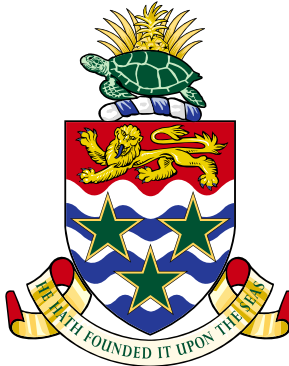


CAYMAN ISLANDS



**Procurement Act
(Law 47 of 2016)**

PROCUREMENT REGULATIONS

(2022 Revision)

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CAYMAN ISLANDS

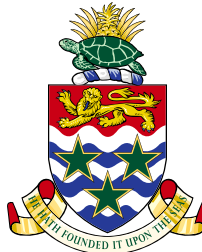
Procurement Act
(Law 47 of 2016)

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Arrangement of Regulations

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CAYMAN ISLANDS

Procurement Act
(Law 47 of 2016)PROCUREMENT REGULATIONS
(2022 Revision)

Citation

1. These Regulations may be cited as the *Procurement Regulations (2022 Revision)*.

Definitions

2. In these Regulations —

“**approved business case**” means a business case which has been reviewed and approved in accordance with regulation 3(3);

“**framework agreement**” means an offer from a supplier to provide goods or services under a predetermined pricing structure and on the specified terms and conditions within the period of time specified;

“**local impact assessment**” means an assessment of the impact of the procurement on local suppliers prior to any approach to the market;

“**local industry impact statement**” means a statement submitted by a bidder as part of a bid submission that outlines how the supply of goods, services or works will provide a positive impact on the local industry and economy should the bidder be awarded the contract;

“**notice of opportunity**” means a notice to potential suppliers advising of an opportunity to participate in a procurement project;

“**pre-qualification**” means a process by which the qualifications of a supplier are evaluated prior to completing a bid submission process and is usually used

to select potential bidders for an individual project or scope of work, or to create a pre-qualified list of potential bidders for a defined programme or timeframe;

“Request for Information” means a pre-solicitation request that may be used to get feedback from suppliers to help the procurement entity in developing an achievable procurement strategy; and

“Request for Expression of Interest” means a non-binding procurement document usually released prior to a competitive process to gauge the level of market interest in the project and to highlight any potential bidder concerns.

Project appraisal and business case requirement

3. (1) A procurement process may be initiated by an entity only after the procurement project has been appraised and the results documented in an approved business case.
- (2) The business case shall —
 - (a) demonstrate the economic need for the project;
 - (b) include a thorough risk and impact assessment that details costs and the socio-economic impact of the procurement project on small and medium sized suppliers operating in the Islands;
 - (c) provide a breakdown of all anticipated procurement projects within the larger project;
 - (d) recommend the procurement method to be utilised;
 - (e) specify the benefits that the project is expected to deliver;
 - (f) demonstrate the options to be incorporated into the procurement process to promote positive economic development of the Islands in accordance with regulation 20; and
 - (g) demonstrate that there is a basis on which a decision may be made on whether to proceed to the procurement stage.
- (3) The appraisal process shall be conducted and the business case shall be prepared in accordance with the following requirements —
 - (a) where a procurement project is less than one hundred thousand dollars in value, a business case is not required, and —
 - (i) a purchase requisition shall be submitted in the format specified by the Chief Officer or the Chief Executive Officer, or the respective delegate of the Chief Officer or the Chief Executive Officer; and
 - (ii) the requisition or purchase order shall be authorised by the Chief Financial Officer or the Chief Financial Officer’s delegate;
 - (b) where a procurement project is one hundred thousand dollars or greater in value but less than two hundred and fifty thousand dollars —



- (i) a written business case shall be submitted in a format specified by the Chief Officer or Chief Executive Officer of the initiating entity;
 - (ii) the business case shall be submitted for review to the Entity Procurement Committee by the Head of Department;
 - (iii) the Chief Officer or Chief Executive Officer, on the advice of the Entity Procurement Committee and supported by the written business case review, may initiate procurement, in line with the approved business case and all appendices;
 - (iv) the business case review conducted by the Entity Procurement Committee shall be recorded in a format specified by the Director of the Central Procurement Office; and
 - (v) the business case shall be retained in a file in the entity along with the procurement file;
- (c) where a procurement project is two hundred and fifty thousand dollars or greater in value but less than ten million dollars in value —
 - (i) a written business case shall be prepared in the format specified by the Director of the Central Procurement Office;
 - (ii) a written local impact assessment shall be prepared in the format specified by the Central Procurement Office and shall be appended to the business case;
 - (iii) the business case and the local impact assessment shall be submitted to the Entity Procurement Committee for review;
 - (iv) the business case review conducted by the Entity Procurement Committee shall be recorded in the format specified by the Director of the Central Procurement Office;
 - (v) the Chief Officer or Chief Executive Officer, on the advice of the Entity Procurement Committee and supported by the written business case review, may authorise procurement to proceed in line with the business case including all appendices; and
 - (vi) the business case and all supporting documentation shall be retained by the entity;
- (d) where a procurement project is ten million dollars in value or greater or is deemed to be high risk by the Chief Officer of the Ministry of Finance —
 - (i) a written business case shall be prepared in a format specified by the Director of the Central Procurement Office;
 - (ii) a written local impact assessment shall be prepared in the format specified by the Central Procurement Office and shall be appended to the business case;

- (iii) a written industry consultation report shall be submitted in the format specified by the Central Procurement Office and shall be appended to the business case;
- (iv) the business case and all appendices shall be submitted for review to the Public Sector Investment Committee, hereinafter referred to as the “PSIC”, by the Chief Officer or Chief Executive Officer;
- (v) following a review of the business case and all the required documentation, the PSIC shall assess the overall viability of the project and make recommendations to Cabinet as to whether or not the project should proceed as proposed;
- (vi) the PSIC report containing the recommendations shall be submitted to Cabinet by the Chief Officer or Chief Executive Officer;
- (vii) following consideration of the PSIC report referred to in subparagraph (vi), together with all of the submissions of the Chief Officer or Chief Executive Officer, the Cabinet shall determine whether the project receives its approval or not and provide notification of its decision;
- (viii) following notification of the Cabinet’s decision, if the Cabinet has approved the project, a copy of the Cabinet’s approval, the business case and all appendices shall be forwarded to the Public Procurement Committee by the Chief Officer;
- (ix) approval by the Cabinet shall serve as authorisation for the Chief Officer to proceed with project initiation, in line with the business case or any amendments requested by the Cabinet; and
- (x) the business case and all supporting documentation shall be retained by the entity.

Competitive process

4. Entities are required to undertake a competitive process when procuring any goods, services or works except where it can be demonstrated that the procurement meets the criteria for the direct award process set out in regulation 5.

Direct award process

5. (1) Subject to paragraphs (2), (3) and (4), a direct award process may be utilised where one or more of the following are met —
- (a) the goods, services or works are valued at less than ten thousand dollars;
 - (b) the goods or services are not competitive products and are only available from a single supplier;
 - (c) the goods or services are required to —



- (i) match an existing brand of equipment for compatibility (including where the goods are replacement parts); or
 - (ii) comply with established entity specifications and standards, and are available from only one supplier;
- (d) the goods or services are required to meet physical design or quality specifications and are available from only one supplier;
- (e) the goods or services are of a confidential or privileged nature and the disclosure through a competitive process is likely to compromise defence, security, public safety, or is likely to cause economic disruption or is otherwise contrary to the public interest;
- (f) construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographical limitations on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and premixed concrete or similar materials for use in the construction or repair of roads;
- (g) no compliant bids have been received in response to a competitive process made in accordance with the *Procurement Act, 2016 [Law 47 of 2016]* and these Regulations;
- (h) it can be demonstrated that only one supplier is able to meet the requirements of a procurement project;
- (i) the goods or services that are being procured are from charitable and philanthropic institutions, or are produced by the labour of persons who are inmates in the prisons or persons with disabilities;
- (j) the goods or services are being procured from an entity that operates an entertainment, sporting, convention or similar event in order that the procuring entity may comply with a commercial agreement containing provisions that may be in conflict with the *Procurement Act, 2016 [Law 47 of 2016]* and these Regulations;
- (k) retaining the services of legal counsel in exceptional circumstances for the purpose of providing legal advice, opinion or representing an entity involved in litigation, arbitration, mediation or any other legal proceedings;
- (l) **Repealed** by regulation 4(a)(ii) of the *Procurement (Amendment) Regulations, 2021 [SL 66 of 2021]*.
- (m) the prototypes being procured are related to research, experiment, study or original development (not including subsequent purchases); or
- (n) the purchase of goods is made possible through exceptionally advantageous circumstances as a result of the supplier's bankruptcy or receivership.

- (2) Every request for a direct award shall be in writing and indicate the relevant basis for the request as set out in paragraph (1).
- (3) A request for a direct award —
 - (a) with a procurement value of less than one hundred thousand dollars requires the approval of the Chief Officer;
 - (b) with a procurement value of between one hundred thousand dollars and two hundred and fifty thousand dollars requires the endorsement of the Entity Procurement Committee prior to submission for approval to the Chief Officer or Chief Executive Officer; and
 - (c) with a procurement value over two hundred and fifty thousand dollars, requires the endorsement of the Public Procurement Committee prior to submission for approval to the Chief Officer or Chief Executive Officer.
- (4) Public notification of direct award contracts or purchases greater than ten thousand dollars must be posted on the web site designated by the Central Procurement Office within thirty days of the contract award or purchase date, as the case may be, and set out the following —
 - (a) the name of the entity;
 - (b) the name of the contractor or vendor, as the case may be;
 - (c) the date of award or purchase;
 - (d) a brief description of the goods or services being procured or purchased; and
 - (e) the total value of the contract or the purchase.

Public notice of opportunity

- 6. (1) Every entity shall provide a public notice of opportunity of all procurement projects with a value of one hundred thousand dollars or greater by publishing the notice on the website designated by the Central Procurement Office except where restricted tendering is used in accordance with regulation 7(2).
- (2) Further to the notice under paragraph (1), an entity may publish an additional notice of opportunity in a newspaper that is circulated in the Islands and that is easily accessed by suppliers in the Islands.
- (3) A notice of opportunity shall be published for a minimum period of fifteen working days before the closing date of the competition.
- (4) A notice of opportunity shall provide the following information —
 - (a) a brief description of the procurement;
 - (b) the location where further information may be obtained;
 - (c) the conditions for obtaining such information, if any;
 - (d) the location and method for submitting bids;



- (e) the deadline for the submission of a bid; and
- (f) a statement that the procurement is subject to the *Procurement Act, 2016 [Law 47 of 2016]* and these Regulations.

Competitive procurement methods

7. (1) Subject to paragraph (2), an entity shall conduct a competitive procurement process by means of one of the following methods of procurement as specified in the policy of the Central Procurement Office —
- (a) request for quotations;
 - (b) request for proposals without negotiation;
 - (c) two-stage tendering;
 - (d) requests for proposals with dialogue;
 - (e) request for proposals with consecutive negotiations; and
 - (f) competitive negotiations.
- (2) An entity shall conduct procurement by means of open tendering except when restricted tendering can be justified where —
- (a) the subject matter of the procurement, by reason of its highly complex or specialised nature, is available only from a limited number of suppliers or contractors; or
 - (b) the value of the procurement is below one hundred thousand dollars and a minimum of three quotes are available from local suppliers.
- (3) Where restricted tendering is used in accordance with paragraph (2)(a), it shall be preceded by pre-qualification proceedings as specified by regulation 8.
- (4) An entity shall conduct procurement under this regulation in accordance with the policy and procedures established by the Central Procurement Office.
- (5) A procuring entity may use a method of procurement in accordance with paragraphs (6) through (12).
- (6) A procuring entity may engage in procurement by means of a request for quotations —
- (a) for the procurement of readily available goods or services that are not uniquely designed, produced or provided to a particular description of the procuring entity; and
 - (b) for which there is an established and competitive market.
- (7) A procuring entity may engage in procurement by means of a request for proposals without negotiation —
- (a) where the procuring entity needs to consider the financial aspects of proposals separately; and

- (b) only after completion of examination and evaluation of the technical, qualitative and performance characteristics of the proposals.
- (8) A procuring entity may engage in procurement by means of two-stage tendering where —
- (a) the procuring entity assesses that discussions with suppliers or contractors are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with the detail required, and in order to allow the procuring entity to obtain the most satisfactory solution to its procurement needs; or
 - (b) tendering was engaged in but no bids were presented or the procurement was cancelled by the entity and, in the judgement of the Chief Officer or Chief Executive Officer, engaging in new open tendering or other procurement method would be unlikely to result in a procurement contract.
- (9) A procuring entity may engage in procurement by means of a request for proposals with dialogue where —
- (a) it is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement and the procuring entity assesses that dialogue with suppliers or contractors is needed to obtain the most satisfactory solution to its procurement needs;
 - (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
 - (c) the procuring entity determines that the selected method is the most appropriate method of procurement for the protection of essential security interests of the Islands; or
 - (d) open tendering was engaged in but no bids were presented or the procurement was cancelled by the procuring entity and, in the opinion of the Chief Officer or Chief Executive Officer, engaging in new open tendering or any other procurement method would be unlikely to result in a procurement contract.
- (10) A procuring entity may engage in procurement by means of request for proposals with consecutive negotiations where the procuring entity —
- (a) needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the technical, qualitative and performance characteristics of the proposal; and
 - (b) determines that consecutive negotiations with suppliers or contractors are needed to ensure that the financial terms and conditions of the procurement contract are acceptable to the entity.



- (11) A procuring entity may engage in competitive negotiations where the procuring entity determines that the use of any other competitive method of procurement is not appropriate for the protection of essential security interests of the Islands.
- (12) A procuring entity may include an electronic reverse auction in a procurement method listed in paragraph (1) under the following conditions —
 - (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
 - (b) there is a competitive market of suppliers or contractors and it is anticipated that the suppliers or contractors will qualify to participate in the electronic reverse auction thereby ensuring effective competition; and
 - (c) the criteria to be used by the procuring entity in determining the successful submission are quantifiable.

Pre-qualification

8. (1) An entity may engage in pre-qualification proceedings, in accordance with the policy and procedure established by the Central Procurement Office, with a view to identifying suppliers that are qualified prior to procurement.
- (2) A pre-qualification process is permissible under the following conditions —
- (a) **Repealed** by regulation 7 of the *Procurement (Amendment) Regulations, 2021 [SL 66 of 2021]*.
 - (b) **Repealed** by regulation 7 of the *Procurement (Amendment) Regulations, 2021 [SL 66 of 2021]*.
 - (c) the notice of opportunity is published in a similar manner as a notice of opportunity under regulation 6;
 - (d) the assessment criteria are disclosed in the notice of opportunity and request for qualifications; and
 - (e) the assessment criteria include —
 - (i) the professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the contract;
 - (ii) the ethical and other standards applicable in the Islands;
 - (iii) the requirement that the supplier must have the legal capacity to enter into the contract;
 - (iv) the requirement that the supplier —
 - (A) is not insolvent, in receivership, bankrupt or being wound up;
 - (B) is not being administered by a court or a judicial officer;
 - (C) has not suspended its business activities forcibly or otherwise,

and is not the subject of legal proceedings for any of the foregoing;

- (v) the requirement that the supplier has fulfilled its obligations to pay pensions and medical benefits in accordance with the laws of the Islands; and
 - (vi) the requirement that neither the supplier nor its directors or officers have been convicted of any criminal offence related to —
 - (A) professional misconduct;
 - (B) the making of false statements or misrepresentations as to qualifications to enter into a procurement contract within a period of five years preceding the commencement of the pre-qualification process; or
 - (C) have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.
- (3) An entity may use pre-qualification in either of the two ways set out in subparagraphs (a) and (b) and in accordance with the policy and procedure established by the Central Procurement Office, that is, either —
- (a) as a stand-alone process for a specific project resulting in a list of pre-qualified suppliers eligible for a secondary competitive process; or
 - (b) as an ongoing process to establish and maintain a framework agreement for repetitive or indefinite future requirements during a given period of time.

Framework agreements

9. An entity may establish a framework agreement, in accordance with the policy established by the Central Procurement Office, under the following conditions —
- (a) the need for the subject matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time; or
 - (b) by virtue of the nature of the subject matter of the procurement, the need for that subject matter may arise on an urgent basis during a given period of time.

Market research methods

10. (1) In order to inform the assessment of the appropriate method of procurement, an entity may, in accordance with the policy and procedure established by the Central Procurement Office, undertake formal non-binding market research through —
- (a) a Request for Information; or
 - (b) a Request for Expression of Interest.



- (2) An entity shall not award a contract as a direct result of either a Request for Information or a Request for Expression of Interest without having undertaken one of the methods of procurement set out in regulation 7.

Specifications

- 11.** (1) The entity shall draft clear, detailed specifications and business requirements for each procurement project and such specifications shall include any or all of the following components —
- (a) physical characteristics;
 - (b) functional, performance or expected results;
 - (c) quality characteristics defined by recognised, third-party standards bodies; and
 - (d) intended use descriptors such as consumer grade, industrial grade, medical or laboratory grade, or suitability for use under extreme conditions.
- (2) When developing specifications, the entity shall ensure that —
- (a) the specifications are not written in a manner that unduly restricts suppliers from bidding;
 - (b) the specifications are written in a manner that encourages open, fair and transparent competition;
 - (c) the specifications are generic and non-branded unless established through a formal standard-setting exercise as prescribed by the policy established by the Central Procurement Office, except that where there is no other way to describe a specification, trade marks or brands may be employed by way of reference, but shall not be used as the specification itself;
 - (d) any specific requirement for contract performance security, if such security is necessary;
 - (e) the specifications contain all information that goes to a bidder's decision to submit a bid or calculate proposed pricing in the competition document, for example, specific site restrictions or conditions, engineering reports or any other factors that a bidder should know prior to submitting a bid; and
 - (f) the specifications contain any legal requirements including any indemnification, insurance requirements or any other legal requirements affecting the delivery of the goods or services in the competition document.

Cancellation of procurement proceedings

- 12.** (1) An entity may cancel a procurement project —
- (a) at any time prior to the acceptance of the successful bid; or
 - (b) after the successful bid is accepted under the circumstances referred to in regulation 16(10).

- (2) An entity shall not open any bids following a decision to cancel the procurement.
- (3) The decision of the procuring entity to cancel the procurement project and the reasons for the decision shall be included in the record of the procurement proceedings.
- (4) The decision to cancel a procurement project shall be promptly communicated to any supplier that presented a bid and the entity shall promptly publish a notice of the cancellation in the same manner and place in which the original information regarding the procurement project was published, and return any tenders or proposals that remain unopened at the time of the decision to the suppliers that presented them.
- (5) Except where the cancellation of the procurement project is a consequence of unjustifiable delay on the part of an entity, the entity shall not be liable to suppliers that have presented bids where the cancellation of the procurement project was carried out in accordance with paragraph (1).

Competitive process and management

13. (1) An entity shall appoint one individual to be the designated contact person for suppliers for the duration of the procurement project and notice of the designated individual and the communication protocol shall be disclosed in the competition document.
- (2) Any other individual, besides the person designated in accordance with paragraph (1), who receives inquiries from a supplier shall immediately direct the supplier to the designated contact person and refrain from any further communication with the supplier for the duration of the procurement project.
- (3) The entity shall respond in a timely manner to any request for clarification submitted by a supplier within the time specified in the bid document and prior to the deadline for presenting bids.
- (4) The entity shall, without identifying the source of the request, communicate the clarification to all suppliers to which the entity has provided the original competition documents.
- (5) At any time prior to the deadline for presenting bids, the entity may for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, modify the competition documents by issuing an addendum which shall apply to every supplier.
- (6) The addendum under paragraph (5) shall be communicated promptly to every supplier to whom the entity had provided the competition documents.
- (7) If, as a result of a clarification or modification issued in accordance with this regulation, the information published when first soliciting the participation of suppliers in the procurement proceedings becomes materially inaccurate, the entity shall cause the amended information to be published in the same manner



and place in which the original information was published and shall extend the deadline for presentation of bids for such reasonable period as affords suppliers enough time to review, acknowledge and incorporate the addendum into the bid.

- (8) Bids with an estimated value of over two hundred and fifty thousand dollars, which are submitted through the electronic procurement system which is designated by the Central Procurement Office, shall be opened by the Director of the Central Procurement Office or the delegate of the Director of the Central Procurement Office.

Procurement documentation

14. (1) An entity shall maintain proper records for all stages of the procurement project and store all bids and contracts in its possession in a secure location that is accessible to only those persons in the entity who are authorised by the Chief Officer or the Chief Executive Officer, as the case may be, or a person who is otherwise authorised by law.
- (2) An entity shall retain and safely store the following records for each procurement project in accordance with the requirements of the *National Archive and Public Records Act (2015 Revision)* and regulation 44 of the *Financial Regulations (2022 Revision)* —
- (a) the approved copy of all issued competition documents;
 - (b) the business case, together with evidence of all necessary approvals;
 - (c) all communications with bidders or potential bidders;
 - (d) every addendum issued;
 - (e) **Repealed** by regulation 9 of the *Procurement (Amendment) Regulations, 2021 [SL 66 of 2021]*.
 - (f) original bids received from bidders;
 - (g) all records of the evaluation process, including individual evaluator notes and scores;
 - (h) a copy of communications with the Public Procurement Committee and the official minutes of the Entity Procurement Committee's deliberations;
 - (i) records of bidder debriefing carried out in accordance with regulation 17; and
 - (j) all communications of the entity with regard to bid disputes or complaints.

Exclusion from the procurement process

15. (1) A Chief Officer or Chief Executive Officer of an entity may exclude from a procurement project a supplier, an agent of the supplier or any person who is in any way collaborating with the supplier in respect of the procurement project where —

- (a) the entity finds at any time that the information submitted by the person concerning the experience or the qualifications of the supplier is false or constitutes a misrepresentation;
 - (b) the person offers, gives or agrees to give, directly or indirectly, to any current or former officer, employee, or board member of an entity or other governmental authority —
 - (i) a gratuity in any form;
 - (ii) an offer of employment; or
 - (iii) any other thing of service or value,so as to influence an act or decision of, or procedure followed by, the entity in connection with the procurement process;
 - (c) the person has an unfair competitive advantage which cannot be mitigated or an undisclosed conflict of interest that would be likely to impair the integrity of the procurement process;
 - (d) the person engages in lobbying or communicating with anyone other than the designated contact person or otherwise violates the communication protocol established in the competition document while the procurement process is underway;
 - (e) the information submitted concerning the qualifications of the supplier is materially inaccurate or materially incomplete and the supplier fails to remedy deficiencies promptly upon request by the entity; or
 - (f) the entity has determined that the price, in combination with other constituent elements of the bid, is abnormally low in relation to the subject matter of the procurement and raises concerns with the entity as to the ability of the supplier that presented that bid to perform the procurement contract, provided that the entity has taken the following actions —
 - (i) requested in writing from the supplier details of the bid that gives rise to concerns as to the ability of the supplier to perform the procurement contract as proposed; and
 - (ii) taken account of any information provided by the supplier following the request under subparagraph (i) and the information included in the bid, but continues, on the basis of such information, to hold concerns.
- (2) Any decision of the entity to exclude a supplier, an agent of the supplier or any person who is in any way collaborating with the supplier in respect of the procurement project shall be communicated promptly in writing to the person being excluded and a record of the reasons for the exclusion included in the procurement project file.



Acceptance of bids

- 16.** (1) An entity shall, where accepting a bid or awarding a contract or making a purchase, act in accordance with the following approval guidelines —
- (a) for procurement projects with a value of less than one hundred thousand dollars, the approval of the relevant Head of Department and the Chief Officer or Chief Executive Officer, as the case may be, is required;
 - (b) for procurement projects with a value of one hundred thousand dollars or greater but less than two hundred and fifty thousand dollars, the Chief Officer or Chief Executive Officer, as the case may be, may approve on the advice of the Entity Procurement Committee; and
 - (c) for procurement projects with a value of two hundred and fifty thousand dollars or greater, the Chief Officer or Chief Executive Officer, as the case may be, may approve on the advice of the Public Procurement Committee.
- (2) An entity shall accept the successful bid unless —
- (a) the supplier presenting the successful bid is excluded in accordance with regulation 15(1);
 - (b) the procurement is cancelled in accordance with regulation 12; or
 - (c) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the *Procurement Act, 2016 [Law 47 of 2016]* and these Regulations.
- (3) Immediately after the successful bid is determined, the entity shall dispatch the notice of acceptance of the successful bid to the supplier that presented the bid, subject to the contract and approval requirements being met.
- (4) The entity shall promptly issue a regret letter to every unsuccessful bidder containing the following information —
- (a) the name of the successful bidder;
 - (b) the total contract value; and
 - (c) instructions for obtaining a debriefing from the entity in accordance with regulation 17.
- (5) Unless a written procurement contract or approval by another authority is required, a procurement contract in accordance with the terms and conditions of the successful bid enters into force when the notice of acceptance is dispatched to the supplier concerned provided that the notice is dispatched while the bid is still in effect.
- (6) Where the competition documents require the supplier whose bid is accepted to sign a written procurement contract conforming to the terms and conditions of the accepted bid —

- (a) the entity and the supplier shall sign the procurement contract within a reasonable period of time after the notice of acceptance is dispatched to the supplier;
 - (b) unless the competition documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract enters into force when the contract is signed by the supplier and by the entity; and
 - (c) between the time when the notice of acceptance is dispatched to the supplier and the entry into force of the procurement contract, neither the procuring entity nor that supplier shall take any action that may frustrate the procurement contract.
- (7) Where the competition documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract shall not enter into force before the approval is given.
- (8) The competition documents shall state the estimated period of time following dispatch of the notice of acceptance for obtaining the approval of the other authority.
- (9) The failure to obtain the approval within the time specified in the competition documents shall not extend the period of effectiveness of submissions specified in the solicitation documents or the period of effectiveness of any bid security required.
- (10) If the supplier whose bid has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract within the time specified, the entity may, subject to paragraph (11), either cancel the procurement or select the next successful bid from among those remaining in effect.
- (11) Before arriving at a decision, the entity under paragraph (10) shall consider —
- (a) the nature of the goods or services being procured;
 - (b) fluctuations in price of the goods or services being procured;
 - (c) the period of time that has elapsed since the acceptance of the bid; and
 - (d) the viability of the remaining bids.

Debriefing bidders

- 17.** An entity shall provide debriefing information to any unsuccessful bidder that makes a request for such information under the following conditions —
- (a) that the debriefing is carried out in accordance with the policy established by the Central Procurement Office;
 - (b) that the debriefing is carried out within such reasonable period of time, as may be specified by the Central Procurement Office, from the date of the request for a debriefing was received;



- (c) that the debriefing may be provided in writing, by phone or video conference or in person in the Islands;
- (d) that the debriefing is limited to the rationale for the non-acceptance of the bid while taking care to protect the confidentiality of the other bids;
- (e) that the debriefing provides the bidder with such information that would enable the bidder to understand the basis on which the bid was not accepted; and
- (f) that the request by the unsuccessful bidder was made within five business days of notification that the unsuccessful bidder's bid was not accepted.

Complaints

- 18.** Within five business days of debriefing in accordance with regulation 17, a bidder may file a complaint regarding the administration of the procurement process using the established complaints process of the entity concerned.

Publication of contract award

- 19.** (1) The entity shall publish a notice of the award of the procurement contract on the website designated by the Central Procurement Office within thirty days of the entry into force of the contract.
- (2) The posted contract award information shall include —
- (a) the name of the entity;
 - (b) the procurement number;
 - (c) a brief description of the goods or services being procured;
 - (d) the name of the successful bidder;
 - (e) the date of contract award; and
 - (f) the total contract value.
- (3) Paragraphs (1) and (2) are not applicable where the total procurement value is less than ten thousand dollars.
- (4) The entity shall publish a notice of an award where the total procurement value is less than ten thousand dollars within one year of the award.

Economic development preference of the Islands

- 20.** (1) An entity shall give consideration in the project planning phase to the economic and community impact as well as the social benefits arising from the procurement project by —
- (a) informing the local supplier community of upcoming procurement projects as soon as the budget is approved;

- (b) ensuring that all procurement projects are structured so as to provide opportunity for the small and medium sized suppliers operating in the Islands to participate;
 - (c) avoiding the use of restrictive specifications and unnecessary requirements which may arbitrarily preclude capable suppliers from participating;
 - (d) using plain language and simplifying procurement documentation;
 - (e) using commercially reasonable terms and conditions; and
 - (f) inviting interested suppliers to pre-procurement briefings as a group so as to provide an opportunity to clarify the procurement requirements, receive input into the specifications and process and receive questions on specific issues.
- (2) For all procurement projects with a value of two hundred and fifty thousand dollars or greater, an entity shall, where the project is not restricted to local suppliers —
- (a) include in all competitive bid documents the request for suppliers to submit a local industry impact statement as part of the bid submission in the format specified by the Central Procurement Office;
 - (b) include the review of all submitted local industry impact statements in the procurement evaluation process through the inclusion of a specific evaluation criterion; and
 - (c) in accordance with regulation 19, upon the entry into force of the procurement contract or conclusion of a framework agreement, publish the successful bidder's local industry impact statement.
- (3) Where an entity considers it appropriate, it may include in the bid documents for procurement projects valued at less than two hundred and fifty thousand dollars a request for suppliers to submit a Local Industry Impact Statement as part of the bid submission in the format specified by the entity.
- (4) An entity may consider disaggregating a major project into smaller lots or constituent parts where —
- (a) the primary purpose of the disaggregation is to address one or more of the following situations —
 - (i) the pre-procurement local impact assessment or industry consultation has documented a lack of local capacity or resources to bid on the aggregated project;
 - (ii) the reduction in risk of a single supplier's failure or poor performance on a major project;
 - (iii) the increase of competition and avoidance of a likely single source bid;
 - (iv) the promotion of innovation by enlarging the potential supplier base;



- (v) the maximisation of the benefit to the greatest number of small and medium sized local suppliers without compromising value for money;
- (b) the recommendation to disaggregate certain portions and procure separately is clearly detailed in the business case in accordance with regulation 3; and
- (c) the costs associated with disaggregation do not outweigh the benefits received and value for money is achievable.

Publication in consolidated and revised form authorised by the Cabinet this 11th day of January, 2022.

Kim Bullings
Clerk of Cabinet

ENDNOTES

Table of Legislation history:

SL #	Law/Act #	Legislation	Commencement	Gazette
66/2021		Procurement (Amendment) Regulations, 2021	29-Sep-2021	LG53/2021/s2
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
16/2018		Procurement Regulations, 2018	2-May-2018	GE35/2018/s1



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