

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (PROCUREMENT METHODS AND
PROCEDURES) REGULATIONS, 2021**

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Legal Notice No.

REPUBLIC OF TRINIDAD AND TOBAGO

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY ACT, 2015**

REGULATIONS

Made by the Minister of Finance on the recommendation of the Office of Procurement Regulation under section 63 of the Public Procurement and Disposal of Public Property Act and subject to affirmative resolution of Parliament

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (PROCUREMENT METHODS AND
PROCEDURES) REGULATIONS, 2021**

**PART I
PRELIMINARY**

1. These Regulations may be cited as the Public Procurement and Disposal of Public Property (Procurement Methods and Procedures) Regulations, 2021. Citation

2. In these Regulations – Interpretation

“Accounting Officer” means a person appointed by the Treasury and charged with the duty of accounting for any service in respect of which moneys have been appropriated by the Constitution or by Parliament, or any person to whom issues are made from the Exchequer Account in accordance with the Exchequer and Audit Act, or the Chief Executive Officer or any other person holding the equivalent position in a procuring entity; Chap. 69:01

“guidelines” means guidelines issued by the Office pursuant to section 13(c) of the Act;

“Office” means the Office established pursuant to section 9 of the Act; and

“procurement officer” means the person referred to in section 61 of the Act.

Strategic
procurement

3. The named procurement officer shall be suitably qualified, experienced and competent to prepare the annual procurement plan for the approval of the Accounting Officer or equivalent in a public body.

Thresholds

4. (1) The Office may, by guidelines, establish different thresholds to be used for different methods of procurement.

(2) A procuring entity may establish specific threshold values in special guidelines and handbooks.

(3) For the purpose of calculating thresholds, the total value of a procurement shall be estimated as follows: as stated in items (a) - (d), below, or as from time to time may be specified by the Office:

- (a) in the case of the procurement of works, the total value of works and related services required to fulfil an economic and technical function shall be taken together, in order to ensure transparency of the total expenditure;
- (b) in the case of the procurement of recurring goods or services which are to be awarded over a given period of time, the total aggregate value of the contracts with similar characteristics to be awarded within twelve (12) months following the first award;
- (c) in the case of a framework agreement, the estimated value of all contracts to be awarded under the framework agreement; and
- (d) where options are specified, the estimated value of the options are to be included in the total estimation.

(4) The splitting of procurement requirements, which are broadly similar or related, shall not be permitted unless the split offers clear and calculable economic or technical advantages.

(5) A procuring entity may divide the requirements allocated to a procurement method into separate lots where it is anticipated that the award of several separate contracts would result in the best overall value for the procuring entity.

(6) Where the requirements of a procurement are divided into lots which may result in separate contracts, the choice of the procurement method shall be determined by the estimated value of each individual lot and not the total value of all the lots.

PART II OPEN BIDDING

5. (1) Without limitation to Regulation 29, a public body shall utilise open bidding, unless the complexity of the procurement or market conditions renders another method more appropriate for achieving the best value for money. Open bidding

(2) Open bidding may be preceded by a pre-qualification or pre-selection process set out in the Public Procurement and Disposal of Public Property (Pre-Qualification and Pre-Selection) Regulations, 2021. These procedures are appropriate for large-scale, technically complex and high value projects for goods, works or non-consultancy services.

(3) A procuring entity may engage in open bidding by means of two stage tendering in appropriate cases such as –

- (a) where, due to the nature and complexity of the subject of the procurement, the procuring entity's needs would be better met by allowing suppliers or contractors to offer customized solutions that may vary in the manner in which they meet or exceed the requirements of the bidding document; or
- (b) for the procurement of large complex works or services or high value projects where it may be undesirable or impractical to prepare complete technical specifications in advance or the detail design is of a high cost.

6. (1) Two stage bidding shall be conducted in the following two stages: Two stage bidding

- (a) first stage – the bidding document shall request a supplier or contractor to present an initial tender containing his proposal without a tender price; and
- (b) second stage – the procuring entity shall invite all suppliers or contractors, whose

initial tender was not rejected during the first stage, to present a final tender with a contract price in response to a revised set of terms and conditions of the procurement.

(2) The bidding document may solicit tenders relating to –

- (a) the technical, quality or performance characteristics of the subject matter of the procurement;
- (b) the contractual terms and conditions of the supply of the subject matter of the procurement; and
- (c) where relevant, the professional and technical competence and qualifications of the supplier or contractor.

(3) The procuring entity may, during the first stage, engage in discussions with a supplier or contractor whose initial tender has not been rejected on any aspect of his initial tender.

(4) Where the procuring entity engages in discussions with a supplier or contractor, it shall extend to all suppliers or contractors whose initial tender has not been rejected, an equal opportunity to engage in discussions.

(5) Pursuant to discussions with a supplier or contractor, the procuring may revise the relevant terms and conditions of the procurement, but not to the extent that the revision would modify the subject matter of the procurement.

(6) The revision of the terms and conditions of a procurement under sub-regulation (5) may refine aspects of the description of the subject matter of the procurement by –

- (a) deleting or modifying an aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding a new characteristic that conforms to the technical requirements of these Regulations; and
- (b) deleting or modifying a criterion for examining or evaluating initial tenders and adding a new criterion, but only to the extent that the deletion, modification or addition is necessary as a result of a

deletion, modification or addition made under paragraph (a).

(7) Where a deletion, modification or addition is made pursuant to sub-regulation (6), it shall be communicated to the suppliers or contractors in the invitation to present final tenders.

(8) A supplier or contractor who does not wish to present a final tender may withdraw from the procurement proceedings without forfeiting his tender security, where he was required to provide a tender security.

(9) Final tenders shall be evaluated in order to ascertain the successful tenderer.

7. (1) Where open bidding is to be utilized, a procuring entity shall advertise an invitation to bid nationally, or in appropriate cases, regionally or internationally.

Procedures for open bidding

(2) An individual, company or joint venture or consortium which is legally recognised and is capable of supplying goods, works or services being sought shall be given an equal opportunity of making a submission.

(3) An invitation may normally be advertised regionally or internationally when –

- (a) the required goods, works or services are not available from qualified, competent and experienced providers in Trinidad and Tobago at competitive prices; or
- (b) it may be necessary to fulfil the terms and conditions of a regional or international treaty or agreement.

(4) The invitation issued pursuant to sub-regulation (1) and an invitation to pre-qualify, shall –

- (a) be published in at least one newspaper in daily circulation in Trinidad and Tobago and on the website of the procuring entity and, where available, on a website provided by the Office; and
- (b) in the case of a regional or international procurement, be published in accordance with paragraph (a) and in a regional or international newspaper or trade

magazine, published in the English language, with adequate circulation to attract foreign competition and/or on widely read internet websites.

PART III LIMITED BIDDING

Limited bidding

8. (1) A procuring entity may engage in limited bidding to restrict the number of suppliers or contractors who are invited to make a submission where –

- (a) the subject of the procurement, by reason of its highly complex or specialized nature, is available from a limited number of suppliers or contractors; or
- (b) the time and cost required to examine and evaluate a large number of submissions would be disproportionate to the value of the subject of the procurement.

(2) Limited bidding shall be conducted in accordance with the pre-selection criteria.

Procedures for limited bidding

9. (1) Where a procuring entity engages in limited bidding it shall include a justification for the reason for selecting the method in its record of procurement proceedings.

(2) Where a procuring entity decides to engage in limited bidding the procedures of an open bidding method, set out in Part II, shall apply save and except the requirement for the advertisement of the invitation to bid and where appropriate the invitation to pre-qualify.

PART IV REQUEST FOR QUOTATIONS

Request for quotations

10. A request for quotations may be utilized by a procuring entity for the procurement of readily available, relatively low priced, goods or services –

- (a) which are not specially produced or provided to the particular specifications of the procuring entity; and
- (b) for which there is an established market.

11. (1) Where a request for quotations is to be utilized, a procuring entity shall, using standard documents it prepared, request quotations, in writing, from as many suppliers or contractors as practicable, but not less than least three suppliers or contractors.

Procedure for requests for quotations

(2) Where only two suppliers or contractors are available the procuring entity shall include in its record of procurement proceedings a justification for requesting quotations from less than the minimum three suppliers or contractors.

(3) A written request for quotations shall contain a clear statement of the procuring entity's requirements with respect to –

- (a) the quality, quantity, terms and time of delivery of the subject of the procurement; and
- (b) other special requirements.

(4) Suppliers or contractors should be given adequate time, usually no less than five working days, to prepare and submit their quotations.

(5) A supplier or contractor shall only be permitted to submit one quotation and the quotation shall not be altered or negotiated.

PART V SINGLE SOURCE SELECTION

12. (1) For the purposes of this Part “single source selection” means a non-competitive method of procurement whereby a procuring entity engages one supplier or contractor for a procurement even though other suppliers or contractors are available.

Single source selection

(2) Single source selection shall be used –

- (a) where the procurement represents a natural continuation of previous procurement and –
 - (i) the previous procurement was based on a competitive process;
 - (ii) the work was carried out by the supplier or contractor within the twelve months immediately preceding the decision to engage in a procurement;

- (iii) the supplier or contractor have performed satisfactorily under the previous procurement;
- (iv) the contract price is reasonable; and
- (v) no advantage would be obtained by the procuring entity by engaging in a competitive procurement method;
- (b) where the subject of the procurement is a good which is a spare or replacement part for equipment in use by the procuring entity;
- (c) where the subject of the procurement is a good which is similar to equipment in use by the procuring entity and single source selection will be more cost effective; or
- (d) where the subject of the procurement is to be delivered or carried out by a supplier or contractor who is in possession of relevant information and data and –
 - (i) it will be more cost effective for the supplier or contractor to deliver the goods or perform the required works or services;
 - (ii) the supplier or contractor performed satisfactorily under the previous contract;
 - (iii) no advantage would be obtained by the procuring entity by engaging in a competitive procurement method; and
 - (iv) the price is reasonable;
- (e) where a procuring entity wishes to procure the provision of goods, works or services which is usually provided by a public body; and
- (f) in cases of emergency.

Procedures for single source selection

13. Where a public body decides to engage in single source selection it shall –

- (a) gain approval after sufficiently detailing the justification for the need to engage in single source selection;
- (b) request a proposal or contract price quotation from the supplier or contractor ; and

- (c) engage in negotiations with the supplier or contractor unless the negotiations would not be feasible in the circumstances.

**PART VI
SOLE SOURCE SELECTION**

14. (1) For the purposes of this Part, “sole source selection” refers to a method of procurement to be utilized where only one supplier or contractor is capable of providing the subject of a procurement. Sole source selection

(2) Sole source selection shall be used in the following exceptional circumstances:

- (a) where –
 - (i) a procuring entity engaged in an open bidding or restricted bidding method and there were no successful submissions; and
 - (ii) subsequently engaging in the same method, with no substantial modification to the bidding document, is expected to produce the same result;
- (b) where a resulting procurement contract can only be performed by a particular supplier or contractor due to –
 - (i) technical or artistic reasons; or
 - (ii) reasons connected with the protection of exclusive rights,and no reasonable alternative or substitute exists;
- (c) where, due to reasons of extreme urgency brought about by unforeseen events not attributable to the procuring entity, the subject matter of the procurement cannot be obtained in a timely manner if an open bidding method or limited bidding method is utilized;
- (d) for the provision of additional goods or services by the supplier who provided the initial goods or services where –
 - (i) a change of supplier would compel the procuring entity to procure equipment or services which do not meet the compatibility

- requirements of existing equipment;
 - (ii) the separation of the services would cause significant inconvenience or substantial duplication of costs to the procuring entity; or
 - (iii) the contract for the additional goods or services is to be awarded no later than eighteen months after the original procurement contract and its total value would not exceed thirty percent of the value of the original procurement contract;
- (e) for the provision of additional services which:
- (i) were within the objectives of the original bidding document but not included in the initial procurement contract;
 - (ii) have, through unforeseen circumstances, become necessary to complete the services described in the bidding document; and
 - (iii) would not result in the award of a contract with a total value exceeding fifty percent of the value of the original procurement contract;
- (f) for the provision of services which consist of the repetition of similar services which conform to a basic project for which –
- (i) an initial procurement contract was awarded following an open bidding method or a selective procurement method; and
 - (ii) the procuring entity indicated in its publication of planned procurement activities that a limited bidding method may be used in awarding contracts for the provision of the new service;
- (g) for the procurement of a prototype or a first product or service which is developed at the request of a procuring entity in the course of, and for, a

- particular contract for research, experiment, study or original development; or
- (h) for the purchase of products on a commodity market.

15. (1) Where a procuring entity decides to engage in sole source selection its bidding document shall include the required quantities, technical specifications and contract terms and conditions.

Procedure for sole source selection

(2) The procuring entity shall review the submission it receives for conformity with the quantities, technical specifications and contract terms and conditions set out in the bidding document.

(3) The submission which complies with the requirements set out in the bidding document shall be reviewed by the procuring entity to determine whether the price is fair and competitive.

(4) Where the submission offers a price which exceeds the allocated budget of the procurement, the procuring entity may negotiate a price reduction.

PART VII ALTERNATIVE PROCURMENT METHODS

16. The Office shall set out in its Guidelines and Handbooks other alternative procurement methods and their conditions of use which may be utilised by a procuring entity.

Alternative procurement methods

PART VIII PROCUREMENT TECHNIQUES

17. (1) A procuring entity may establish a framework agreement if it is of the opinion that –

Framework agreements

- (a) the need for the goods, works or services, is expected to arise on a repetitive basis during a given period of time; or
- (b) the need for goods, works or services, due to their nature, may arise on an urgent basis during a given period of time.

Procedure for
framework
agreements

18. (1) Where a procuring entity decides to establish a framework agreement it shall be conducted in the following two stages:

- (a) the invitation of a supplier or contractor to be a party to the framework agreement, utilizing the open bidding method or limited bidding method; and
- (b) the award of a procurement contract under the framework agreement to a supplier or contractor who is a party to the agreement.

(2) A framework agreement shall contain –

- (a) the information which is necessary to allow the effective operation of the framework agreement;
- (b) information on how the framework agreement can be accessed;
- (c) information on how publications of forthcoming procurement contract under the framework agreement can be accessed;
- (d) the information specified elsewhere in this section; and
- (e) appropriate information regarding connection, where applicable.

(3) A procuring entity shall apply or negotiate a framework agreement in accordance with the guidance of the Office.

Electronic
reverse auction

19. (1) An electronic reverse auction shall only be utilized for the procurement of goods.

(2) A procuring entity may utilise an electronic reverse auction where –

- (a) it is feasible to formulate a detailed description of the subject matter of the procurement;
- (b) it is anticipated that there is a competitive market of qualified suppliers to participate in the electronic reverse auction to ensure effective competition; or

- (c) the criterion to be used to determine a successful submission is quantifiable and can be expressed in monetary terms.

20. (1) Where a procuring entity decides to engage in an electronic reverse auction it shall utilize the open bidding method up to the final stage preceding the award of the procurement contract and then engage in the electronic reverse auction to determine the lowest price.

Procedure for
electronic
reverse auction

- (2) An electronic reverse auction shall be based on –
 - (a) price, where the procurement contract is to be awarded to the lowest evaluated price; or
 - (b) price and other criteria specified to suppliers under Regulations 42 and 43, as applicable, where the procurement contract is to be awarded to the best value for money submission.

(3) The bidding document for an electronic reverse auction shall include –

- (a) a reference to the fact that the final stage will be conducted by way of an electronic reverse auction;
- (b) the mathematical formula that will be used in the evaluation procedure during the electronic reverse auction; and
- (c) instructions on how the electronic reverse auction can be accessed, including information regarding connection to the auction.

**PART IX
PROCUREMENT AND DISPOSAL ADVISORY
COMMITTEE**

21. (1) A procuring entity shall establish a Procurement and Disposal Advisory Committee (hereinafter referred to as “the Committee”).

Composition of
the Procurement
and Disposal
Advisory
Committee

- (2) The Committee shall comprise –
 - (a) Corporate Secretary/Head of Legal;
 - (b) Head of Finance;
 - (c) Subject Matter Expert;

(d) such other members as may be necessary.

(3) A member of the Committee may be sourced from another public body.

(4) A Senior Officer shall be appointed as the Secretary to attend all meetings of the Committee but shall not be a member of the Committee.

(5) The Committee shall review reports, recommendations for contract award and procurement proceedings and property disposal files to determine –

- (a) adherence to the Act and the Regulations;
- (b) adherence to the Handbook and Guidelines;
- (c) adherence to the approved procurement/disposal strategy; and
- (d) achievement of the objects of the Act.

(6) Where Committee is of the opinion that there is not adherence or achievement as set out in sub-regulations (5), it shall recommend the appropriate action to the procurement officer with a written explanation providing reason for its decision.

(7) The Committee shall cause the written explanation to be forwarded to the Accounting Officer for noting.

(8) Where there is an agreement, the Committee shall give the Accounting Officer a written recommendation which must be accompanied by the procurement proceedings file and property disposal file.

(9) A member of the Committee shall disclose his interest and not take part in the proceedings of the Committee where he –

- (a) is a member, director or shareholder of a company or other body corporate;
- (b) is a proprietor of or partner in a firm, or partnership;
- (c) is employed by or is otherwise a party to a contract for services;
- (d) has a financial interest in or relationship with someone;
- (e) is a relative of an individual,

being reviewed by the Committee.

**PART X
GENERAL**

22. (1) An invitation to tender or to re-qualify shall include
- (a) the identity and address of the procuring entity and the contact details of the person from whom further information can be obtained;
 - (b) the nature and timeframe of the procurement, including the place for delivery of the goods or services or the location of the works;
 - (c) the manner and cost of obtaining the bidding document, or, if applicable, the pre-qualification documents;
 - (d) the place and deadline for submissions or applications to pre-qualify;
 - (e) the documents specified in the Public Procurement and Disposal of Public Property (Pre-Qualification and Pre-Selection) Regulations, 2021; and
 - (f) such other information which the procuring entity requires.

Invitation to
tender/
Solicitation

(2) A procuring entity shall provide the bidding document, in an expeditious and non-discriminatory manner, to –

- (a) all suppliers or contractors who respond to the invitation to tender; or
- (b) in the case of pre-qualification, all suppliers or contractors who were pre-qualified.

(3) The price, if any, to be charged for the bidding document shall only reflect the cost of printing and distributing the document.

(4) The bidding document shall be ready for distribution prior to the publication of the procurement notice.

(5) The bidding period runs from the date of the first publication of the procurement notice until the deadline date for the making of submissions.

Submission
period

23. (1) In order to provide an equal opportunity to all suppliers or contractors, a procuring entity shall set a fixed period for making submissions.

(2) A supplier or contractor shall not be given advance notice.

(3) In determining the period for making submissions the procuring entity shall take into account –

- (a) the time required for the preparation of a tender, taking into consideration the level of detail required and the complexity of the tender;
- (b) the need, if any, for suppliers or contractors to submit certified legal documents or similar documents as part of their tender and the time required to obtain such documents;
- (c) the location of suppliers or contractors and the time required for obtaining the bidding document and making submissions to the procuring entity; and
- (d) restrictions, if any, relating to the time by which the goods, works or services are required.

(4) In order to preserve fairness during open bidding or limited bidding methods, a procuring entity shall comply with the following minimum periods for making submissions:

- (a) twenty working days where the open bidding method is utilized;
- (b) forty working days where the open bidding method is utilized and the invitations to tender are advertised regionally or internationally;
- (c) thirty working days for the submission of applications to pre-qualify;
- (d) twenty working days where the limited bidding method is utilized; and
- (e) thirty working days where the limited bidding method is utilized and invitations to tenders are advertised regionally or internationally.

24. (1) Bidding documents shall provide suppliers or contractors with all the information that they require in order to make a submission which is responsive to the needs of the procuring entity, in particular –

- (a) the nature and timeframe of the procurement, including but not limited to, the contractual terms of the procurement and the manner of entry into force of the contract;
- (b) the required qualifications of suppliers or contractors and the documents required to satisfy the requirements, except where a pre-qualification or pre-selection process is utilized;
- (c) information relating to site visits and pre-bid meetings, where applicable;
- (d) instructions for the preparation and submission of tenders, including the deadline for making submissions and, where applicable, the time and place for the opening of tenders;
- (e) the components to be reflected in the price, the currency in which the tender price may be stated, the currency and related exchange rate to be used for the comparison of tenders, and any applicable taxes;
- (f) the criterion and methodology for the evaluation of submissions and the selection of the successful supplier or contractor;
- (g) the limitation, if any, of participation in the procurement proceedings in order to promote local industry development and local content;
- (h) grouping of goods, works or services into lots and packages, where applicable, and the manner of evaluation of the lots and packages;
- (i) whether alternatives to the technical or contractual specifications would be considered and, if so, how the alternatives would be evaluated;
- (j) the required validity period of bids;

- (k) the number and acceptable form of a submission, performance or other security, where required;
- (l) the terms and conditions of the contract to be awarded; and
- (m) such other matters as may be required by the procuring entity.

(2) Where the open bidding or limited bidding method is utilized and the invitation to bid is advertised regionally or internationally the bidding documents shall indicate –

- (a) a supplier or contractors can express his tender, as well as his security document, in a currency widely used in international trade and stated in the bidding documents;
- (b) the use of general and special conditions of contract of a kind generally used in international trade; and
- (c) that the technical specifications shall, to the extent compatible with national requirements, be based on international standards.

(3) A procuring entity shall avail itself of standard bidding documents for all commonly procured items and make them available for all procurements.

Technical specifications in bidding or pre-qualification documents

25. (1) A procuring entity shall clearly specify in its bidding document its requirements with respect to the quality and quantity of goods, services or works, including any certification, testing methods or other means for evaluating the conformity of the performance of the contract to its requirements.

(2) A procuring entity shall ensure that its bidding documents and pre-qualification documents provide objective descriptive information which do not favour a particular supplier or contractor, manufacturer or brand, and include the desired performance or output requirements of the procurement, where possible.

Technical specifications

26. (1) In designing its technical specifications, a procuring entity shall include, where appropriate –

- (a) a full description of the requirements of the procurement to an appropriate level of detail;
- (b) a functional description of the requirements of the procurement, including any environmental or safety features;
- (c) the performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance of the contract can be assessed;
- (d) the inspection and testing requirements; and
- (e) any applicable standards.

(2) A reference in a technical specification to a standard is, where possible, a reference to a standard approved by the Trinidad and Tobago Bureau of Standards (hereinafter referred to as “the Bureau”) established under the Standards Act or similar agency responsible for setting applicable standards and in its absence, an international standard acceptable by the Bureau or similar agency.

Chap. 82:03

(3) (3) A procuring entity shall not require or make a reference to, in its technical specifications, a particular trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other way of describing the procurement, and words “such as” or “equivalent” are included in the specifications.

27. (1) A supplier or contractor may, in writing, seek from the procuring entity clarification of information contained in the bidding documents.

Clarification of bidding documents

(2) The procuring entity shall include in its bidding document –

- (a) the period within which a supplier or contractor may seek clarification of the information contained therein; and
- (b) the period within which the procuring entity shall respond to a request for clarifications.

(3) The procuring entity's response to a clarification shall be simultaneously provided, in writing, to all suppliers or contractors without identifying the source of the request.

(4) The procuring entity may modify its bidding document as a result of a result for clarification, or for any other reason, at any time prior to the deadline for the making of a submission.

(5) The procuring entity shall extend the deadline for making a submission where its modification of its bidding document requires that suppliers or contractors be given an opportunity to take the modification into account in preparing their submission.

Making
submissions

28. (1) A supplier or contractor is responsible for ensuring that his submission is delivered to the procuring entity in the manner specified in the bidding document prior to the deadline for the making of submissions.

(2) A supplier or contractor shall deliver his submission in the manner required by the procuring entity which may include delivery by hand, courier, messenger or by registered post in sealed envelopes to the addressee.

(3) A procuring entity may, in its bidding document, permit any method of making a submission, provided that the method allows for the confidentiality and security of submissions, including the prevention of the opening and reading of submissions prior to the deadline set out in the bidding document.

(4) Where a submission is received after the deadline for making a submission, the procuring entity shall return the unopened submission to the supplier or contractor, accompanied by an explanatory letter indicating the time and date of receipt of the submission.

(5) The procuring entity shall record the date and time of the receipt of a submission from each supplier or contractor.

Tender security

29. (1) A procuring entity may, in its bidding document, require a tender security, where appropriate, in order to deter irresponsible bids and encourage suppliers or contractors to fulfil the conditions of their tender.

(2) A procuring entity may, in its bidding documents, request the use of a tender securing declaration.

(3) Where a procuring entity requires a tender securing declaration, it shall, in its bidding document, provide the form of the tender securing declaration to be signed and the requirements for the signature.

(4) Where a procuring entity requires a tender security, it shall, in its bidding document, state the required format of the tender security and the form of payment acceptable to the procuring entity.

(5) The value of a tender security shall be expressed as a fixed amount, not exceeding two percent of the estimated value of the contract.

(6) A tender security shall be valid for the period specified in the bidding document, normally twenty-eight (28) working days beyond the expiry of the bid validity period.

(7) Where a tender security or tender securing declaration is required, it shall be included with the submission and submitted prior to the deadline for the making of submissions.

(8) A tender security may be forfeited or a tender securing declaration may be activated by the procuring entity, where there is –

- (a) a modification or withdrawal of a submission after the deadline for the making of submissions and during its period of validity;
- (b) refusal by a supplier or contractor to accept a correction of an arithmetical error appearing on the face of the submission;
- (c) failure by the successful supplier or contractor to sign a contract in accordance with the terms specified in the bidding document; or
- (d) failure by the successful supplier or contractor to provide a security for the performance of the contract in accordance with the bidding documents.

(9) A procuring entity shall promptly release a tender security to an unsuccessful supplier or contractor upon the expiration of the term of the security or the execution of a contract with the successful supplier or contractor and his submission of the required performance security, whichever is sooner.

(10) A procuring entity shall not release the tender security of a successful supplier or contractor until the contract is executed and the required performance security is received.

(11) For the purposes of this regulation, “tender securing declaration” means a written declaration signed by a supplier or contractor, or his authorized representative, which acknowledges that in the event of the occurrence of a situation set out in sub-regulation (8), the tender security shall be forfeited.

Tender validity

30. (1) A supplier or contractor is required to submit a valid tender, for the period specified in the bidding document, which shall be sufficient to enable the comparison and evaluation of tenders and obtain the necessary approvals for the award of the contract within the period.

(2) A procuring entity may request an extension of the tender validity period from suppliers and contractors in justified exceptional circumstances.

(3) A request for an extension of the tender validity period shall be made in writing to all suppliers or contractors before the expiration date of the tender validity period.

(4) The extension of the tender validity period shall be for the minimum period required to complete the evaluation of the tenders, obtain the necessary approvals and award the contract.

(5) Where an extension of the tender validity period is requested, the suppliers or contractors shall not be requested or permitted to change their price or other conditions of their tender.

(6) A supplier or contractor has the right to refuse to grant an extension of the tender validity period without forfeiting his tender security.

(7) A supplier or contractor who is willing to grant an extension of the tender validity period shall be required to provide

an extension of his tender security to cover the revised bid validity period.

31. (1) A procuring entity shall set out in its bidding document a procedure which guarantees the regularity of the opening of submissions. Opening of submissions

(2) Where the opening of submissions is to be conducted in view of the public –

- (a) the submissions shall be opened publicly at the time and place specified in the bidding document;
- (b) the submissions shall be opened in the presence of suppliers or contractors, or their representatives, who choose to attend; and
- (c) the procuring entity shall prepare a record of the opening of the submissions, which shall be dated and signed by the representative of the procuring entity who is present.

(3) The record referred to in sub-regulation (2)(c) shall contain at a minimum –

- (a) the identification of the submission;
- (b) the date and time of opening the submission;
- (c) the name of the supplier or contractor who made the submission and his price, together with any discounts offered;
- (d) the existence of any statutory documents and, where required, tender securities.

32. (1) Subsequent to opening submissions, a procuring entity will conduct a preliminary examination of the submissions to Preliminary examination

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- (a) assess its compliance with section 35 of the Act;
- (b) assess its compliance with the terms and conditions set out in the bidding document; and
- (c) where required, the furnishing of a tender security or tender securing declaration or the signature of the authorized person.

(2) For these purposes, “substantially responsive bids” means bids that conform to the terms, conditions and specifications of the tender documents without material deviation which –

- (a) affects the scope, quality or performance of the work, supply of goods or services;
- (b) is inconsistent with the tender documents, the project owner’s or procuring entity’s rights or the Supplier’s or Contractor’s obligations under the contract; or
- (c) affects unfairly the competitive position of other Suppliers or Contractors presenting responsive bids.

Clarification and correction

33. (1) During the evaluation of submissions which are deemed compliant pursuant to regulation 39 the procuring entity may seek written clarification from a supplier or contractor to facilitate the evaluation.

(2) Where the procuring entity seeks a clarification under sub-regulation (1) it shall not ask or permit a supplier or contractor to change the price or any other aspect of his submission.

(3) Where a supplier or contractor amends his submission in any manner, the procuring entity shall reject his submission and his tender security, if any, shall be forfeited.

(4) The procuring entity may correct an purely arithmetical or computational error in a submission and the supplier or contractor shall be notified of the correction and be requested, in writing, to agree to the correction.

(5) Where a supplier or contractor does not agree to a correction under sub-regulation (4), the procuring entity shall reject his submission and his tender security, if any, may be forfeited.

Evaluation

34. (1) A procuring entity shall evaluate the remaining substantially responsive submissions in accordance with the Public Procurement and Disposal of Public Property (Evaluation) Regulations, 2021 art 6 to determine the successful submission.

(2) All written communication between the procuring entity and the supplier or contractor who presented the successful submission, during the preliminary examination and evaluation of

submissions, shall be included in the record of the procurement proceedings.

(3) For the purposes of this regulation, a “substantially responsive submission” means a submission which conforms to the terms, conditions and specifications of the bidding document, without material deviation which –

- (a) affects the scope, quality or performance of the subject matter of the procurement;
- (b) is inconsistent with the bidding document, the project owner’s or procuring entity’s rights or the obligations of a supplier or contractor under the procurement contract; or
- (c) unfairly affects the competitive position of other suppliers or contractors who present submissions.

35. (1) Where a procuring entity wishes to request a performance security, it shall include a statement to that effect in its bidding document. Performance security

(2) The bidding document and procurement contract shall state that the performance security shall be –

- (a) in accordance with the format and wording provided in the bidding document;
- (b) in a form acceptable to the procuring entity;
- (c) from a reputable financial institution acceptable to the procuring entity; and
- (d) valid for the period specified in the procurement contract.

(3) The value of a performance security may be expressed as a fixed amount or as a percentage of the value of the procurement contract.

(4) A performance security shall not be less than five percent nor more than ten percent of the value of the procurement contract.

(5) In determining the value of a performance security, the procuring entity shall take into account –

- (a) the cost of obtaining the performance security;
- (b) the value of the procurement contract;
- (c) the risk of a supplier or contractor failing to fulfil his obligation under the procurement contract; and
- (d) the extent of protection offered to the procuring entity through alternative means, such as payment retentions, should a supplier or contractor fail to fulfil his obligation under the procurement contract.

(6) The value of a performance security may be progressively reduced, in accordance with the progress of the supplier or contractor in delivering or completing the subject matter of the procurement to which the performance security relates.

(7) The conditions for the forfeiture of the performance security shall be specified in the procurement contract.

(8) The procuring entity shall promptly release the performance security to the supplier or contractor upon the completion of his obligations under the procurement contract which are subject to the security or termination of the contract for a reason that is not attributable to any fault of the contractor.

(9) For the purposes of this regulation, “performance security” means a security required by a procuring entity from a supplier or contractor to secure the fulfilment of the obligations of the supplier or contractor under the procurement contract.

Advance
payment
guarantee

36. (1) Where a bidding document allows for an advance payment to a supplier or contractor who presents a successful submission, beyond the mobilization or commitment fee, the full amount of the advance payment required by the supplier or contractor may be secured by an advance payment guarantee based on the risk as determined by the procuring entity.

(2) For the purposes of subregulation (1), “mobilization or commitment fee” means ten percent of the value of the procurement contract.

(3) An advance payment guarantee shall be provided by a reputable financial institution and submitted to the procuring

