contract.

After the award of the contract, the Commission shall cause the evaluation report to be open to public inspection.

Where the Commission conducts a competitive bidding procedure, but only one qualified firm submits a bid, this firm may be awarded the project contract without such contract being considered "sole source" procurement, provided that the bid meets the requirements set out in the RFP.

## **Disqualification**

The Commission shall disqualify bidders from further consideration in a competitive selection process for one or more of the following reasons:

- § Failure to submit the bid by the prescribed deadline;
- § Failure to comply with any of the procedures or other requirements established by the RFP;
- § Failure to submit the Bid Bond amount specified in the RFP;
- § Serious inaccuracy or misrepresentation of any material facts in any part of the bid;

Before taking action against a bidder pursuant to these disqualification provisions, the Commission shall send a written notice to the bidder identifying the circumstances and practices relied on by the Commission to support such action, and notifying the bidder that he is entitled to protest by filing a claim in accordance with the Telecommunications (Universal Service Fund) Regulations.



### **Cancellation of Invitations for bids**

The Commission may cancel without penalty an invitation for bids, where it is in the best interests of the Fund. The Commission shall notify bidders of the reasons for cancellation or rejection, and shall publish the reasons for cancellation or rejection on its website.

Where no qualified firms submit bids under a competitive bidding process, the Commission shall undertake a review to determine the most likely reasons that no bids were received. Following this, the Commission shall decide on how best to go forward with the project.

### **Timetable**

The Fund Administrator shall establish a clear timetable for the key events associated with the procurement process for each Fund Project. The following indicative deadlines shall be considered reasonable for typical projects. The Fund Administrator may adjust any of the deadlines to accommodate the scheduling needs of any particular project, subject to the restriction that no procurement shall require more than sixteen (16) weeks from the public release of the Request for Proposals to the selection of the winning bidder:

Event	Time Frame
RFP release	Week 0
Bid submission and Opening	Week 6
Bid Evaluation	Week 8
Winning bid announcement	Week 10
Contract award	Week 13

## **6.4 Restricted Bidding**

Under conditions specified in the Regulations, the Commission may opt for restricted bidding. Where the Commission deems restricted bidding appropriate, it shall identify the organisations, which it reasonably believes can provide the required Fund service and invite those organisations to bid. The procedures required in the case of open competitive bidding shall apply to restricted bidding except that in the case of restricted bidding, consideration will only be given to bids from the organisations that have been invited to participate in the restricted bidding process.

## **6.5 Sole Source Procurement**

In certain limited circumstances, the Commission may award contracts for Fund projects by sole source procurement to a designated firm, when the Commission determines, in

agreement with ECTEL, that this firm is the only economically feasible source for the service. At least four weeks before making such a designation, the Commission shall publish a notice of intent so to do. The notice shall include a description of the service to be procured and the intended sole source contractor, and it shall invite comment from any party that may have an interest in this matter.

In no event shall sole-source procurements for Fund Projects exceed 25% of the available funds within any given operating year.

## **6.6 Emergency Procurements**

The Commission may make emergency procurements for a Fund Project without bidding or prior notice when there exists a threat to public health or public safety, or when immediate expenditure is necessary to prevent or minimize serious disruption in telecommunications services. Where such an emergency procurement is made, the Commission shall provide reasons for the selection of the particular contractor in the contract file and publish the description and the reasons for selection on the Commission's website.

In making decisions on emergency procurement, the Commission shall consult with relevant national agencies such as the National Emergency Management Organisation.

In no event shall emergency procurements for Fund Projects exceed 15% of the available funds within any given operating year.

## **7 PROJECT IMPLEMENTATION AND MONITORING**

This section addresses the guidelines for implementation of Fund Projects and procedures for monitoring of Fund Projects to ensure that contractors remain in compliance with terms and conditions of the Service Contract.

### **7.1 Project Implementation**

Fund Projects should be implemented as soon as practicable after the winning bidder has been selected and the Service Contract has been signed.

The implementation of Fund Projects shall be undertaken in accordance with the provisions of the service contracts. Among the key aspects of project implementation to be considered, are as follows:

#### **Payment Milestones**

Payment milestones shall be determined based on the project's implementation timeline and shall be directly linked with the project's components. Fund payments to contractors shall be linked to such milestones, which must be verified by the Fund Administrator or his designated representative before payments shall be authorized.

#### **Reporting Requirements**

All successful bidders shall submit periodic project reports to the Commission, in accordance with the reporting requirements stipulated in the Service Contract. Project reports shall include such items as, project description and goals, assessment of progress, analysis of any unexpected circumstances, financial statements and any other analysis relevant to the understanding of the project's progress, particularly in cases of deviation from initial project plans.

#### **Sanctions for Non-Compliance**

Contractors are required to comply with all terms and conditions of the Service contract. The Service Contract shall include the sanctions for non-compliance with its terms and conditions.

## **7.2 Monitoring of Projects**

The Fund Administrator shall monitor Fund Projects, to ensure compliance with the terms and conditions of the Service Contracts. Project monitoring shall include a review of the periodic project reports submitted by the contractor as well as on-site inspection of the Fund Project, as necessary.

The Commission shall determine based on information provided by the periodic project reports and from reports from on-site inspection whether additional investigation may be necessary to ensure compliance with the provisions of the service contract.

## **8. DISPUTES AND PROTESTS**

### **8.1 Filing the Dispute**

Any party, which disputes any aspect of the Fund may submit a formal claim, describing in concise detail the facts giving rise to the dispute and the basis for the dispute. The claim must be signed by the claimant or an authorized officer of the claimant certifying that he or she believes that the facts set out in the formal claim are true. The formal claim shall be submitted within fourteen days of the date on which the event or the disputed action occurred. The formal claim shall be addressed to the Chairman of the Commission and shall state clearly the name of the claimant, the address of the claimant, the claimant's contact details and the date of the claim.

### **8.2 Processing the Dispute**

The Commission shall enter the details of the claim in a Register of Disputes relating to the Fund. Upon entering the claim in the register, the claim shall be given a number and shall be given a date for review by the Commission. That date should not exceed fourteen days of receipt of the claim.

### **8.3 Review by the Commission**

The Commission shall within fourteen days of receipt of the claim review the merits of the claim and shall issue a public reply within ten days of the review of the claim describing any actions or decisions taken as a consequence of its review of the claim. Where the Commission deems appropriate, it may request additional information on the matter before taking any actions or making any decisions. Where the Commission requests additional information, the party receiving the request shall forward the information within fourteen days of the request for additional information. The Commission shall review the additional information within fourteen days of receipt of the additional information and issue a public reply within ten days of the conclusion of its review. The Commission shall have sole discretion to determine the appropriateness, timeliness, and relevance of claims.