

ANNEX 2

FINANCIAL ADMINISTRATION AND AUDIT (PUBLIC PROCUREMENT) REGULATIONS, 2012

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FINANCIAL ADMINISTRATION AND AUDIT ACT

(NO. 26 OF 2010)

FINANCIAL ADMINISTRATION AND AUDIT (PUBLIC PROCUREMENT) REGULATIONS, 2012

The Minister, in exercise of the powers conferred by section 19H of the Financial Administration and Audit Act, 2010 makes the following regulations —

PART I – PRELIMINARY

1. Citation and commencement.
 - (1) These regulations may be cited as the Financial Administration and Audit (Public Procurement) Regulations, 2012.
 - (2) These Regulations shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.
2. Interpretation.
 - (1) In these Regulations, unless the context otherwise requires —
 - “Act” means the Financial Administration and Audit Act (*Ch. 359*);
 - “bid” means a proposal or quotation, in accordance with the type of procurement method used, submitted by a bidder in response to an invitation by a procurement department;
 - “bidder” means an individual, or a corporate or other legal entity, who submits a bid in response to an invitation by a procurement department;
 - “Board” means the Public Procurement Board continued under Part IIA of the Act;
 - “centralized procurement” means the procurement conducted by the public procurement department on behalf of a procurement entity;
 - “consultant” means the provider of intellectual services for a specific project;

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- “contractor”** means a physical or juridical person under contract with a procurement entity to provide work;
- “department”** means the public procurement department within the Ministry of Finance established under Part IIA of the Act;
- “end-user department”** means the procuring entity which benefits from the procurement carried out by the public procurement department;
- “financed in part by public funds”** means financed as to more than fifty percent by public funds;
- “goods”** means objects of every kind and description including —
- (a) commodities, raw materials, products and equipment;
 - (b) objects in solid, liquid or gaseous form; and
 - (c) services incidental to the supply of goods where the value of such services does not exceed the value of the goods themselves;
- “Government”** means the Government of the Commonwealth of The Bahamas;
- “intellectual services”** means any activity of an intellectual nature that does not lead to measurable physical output;
- “joint purchasing”** means the combining of the requirements of two or more departments to obtain the benefits of volume purchases and a reduction in administrative expenses;
- “Minister”** means the Minister responsible for Finance;
- “officer”** means any person employed in the service of the Government;
- “permanent secretary”** means, unless the context requires otherwise, the Financial Secretary;
- “procurement”** means all activities that pertain to the solicitation of, and entering into, a procurement contract by the Government for the supply of goods, works and services;
- “procurement contract”** means a supply agreement between a procurement entity and a supplier or contractor resulting from procurement proceedings;
- “Procurement Review Tribunal”** or **“Tribunal”** means the Procurement Review Tribunal established under section 19G of the Act;
- “procurement unit”** means the officer or officers within or persons employed by a procuring entity responsible for the procurement of the procuring entity;
- “procuring entity”** means a Ministry, department, agency, organ or other unit of the Government and any subdivision of the same including —
- (a) the public procurement department;
 - (b) a town committee; and

- (c) a public company engaging in procurement in which the share of Government ownership exceeds fifty percent;

“public procurement department” means the department of Government established under Part IIA of the Act;

“research and development contracts” means contracts for works, goods or services which are —

- (a) performed solely for purposes of research, testing or development; and
- (b) not performed with the aim of ensuring profitability or recovering research and development costs;

“selective bidding” means competitive bidding preceded by pre-qualification;

“services” means the supply of professional services including —

- (a) intellectual services or other labour, time or effort; and
- (b) where their value does not exceed the value of the services, reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services;

“small procurement” means a procurement for an amount not exceeding the threshold which the Minister may by order prescribe;

“supplier” means a person or financial person under a procurement contract with a procuring entity to supply goods, construct works or provide other services;

“thresholds” means the financial thresholds fixed in these Regulations above or below which certain procurement procedures may be applied;

“town committee” means a town committee established under the provisions of the Local Government Act (*Ch. 37*);

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works including —

- (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and furnishing; and
- (b) services incidental to construction, such as drilling, mapping satellite, photography, seismic investigations and similar services, provided pursuant to a procurement contract where the value of such services does not exceed the value of the construction itself.

(2) For the purpose of these Regulations —

- (a) subject to sub-paragraph (b), thresholds shall be calculated and expressed in Bahamian dollars; and
- (b) thresholds contained in regulation 18(2) shall be based on Special Drawing Rights applied in the context of international agreements

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to which the Bahamas is a party and the Minister may amend such thresholds in accordance with any applicable changes made to the level of Special Drawing Rights thresholds.

3. Application.

- (1) Subject to paragraphs (2) and (3), these Regulations shall apply to all procurement carried out by a procuring entity.
- (2) These Regulations shall not apply to —
 - (a) the extent that they conflict with the procurement rules of a donor or funding agency, the application of whose rules is mandatory pursuant to or under an obligation entered into by the Government, and the rules of such donor or funding agency shall prevail over these Regulations to the extent of such conflict;
 - (b) procurement contracts governed by different procedural rules and awarded —
 - (i) for the direct purpose of providing international assistance, including development aid;
 - (ii) pursuant to a concluded international agreement relating to the stationing of troops;
 - (iii) pursuant to an international agreement between the Government and one or more third countries and covering supplies, works or services intended for the joint implementation or exploitation of a project by the Government and one or more third parties;
 - (iv) in support of military forces located outside the territory of The Bahamas;
 - (c) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
 - (d) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
 - (e) arbitration and conciliation services;
 - (f) public employment contracts;
 - (g) research and development services;
 - (h) the procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes, including food aid.
- (3) The application of these Regulations shall, where the Minister responsible for National Security determines with the written approval of the Cabinet that a procurement is related to national defence or national security, be

modified or suspended to the extent necessary for the protection of the public interest.

PART II – PUBLIC PROCUREMENT BOARD

4. Constitution of the Board.

(1) The Public Procurement Board shall consist of —

- (a) a chairperson appointed by the Minister from outside the public service who shall be competent and knowledgeable in public procurement;
- (b) an officer appointed by the Director of Legal Affairs;
- (c) the Financial Secretary, *ex officio*;
- (d) the permanent secretary of a Government Ministry designated by the Minister in rotation for a period of three years with no Ministry being eligible for designation for consecutive three year terms;
- (e) a minimum of two persons appointed by the Minister and selected from nominations submitted by the following associations, each association being permitted to make one nomination only —
 - (i) Bahamas Chamber of Commerce;
 - (ii) Grand Bahama Chamber of Commerce;
 - (iii) Abaco Chamber of Commerce;
 - (iv) Exuma Chamber of Commerce;
 - (v) Bahamas Institute of Chartered Accountants;
 - (vi) Bahamas Bar Association;
 - (vii) Bahamas Institute of Professional Engineers;
 - (viii) Bahamas Institute of Architects;
 - (ix) Bahamas Contractors Associations;
 - (x) any other professional body recognised by the Government;
- (f) a maximum of two other persons appointed at the discretion of the Minister;
- (g) the Chief Procurement Officer, *ex officio*.

(2) The Chief Procurement Officer shall act as secretary to the Board.

5. Functions of the Board.

(1) The functions, powers and duties of the Public Procurement Board are to —

- (a) advise the Minister on the regulation and monitoring of public procurement in The Bahamas;
- (b) approve and advise on procurement actions above established thresholds;

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- (c) advise the Government on issues relating to public procurement in general;
 - (d) formulate and propose policy, legislative and regulatory actions for the better implementation of public procurement in The Bahamas including measures consistent with these Regulations —
 - (i) to facilitate the participation of small and medium sized enterprises;
 - (ii) for the purchase of products produced by disabled persons, philanthropic institutions or by way of prison labour; and
 - (iii) for the procurement of environmentally friendly goods and services;
 - (e) provide advice and recommendations to the Minister —
 - (i) generally and specifically on procurement issues;
 - (ii) on the duties, responsibilities, functions and organisational structure of the public procurement department necessary for the efficient discharge of its functions;
 - (iii) to ensure implementation by all parties of existing laws, policies, regulations, rules and procedures governing the procurement of works, goods and services financed in whole or in part from public funds;
 - (iv) on the issuance on standard forms of contracts and standard standard bidding documents for mandatory use by all procuring entities;
 - (f) direct Government procurement entities to furnish the Board with information, reports or other documents which the Board considers necessary for the performance of its functions;
 - (g) provide policy guidance, opinions, advice and recommendations to the Chief Procurement Officer to secure the efficient implementation of the Board's functions and discharge of its responsibilities while enhancing its overall performance;
 - (h) appoint, through the Chairperson, the debarment committee referred to in the *First Schedule* and authorise such committee to execute the prescribed debarment procedures in the name of the Board;
 - (i) provide advice on the issuance of forms prescribing the content, format and the frequency or dates for submission of procurement reports to be submitted by procuring entities to the Board;
 - (j) review procurement processes undertaken by other procuring entities, approve them within the thresholds established and prepare submissions for Cabinet approval.
- (2) The Chief Procurement Officer shall not, where the public procurement department does not follow the opinions, recommendations, guidance and advice of the Board in relation to a department proposal, proceed with the

proposal without the written concurrence of the Minister provided in the form of a reasoned decision.

6. Procedures of the Board.

- (1) The Public Procurement Board shall have such structures and organization as the Minister may determine necessary for the efficient performance of its functions.
- (2) The chairperson and other Board members, not being *ex officio* members, shall hold office for a term of three years and shall be eligible for re-appointment except in the case of members appointed pursuant to paragraph (d) of section 5.
- (3) The chairperson and other Board members shall be paid by the public procurement department such remuneration, fees, allowances and reimbursements for expenses incurred, in connection with the discharge of their functions as the Minister may determine.
- (4) The quorum at a meeting of the Board shall be five, excluding the Chief Procurement Officer.
- (5) Each Board member excluding the Chief Procurement Officer shall have one vote but the chairperson shall, where there is an equality of votes, have a casting vote.
- (6) The Board shall cause minutes of all its meetings to be taken by the secretary to the Board, signed by the chairperson, and kept in the proper form as a public document.
- (7) Subject to the Act and these Regulations, the Board may regulate its meetings and procedure as the Board thinks fit.

PART III – PROCURING ENTITIES

7. Establishment and functions of procurement units.

- (1) A procuring entity shall ensure that all procurement-related functions are carried out by persons trained and knowledgeable in procurement in accordance with the guidelines and qualification requirements established by the public procurement department.
- (2) The head of each procuring entity shall establish a procuring unit and determine its size, location and structure having regard to its procurement requirements and the number of trained and experienced staff available.
- (3) For the purposes of these Regulations, a single public officer who carries out the functions of a procuring unit shall be deemed to be the procuring unit of the relevant procuring entity.
- (4) The general functions of a procurement unit include the —
 - (a) planning of procurement for the procuring entity;

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- (b) preparation of invitations to bid and of bidding documents;
 - (c) publication and distribution of invitations to bid;
 - (d) reception and safeguarding of bids;
 - (e) administration and implementation of a procurement contract to the extent that the contract is not carried out by the end-user department.
- (5) The functions of a procurement unit shall, in addition to the functions described in paragraph (4), include —
- (a) where the value of a contract does not exceed thirty thousand dollars (\$30,000.00) the —
 - (i) opening of bids;
 - (ii) evaluation of bids;
 - (iii) awarding of contracts or purchase orders.
 - (b) where the value of a contract exceeds thirty thousand dollars (\$30,000.00) the —
 - (i) performance of secretariat services for the relevant tender committee.
 - (ii) preparation of contract award recommendations for the Public Procurement Board and higher award authorities.
- (6) Subject to these Regulations, a procurement unit shall be responsible for procurement with the funds at its disposal.

8. Establishment and functions of tender committees.

- (1) Each procuring entity shall establish a tender committee responsible for awarding all contracts whose value exceeds thirty thousand dollars (\$30,000.00).
- (2) A tender committee shall be appointed as required by the head of the procuring entity and comprise a minimum of three and a maximum of five members including —
 - (a) the head or deputy head of the procuring entity;
 - (b) the chief financial officer of the procuring entity;
 - (c) the head of the procurement unit, and
 - (d) two other members as required to provide technical, legal or commercial expertise.
- (3) A tender committee may appoint technical evaluation committees and advisers to assist the procurement unit in evaluating bids and making recommendations for award.
- (4) The functions, powers and duties of a tender committees include the —
 - (a) verification of proper procurement planning and preparation of procurement proceedings;

- (b) approval of proposed invitations, notices, requests, and other documents related to procurement proceedings;
 - (c) conduct of the opening of bids;
 - (d) review and approval of evaluation reports and contracts award recommendations, except where the proposed contract value is less than five thousand dollars (\$5,000.00);
 - (e) subject to paragraph (6), awarding of contracts and rejection of unsuccessful bids;
 - (f) approval of contract documents; and
 - (g) performance of any other functions specified under these Regulations.
- (5) A tender committee shall, where the value of a proposed contract exceeds fifty thousand dollars (\$50,000.00), forward to the Public Procurement Board the recommendation for award together with all necessary documentation.
- (6) The Board shall, where a recommendation for award is forwarded pursuant to paragraph (5) —
- (a) seek the approval of the Minister responsible for the procuring entity; or
 - (b) where the contract value exceeds one million dollars (\$1,000,000.00), seek the approval of the Cabinet.

9. Planning requirements.

- (1) A procuring entity shall plan procurement with a view to achieving maximum value for public expenditure so that it is carried out within available financial resources and other applicable limitations and at the most favourable time.
- (2) Two or more procuring entities may, where appropriate, aggregate their procurement requirements in order to achieve economies of scale.
- (3) A procuring entity shall, before commencing a procurement procedure —
 - (a) inquire as to whether or not its requirements can be met by the transfer of goods from another procuring entity;
 - (b) ensure that an accurate estimate of the cost of the procurement, including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement, has been prepared; and
 - (c) commit the amount of the estimate prepared pursuant to subparagraph (b) in accordance with the provisions of the Act.

10. Artificial division of procurement.

A procuring entity shall not, for the purposes of determining the appropriate procurement method, artificially divide a procurement with the intention of avoiding the prescribed financial thresholds.

11. Division into lots.

- (1) Notwithstanding regulation 11, a procuring entity may divide a procurement requirement which could be procured as a single contract into a package, consisting of several lots that are to be tendered together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.
- (2) A requirement shall not be divided into lots —
 - (a) for the sole purpose of avoiding thresholds;
 - (b) where the award of several separate contracts would create problems of compatibility or inter-changeability between items procured as separate lots or would unduly strain contract administration resources;
 - (c) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) A procuring entity shall, where a requirement which could be procured as a single contract is divided into lots —
 - (a) permit bidders to bid for a single lot, any combination of lots, or all lots; and
 - (b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

12. Centralised procurement.

- (1) The public procurement department may, pursuant to its functions under section 19B of the Act, organize the central procurement of common-use items on behalf of selected or all procuring entities in The Bahamas.
- (2) The public procurement department shall, where it organizes centralized procurement pursuant to paragraph (1) —
 - (a) compile lists of common-use items in accordance with paragraph (3);
 - (b) prepare and dispatch a consultation document to each procuring entity with a view to identifying the annual aggregated requirements for the centralization of procurement;
 - (c) cause the procuring entities to provide an indication of the goods, works or services that may be procured by way of centralized procurement;

- (d) finalize the department's procurement plan for the centralized procurement of goods, works or services and distribute it to the concerned procuring entities in time for the preparation of their annual procurement plans.
- (3) The public procurement department shall, in determining where the aggregation of demand is appropriate, consider all relevant factors including —
 - (a) which items are of a similar nature and likely to attract the same potential bidders;
 - (b) when items will be ready for bidding and when delivery, implementation or completion is required;
 - (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;
 - (d) which items will be subject to the same bidding requirements and conditions of contract;
 - (e) the potential to realise savings in time or transaction costs;
 - (f) the potential to facilitate contract completion and administration by the procuring entity; and
 - (g) other special factors related to the specific item.
- (4) A procuring entity which directly purchase works, supplies and services from or through the public procurement department shall be deemed to have complied with these Regulations to the extent that the department has complied with them.

13. Annual procurement plan.

- (1) A procuring entity shall prepare a procurement plan for each fiscal year containing —
 - (a) a detailed breakdown of the goods, works and services required;
 - (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
 - (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-use items;
 - (d) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding;
 - (e) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle taking into account the applicable approval requirements;

- (f) an indication of whether the goods, works or services will be procured through centralized procurement by the public procurement department;
 - (g) other details as may be relevant to any item in the plan.
- (2) Annual procurement planning shall be integrated with applicable budget processes.
- (3) A procuring entity shall —
 - (a) prepare a summary of its annual procurement plan in accordance with the template provided by the public procurement department; and
 - (b) forward the completed template of its annual procurement plan to the public procurement department within one month of the beginning of the fiscal year for publication on the department's website.

14. Specific procurement plan.

- (1) Subject to paragraph (3), a procuring entity shall prepare a procurement plan for each individual procurement requirement.
- (2) A procurement plan shall include —
 - (a) a description of the requirement including the schedule required for delivery, implementation or completion of goods, works or services and any division into lots;
 - (b) the estimated value of the requirement and, where applicable, individual lots;
 - (c) subject to regulation 16, the proposed procurement method and a justification for the use of any method other than competitive bidding or, in the case of consultancy services, a request for proposals;
 - (d) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;
 - (e) an indication of the resources required and available for management of the procurement process and contract administration; and
 - (f) any other relevant information.
- (3) A written procurement plan shall not be required where the estimated value of the procurement requirement is such that the request for quotations method is permitted.

15. Selection of procurement method.

- (1) A procuring entity shall, as part of the procurement planning process, select the most appropriate method of procurement for each requirement.

- (2) The choice of procurement method shall take into account —
- (a) the estimated value of the procurement, calculated in accordance with the valuation rules set out in the *Second Schedule*;
 - (b) the potential sources for the procurement including —
 - (i) the competitiveness of the national and international market for the goods, works or services; and
 - (ii) the likely interest of potential national and international bidders, given the size and nature of the requirement;
 - (c) the nature of the goods, works or services required; and
 - (d) the circumstances surrounding the procurement, such as the existence of an emergency need or of situations which might justify use of limited bidding.

PART IV – PROCUREMENT METHODS

16. Competitive bidding.

- (1) Public procurement of goods, works and non-consultancy services shall be undertaken by means of advertised competitive bidding proceedings to which equal access shall be provided to all eligible and qualified bidders without discrimination.
- (2) Subject to regulations 19, 20, 21, 22 and 23, methods of procurement other than competitive bidding shall not be permitted;
- (3) A procuring entity shall, where a method of procurement other than competitive bidding is used, include in the record of the procurement proceedings a written justification of the decision to utilise the procurement method, including the grounds for taking such decision.
- (4) Consultancy services shall be procured by the request for proposals method in accordance with regulations 23 and 46.

17. Two stage competitive bidding.

- (1) Competitive bidding may be carried out in a single stage or in two stages.
- (2) Competitive bidding may be held in two stages where —
 - (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; or
 - (b) due to the complex nature of the goods, works or services to be procured, the procuring entity wishes to consider and discuss with bidders various technical or contractual solutions and their relative merits before deciding on the final technical or contractual specifications.

- (3) A procuring entity may, in the first stage of the two stage bidding method, engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents in order to —
 - (a) further understand the proposals; or
 - (b) indicate to bidders the changes required to make the proposals acceptable and to seek the bidder's willingness to make such changes.
- (4) A procuring entity shall keep minutes of first-stage bidding discussions engaged in pursuant to paragraph (3) and such minutes shall form part of the procurement records.
- (5) A procuring entity may, at the end of the first stage of the two stage bidding method —
 - (a) reject those bids which are substantially non responsive or do not meet, and in respect of which bidders are unwilling or unable to change to meet the —
 - (i) basic requirements;
 - (ii) minimum performance; or
 - (iii) required completion time;
 - (b) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
- (5) A procuring entity shall, in the second stage of the two stage bidding method, invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.
- (6) A bidder who does not wish to submit a final bid may withdraw from the bidding proceedings without forfeiting the bid security that such bidder may have been required to provide and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised documents.
- (7) Subject to the provisions of this regulation, the procedures for single stage competitive bidding shall also apply to two-stage competitive bidding.

18. International bidding.

- (1) Where the estimated contract amount in a proposed procurement is higher than the value of the thresholds set out in paragraph (2) —
 - (a) all procurement notices shall be published in accordance with regulation 30(2);
 - (b) all invitations to bid or to pre-qualify, and bidding documents, shall be in English;
 - (c) procuring entities shall allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit

- applications to pre-qualify and bids in accordance with the instructions given in the bidding documents;
- (d) bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies or in a currency widely used in international trade and stated in the bidding documents;
 - (e) general and special conditions of contract shall be a kind generally used in international trade;
 - (f) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade.
- (2) For the purposes of this section, a procurement contract falls within paragraph (1) when its estimated value exceeds —
 - (a) nine million, five hundred thousand dollars (\$9,500,000.00) in the case of a works contract; and
 - (b) two hundred twenty-six thousand, five hundred dollars (\$226,500.00) in the case of a goods contract and a contract for non-consultancy services.
 - (3) This regulation applies to competitive bidding, selective bidding and restricted bidding.

19. Selective bidding.

- (1) Selective bidding may be used in cases of high value or complex procurements where it is necessary or desirable to identify, prior to the submission of bids, those bidders that are qualified.
- (2) The requirements and criteria for assessing the qualifications of bidders in selective bidding shall be in accordance with regulation 26.
- (3) In the pre-qualification stage of the selective bidding process —
 - (a) the procuring entity shall —
 - (i) provide pre-qualification documents to all bidders responding to the invitation to pre-qualify;
 - (ii) respond promptly to any request by a bidder for clarification of the pre-qualification documents received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to pre-qualify; and
 - (b) the pre-qualification documents shall provide bidders with the information required to prepare and submit applications for pre-qualification.
- (4) The procuring entity —
 - (a) shall make a decision with respect to each application to pre-qualify;

- (b) shall invite all bidders who have been pre-qualified to submit bids in the procurement proceeding;
 - (c) may at any time prior to contract award require a pre-qualified bidder to demonstrate anew its qualifications in accordance with the same criteria used to pre-qualify such bidder; and
 - (d) shall disqualify any bidder that fails to demonstrate anew its qualifications if requested to do so.
- (5) Subject to this regulation, the provisions of the competitive bidding method apply to selective bidding.

20. Restricted bidding.

- (1) Restricted bidding may be used where the —
- (a) goods , works or services are only available from a limited number of bidders; or
 - (b) the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement.
- (2) The procuring entity shall in the case of restricted bidding invite bids from —
- (a) where restricted bidding is used pursuant to paragraph (1)(a), all potential bidders;
 - (b) where restricted bidding is used pursuant to paragraph (1)(b), sufficient bidders to ensure effective competition and, in all cases, a minimum of three bidders.
- (3) The procuring entity may, in selecting bidders to be invited to bid, use —
- (a) the contractor registration system of supplier lists maintained in accordance with procedures established by the public procurement department;
 - (b) lists of pre-qualified bidders;
 - (c) the procuring entity's own knowledge of the market;
 - (d) any other appropriate sources of information.
- (4) The procuring entity shall, where it uses restricted bidding pursuant to paragraph (1)(b), publish a notice in accordance with regulation 30 stating —
- (a) the nature of the procurement requirement;
 - (b) that the procuring entity is using restricted bidding on the grounds that the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement;
 - (c) the proposed bidders;

- (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement may contact the procuring entity, and
 - (e) the deadline for a request for information or participation in the procurement.
- (5) Subject to this regulation, the provisions of the competitive bidding method apply to restricted bidding.

21. Request for quotations.

- (1) The request for quotations method may be used for the procurement of goods, works and services where —
 - (a) the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the procuring entity;
 - (b) the estimated value of the procurement of works does not exceed ten thousand dollars (\$10,000.00); or
 - (c) the estimated value of the procurement of services does not exceed five thousand dollars (\$5,000.00).
- (2) Quotations shall, under the request for quotations method, be requested in writing from as many bidders as practicable and, in all cases, from a minimum of three bidders.
- (3) A request for quotations shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms, time to delivery, and any other special requirements.
- (4) Bidders shall be given adequate time to prepare and submit their quotations and each bidder shall be permitted one quotation only which may not be altered or negotiated.
- (5) The procuring entity shall place a purchase order with the bidder providing the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.
- (6) A purchase order shall include —
 - (a) the quoted price;
 - (b) the contract number;
 - (c) the name of the contractor or of the supplier;
 - (d) the name of the officer of the contractor or of the supplier who signed the contract;
 - (e) the terms and the date of delivery.

22. Limited bidding.

- (1) A procuring entity may award a public contract by limited tendering procedure where —

- (a) no suitable tenders have been submitted in response to a competitive or selective bidding procedure and the procuring entity makes the contract subject to the condition that the requirements of the initial tender may not be substantially modified by the bidder;
- (b) for technical or artistic reasons or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the products or services could not be obtained in time by means of competitive or selective bidding procedures;
- (d) the contract is for additional deliveries of goods or services by an original supplier in circumstances where a change of supplier would —
 - (i) compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services procured under the initial procurement; and
 - (ii) cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (e) the procuring entity procures prototypes or a first product or service developed at its request in the course of and for a specific contract for research, experiment, study or original development;
- (f) additional services within the objectives of the original tender documentation but not included in the initial contract have, through unforeseen circumstances, become necessary to complete the services described in such documentation and the total value of contracts awarded for such additional services do not exceed fifty per cent of the amount of the initial contract;
- (g) the contract is for new services —
 - (i) consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement method; and
 - (ii) for which the procuring entity has indicated in the notice of intended procurement that a limited procurement method might be used in awarding contracts for such new services;
- (h) the contract is for products purchased on a commodity market; or
- (i) the contract is for purchases —
 - (i) made under exceptionally advantageous conditions of unusual disposals which arise only in the very short term such as from liquidations, receiverships or bankruptcies; and
 - (ii) which are not routine purchases from regular suppliers.

- (2) Under the limited budding method —
 - (a) the procuring entity shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery;
 - (b) a quotation shall be invited from at least one and, where possible, additional suppliers or contractors;
 - (c) the procuring entity may give a time limit to the bidders to prepare and submit bids or may fix a time limit by mutual agreement with the bidders;
 - (d) the compliance of an offer or offers with the specifications, terms and conditions shall be considered;
 - (e) negotiations to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices.

23. Request for proposals method.

- (1) A procuring entity shall, for the purposes of procuring the services of a consultant —
 - (a) prepare a list of three to six consulting firms comprising to the greatest extent feasible consultants of the same category and similar capacity and business objectives;
 - (b) provide the request for proposals for services to the listed firms; and
 - (c) establish the short-list from among those listed firms having the capacity to perform the required services as demonstrated in their submissions.
- (2) The procuring entity shall, where the estimated value of the procurement exceeds \$50,000, prepare the list referred to in sub-paragraph (a) of paragraph (1) by inviting expressions of interest through publication of a notice —
 - (a) in the *Gazette*; and
 - (b) where appropriate, in a relevant trade publication or technical or professional journal.
- (3) The procuring entity may, where the estimated value of the procurement assignment is lower than \$50,000, prepare the list referred to in sub-paragraph (a) of paragraph (1) —
 - (a) from market knowledge or other sources of information; and
 - (b) in the case of assignments which have an estimated value above \$50,000 but less than \$1 million or are particularly complex, through the utilization of advertisements.
- (4) The request for proposals shall provide short-listed bidders with the information necessary to enable them to participate in the procurement

proceedings and to submit proposals that are responsive to the needs of the procuring entity including —

- (a) the name and address of the procuring entity;
 - (b) the nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
 - (c) the criteria to be used in evaluating and comparing proposals and their relative weights as compared to price;
 - (d) the contractual terms of the procurement and the manner of entry into force of the contract;
 - (e) instructions for preparation and submission of proposals and the place and deadline for submission of proposals;
 - (f) the final selection procedures to be applied;
 - (g) notice of conflict-of-interest restrictions and anti-fraud and corruption rules, including the grounds for potential debarment from future participation in procurement of goods, service or works that may result from the assignment under consideration; and
 - (h) such matters as may be prescribed in the standard documents issued by the public procurement department.
- (5) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

PART V – BIDDING PROCESS, DOCUMENTS AND QUALIFICATION CRITERIA

24. Bidding documents must state object of procurement.

- (1) A procuring entity shall set out clearly in the bidding documents detailed requirements with respect to quality, quantity, certification, testing and test methods and any other means for evaluating the conformity of the performance of the contract to the requirements.
- (2) All relevant bidding and pre-qualification documents shall —
 - (a) provide objective descriptive information that does not unnecessarily favour a particular bidder; and
 - (b) wherever possible, state the desired performance or output requirements of the object of the procurement rather than design or descriptive characteristics.
- (3) Technical specifications in the bidding documents shall include where appropriate —
 - (a) the purpose and objectives of the goods;
 - (b) a full description of the requirement;
 - (c) a generic specification to an appropriate level of detail;

- (d) a functional description of the goods, including any environmental or safety features;
 - (e) performance parameters, including outputs, time scales and any indicators or criteria by which satisfactory performance can be measured and judged;
 - (f) process and materials descriptions;
 - (g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
 - (h) inspection and testing requirements; and
 - (i) any applicable standards.
- (4) References to standards shall where possible be references to international standards or national standards incorporating international standards.

25. Brand names.

Technical specifications shall include no requirement of or reference to a particular trademark or name, patent, design or type, specific original producer or service provider unless —

- (a) there is no other practical way of describing the procurement requirements; and
- (b) words such as “or equivalent” are included in the specifications.

26. Permitted criteria.

- (1) Qualification criteria shall be limited to criteria designed to demonstrate that a bidder possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, business reputation and personnel, to perform the contract.
- (2) Qualification criteria shall —
 - (a) not be unduly restrictive or designed to reduce competition; and
 - (b) be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.
- (3) The procuring entity shall clearly state the qualification criteria in all bidding documents and, where it deems fit, require bidders to provide signed statements or documentary evidence to certify their eligibility.
- (4) The procuring entity shall not impose any requirement as to qualifications in the invitation to bid other than a requirement specified in regulations 27 and 28.
- (5) This regulation shall govern entry, or the denial of entry, on or to any list or register of suppliers, service providers or contractors held by a procuring entity, and any system of pre-qualification, based on qualification criteria.

27. Qualification criteria.

Subject to regulation 26(2), the procuring entity may, in order to satisfy the qualification criteria established in the bidding documents, request from bidders evidence of —

- (a) a bidder's technical abilities furnished, according to the nature, quantity, importance or use of the works, suppliers or services, by evidence of —
 - (i) experience and reliability;
 - (ii) financial resources, equipment and other physical facilities;
 - (iii) personnel;
 - (iv) managerial capability;
 - (v) possession of the necessary professional and technical qualifications and competence; and
 - (vi) subject to the right of the bidder to protect its intellectual property rights and trade secrets, possession of the requisite intellectual property rights or trade secrets;
- (b) a bidder's legal capacity to perform the contract furnished by evidence that —
 - (i) the bidder has satisfied all the legal requirements to carry on business in The Bahamas and, where the bidder has its headquarters outside The Bahamas, is entitled to carry on business in the foreign jurisdiction;
 - (ii) the bidder is not insolvent, in bankruptcy, in receivership or under liquidation, and
 - (iii) legal proceedings have not been taken, and are not anticipated to be taken, that would materially affect the ability or the legal capacity of the bidder to carry out the contract;
- (c) a bidder's good standing with the Government and fulfilment of its obligations to pay taxes, levies, license fees and other fees or charges, including national insurance contributions, or conclusion of arrangements satisfactory to the Minister and the National Insurance Board to fulfil such obligations;
- (d) a bidder's integrity, including evidence that neither the bidder nor any director, officer, manager or supervisor of the bidder has, within a period of three years preceding the date of issuance of the invitation to bid, been —
 - (i) convicted of any criminal offence, whether in The Bahamas or elsewhere —
 - (A) relating to the bidder's or his professional conduct;

- (B) relating to the making of false statements or misrepresentations as to the bidder's or his qualifications to enter into a procurement contract;
- (C) involving dishonesty;
- (D) under anti-corruption legislation; or
- (ii) suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in The Bahamas or elsewhere.

28. Disqualification.

- (1) A procuring entity shall disqualify a bidder if the procuring entity finds that the information submitted in a bid concerning the bidder's qualifications is false or misleading.
- (2) A procuring entity may disqualify a bidder if the procuring entity —
 - (a) finds that the information submitted in a bid concerning the bidder's qualifications is materially inaccurate or materially incomplete; or
 - (b) gives written notice to the bidder to remedy in writing, within ten days after the bidder's receipt of the notice, the material inaccuracies or material omissions in a bid concerning the bidder's qualifications and the bidder fails or refuses to do so within the time specified.

29. Invitation to bid.

A procuring entity shall conduct —

- (a) a requests for quotation invitation to bid in accordance with regulation 22;
- (b) limited bidding in accordance with regulation 23;
- (c) competitive bidding through publication of an announcement of bidding proceedings;
- (d) selective bidding from the list of pre-qualified bidders;
- (e) restricted bidding from a short-list of bidders or, where regulation 21(b) applies, through the publication of an announcement of bidding proceedings; and
- (f) a request for proposals in accordance with regulations 23 and 46.

30. Publication of procurement notices.

- (1) A notice of invitation to bid or to pre-qualify, as the case may be, shall be—
 - (a) published in the *Gazette* or in one or more national newspapers of wide enough circulation to reach sufficient bidders to ensure effective competition;

- (b) broadcast over radio or television on the stations and programmes, and at a time, most likely to target potential bidders; and
 - (c) to the extent feasible, published on the internet including on any website established by the public procurement department.
- (2) Procurement notices shall, where international competitive bidding is used, be published in addition to publication in accordance with paragraph (1) —
 - (a) in at least two English language newspapers or other printed media with adequate circulation to attract foreign competition; or
 - (b) on widely read internet sites as defined in guidance material of the public procurement department.
- (3) A procuring entity that considers that it is necessary to ensure wide competition —
 - (a) may send a procurement notice, after its date of publication, directly to potential bidders; and
 - (b) shall keep a record of any bidders to whom a procurement notice is sent directly and such record shall form part of the procurement record.
- (4) The invitation to bid or the invitation to pre-qualify, as the case may be, shall include information on —
 - (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 time-frame of the procurement, including the place of delivery of goods or services and the location of any works;
 - (c) the price of and the manner of obtaining the bidding documents or, where applicable, the pre-qualification documents;
 - (d) the place and deadline for submission of bids or of applications to pre-qualify;
 - (e) such other matters as may be prescribed in the standard forms issued by the public procurement department.

31. Minimum bidding periods.

- (1) Bidding documents shall be ready for distribution prior to the publication or broadcast of the invitation to bid.
- (2) The bidding period shall commence on the date of the first publication or broadcast and shall finish on the date of the bid submission deadline.
- (3) The minimum bidding period shall be, in respect of —
 - (a) competitive bidding, thirty calendar days;
 - (b) international competitive bidding pursuant to regulation 19, forty-five calendar days;

- (c) selective bidding, twenty calendar days;
 - (d) restricted bidding, twenty calendar days;
 - (e) selective international competitive bidding, thirty calendar days; and
 - (f) restricted international competitive bidding where regulation 21(b) applies, thirty calendar days.
- (4) Bidders shall, in selective bidding, be given a minimum of thirty calendar days following publication of a notice to pre-qualify to submit their pre-qualification applications.
- (5) The procuring entity shall, in determining the appropriate bidding period for each requirement, take into account in addition to the minimum bidding period —
- (a) the time required for preparation of bids, having regard to the level of detail required and the complexity of the bids;
 - (b) any need for bidders to submit authenticated legal or similar documents as part of their bids and the time required to obtain such documents;
 - (c) the location of potential bidders and the time required to obtain the bidding documents and for the delivery and submission of bids to the procuring entity; and
 - (d) any restrictions relating to the time the goods, works or services are required.

32. Bidding documents.

- (1) A procuring entity shall use the prescribed standard bidding documents including any manuals or guidance issued by the public procurement department.
- (2) The procuring entity shall provide, in an expeditious and non-discriminatory manner, bidding documents —
- (a) to all potential bidders that respond to the invitation to bid; or
 - (b) in the case of selective bidding, to all bidders that have been pre-qualified.
- (3) The procuring entity may charge for the bidding documents a price that reflects only the cost of printing and distributing the documents.
- (4) The bidding documents shall provide all the information required in order for bidders to submit bids that are responsive to the needs of the procuring entity, including information —
- (a) stating the nature and time frame 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) in all cases other than selective bidding, providing the prescribed bidder qualification and documentation requirements in order to evidence that a bidder meets the necessary qualification criteria to perform the contract as regards the bidder's —
 - (i) professional and technical qualifications and competence;
 - (ii) financial resources, equipment and other physical facilities;
 - (iii) managerial capability;
 - (iv) experience in the object of the procurement;
 - (v) business reputation; and
 - (vi) personnel;
- (c) on site visits and pre-bid conferences;
- (d) providing instructions for preparation and submission of bids, including the deadline for submission of bids and the time and place of bid opening;
- (e) giving the components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- (f) providing the criteria and methodology for evaluation of bids and the selection of the successful bidder —
 - (i) quantified in monetary terms;
 - (ii) expressed in the form of pass or fail requirements and, where this is not possible, expressed by relative weights; and
 - (iii) stating that the evaluation criteria for consideration by the procuring entity shall consist only of the —
 - (A) bid price;
 - (B) cost of operating, maintaining and repairing the goods or works;
 - (C) time for delivery of the goods, completion of the works or provision of the services;
 - (D) functional characteristics of the goods or works;
 - (E) terms of payment and of guarantees in respect of the goods, works or services;
- (g) stating the preference, if any, for domestic goods and contractors as may be prescribed by the public procurement department;
- (h) on any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
- (i) stating whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;

- (j) where suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, providing a description of the portion or portions for which bids may be submitted;
 - (k) stating the required validity period of bids;
 - (l) providing the amount and acceptable forms of any required bid, performance or other security;
 - (m) stating the conditions of contract which will be entered into with the successful bidder;
 - (n) providing notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
 - (o) stating the manner in which bidders may obtain review of actions, omissions and decisions of the procurement entity; and
 - (p) on such other matters as may be prescribed by regulations or in manuals and standard forms issued by the public procurement department.
- (5) The procuring entity shall, for the purposes of subsequent communications with bidders, make a record of the name, postal address, telephone and fax numbers and email address of all persons to whom an invitation to bid is issued and shall file a copy of such record in the procurement documents file.

33. Alternative bids.

- (1) Alternative bids shall not, except where specifically indicated in the bidding documents, be permitted.
- (2) The procuring entity may permit alternative bids where it is anticipated that bidders may be able to offer goods, works or services which, although they do not conform precisely to the description of requirements, meet the objectives of the procurement in an alternative manner.
- (3) Alternative bids may be permitted —
 - (a) in areas of rapidly changing technology or where a need could be satisfied in a number of different ways; and
 - (b) where the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.
- (4) The bidding documents shall, where alternative bids are permitted, state that the alternative bid does not need to conform precisely to the description of requirements but the bid must —
 - (a) meet the objectives or performance requirements prescribed in the description of requirements;
 - (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and

- (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of requirements in terms of technical performance, price, operating costs or any other benefit.

34. Domestic preferences.

- (1) A margin of domestic preference may be applied to eligible bids —
 - (a) where so indicated in the bidding document; and
 - (b) strictly in accordance with any rules or schemes for domestic preference issued through circulars by the public procurement department.
- (2) Bidding documents and circulars permitting a margin of domestic preference to be applied to eligible bids shall clearly state the —
 - (a) eligibility requirements for the margin of preference in terms of ownership, location of bidder or production facilities, origin of labour, raw materials or components, extent of sub-contracting or association with local partners, or any other relevant factor;
 - (b) documentation required as evidence of eligibility for the margin of preference; and
 - (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (3) The percentage of domestic preference permitted in schemes issued by public procurement department circular shall be between five and ten percent and may be reviewed annually by the department.

35. Cancellation of procurement proceedings.

- (1) The cancellation of procurement proceedings shall, where possible, be avoided.
- (2) Cancellation of procurement proceedings shall be permitted where the procuring entity makes a determination in writing that —
 - (a) the procurement need has ceased to exist or has changed significantly;
 - (b) insufficient funding is available for the procurement;
 - (c) there has been a significant change in the required technical details, bidding conditions, conditions of contract or other details making it necessary to commence procurement proceedings anew;
 - (d) insufficient or no responsive bids have been received;
 - (e) there is evidence of collusion among bidders; or
 - (f) cancellation is otherwise in the public interest.
- (2) Bids received shall, where procurement proceedings are cancelled, be returned unopened prior to bid opening.

36. Unsuccessful procurement procedures.

- (1) The procuring entity shall, where no responsive bids are received or procurement proceedings are otherwise unsuccessful —
 - (a) investigate the failed procurement proceedings; and
 - (b) record in the procurement report the reasons why the procurement was unsuccessful and the course of action taken.
- (2) An investigation pursuant to paragraph (1) shall consider all relevant issues, including whether —
 - (a) the bidding period was sufficient, having regard to the factors referred to in regulation 31(5);
 - (b) the requirements of the bidding documents and the terms and conditions of the proposed contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;
 - (c) the invitation notice was published in an appropriate publication and on the required date;
 - (d) there was delay in issuing the bidding documents;
 - (e) any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
 - (f) there were other extraneous events or circumstances which may have affected the ability of bidders to respond;
 - (g) the evaluation process was conducted in accordance with these Regulations and the bidding documents and whether staff responsible for the evaluation had adequate skills and resources;
 - (h) there is any suspicion of collusion between potential bidders; and
 - (i) the original choice of procurement method was appropriate.
- (3) The procuring entity shall, after completion of its investigation, take any appropriate action suggested by the cause or causes of failure including but not limited to —
 - (a) the use of an alternative method of procurement;
 - (b) amendments to the bidding documents, including bidding requirements, the type of contract, or the terms and conditions of the proposed contract;
 - (c) alternative publication of any invitations to bid, similar notices or bidding documents; and
 - (d) the introduction of international competition.

37. Submission of bids.

- (1) A bid shall be submitted before the deadline for submission of bids in written form, duly signed and sealed, in an envelope.

- (2) Bids received after the deadline for submission of bids shall be returned unopened.
- (3) Invitations for pre-qualification and bidding documents shall permit the submission of applications to pre-qualify or bids by hand or mail, or by courier, at the option of the bidder.
- (4) Notwithstanding paragraph (3) and subject to any procurement rules or guidance issued by the public procurement department, bidding documents may authorize other methods of submission of bids, such as electronic mail, where the confidentiality and security of the bid is assured and no person is able to open or read the bid prior to the time fixed in accordance with regulation 40 for bid opening.
- (5) Bids shall remain valid for the period of time indicated in the bidding documents but modification or withdrawal of a bid during the bid validity period shall be subject to forfeiture of the bid security.
- (6) The procuring entity shall not extend, or be deemed to have extended, the validity period of a bid without the written agreement of the bidder concerned and, where a bidder agrees in writing to an extension of the validity period of its bid, the bid security where such security was required shall also be correspondingly extended.

38. Bid security.

- (1) A procuring entity —
 - (a) may require a bid security in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids; and
 - (b) shall include in the bidding documents any requirement for a bid security.
- (2) The value of a required bid security shall be expressed as a fixed amount and not as a percentage and such amount shall be between two and five percent of the estimated value of the contract.
- (3) A procuring entity shall, in determining the amount of bid security required, take into account the —
 - (a) cost to bidders of obtaining a bid security;
 - (b) estimated value of the contract;
 - (c) risk of bidders failing to fulfil the conditions of their bids; and
 - (d) need for the amount of the bid security to be high enough to deter irresponsible bids but not so high as to discourage competition.
- (4) The bidding documents shall state that a bid security must be —
 - (a) in accordance with the format and wording provided in the bidding documents;
 - (b) in a form acceptable to the procuring entity, including —
 - (i) cash;

- (ii) a bank guarantee;
 - (iii) an equivalent instrument, such as a security issued by a insurance company or stand-by letter of credit;
 - (iv) property pledged by the bidder; or
 - (v) an alternative form acceptable to the procuring entity including a form permitted under schemes authorised by the public procurement department to facilitate access to securities by small enterprises;
 - (c) in the case of instruments issued by financial institutions, from an institution acceptable to the procuring entity; and
 - (d) valid for a period of twenty-eight days after the expiry of the bid validity period, or for such other period as may be prescribed in the bidding documents.
- (6) A procuring entity may forfeit a bidder's bid security only where there is a —
- (a) modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
 - (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
 - (c) failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
 - (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.
- (7) A procuring entity shall release a bid security promptly to an unsuccessful bidder upon the earlier of the —
- (a) expiry of the term of the security; or
 - (b) formation of a contract with the successful bidder and submission of any required performance security.
- (8) The bid security of a successful bidder shall not be released until a performance security, if required, has been received.

39. Amendment of withdrawal of bid.

- (1) A bidder may amend or withdraw a bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the date and time for the close of submission of bids.
- (2) The notice of amendment or withdrawal shall be submitted in an envelope identifying the invitation to bid and clearly labelled "*Amendment of Proposal*" or "*Withdrawal of Proposal*" and shall comply with any additional directions, if any, in the invitation to bid.

**PART VI – BID OPENING, EXAMINATION AND
EVALUATION, CONTRACT AWARD AND PERFORMANCE
SECURITY**

40. Bid opening.

- (1) Bids shall be opened by the procurement unit or tender committee, as appropriate, at the time and place indicated in the bidding documents and the time of bid opening shall coincide with or follow immediately after the deadline for submission of bids, allowing a minimum time interval for logistical reasons.
- (2) Bidders or their representatives may attend the bid opening and the procurement unit or tender committee, as the case may be, shall cause to be read out loud and recorded —
 - (a) the name of the bidder;
 - (b) the total amount of each bid;
 - (c) any discounts or alternatives offered; and
 - (d) the presence or absence of any required bid security or essential supporting documents.
- (3) A copy of the record shall be made available to any bidder on request.
- (4) No decision regarding the disqualification or rejection of a bid shall be taken or announced in the bid opening session.
- (5) A bidder shall not, after opening of the bids and until the preliminary decision on award has been notified to the successful bidder, make any unsolicited communication to the procurement entity or attempt in any way to influence the procuring entity's examination and evaluation of the bids.

41. Confidentiality.

Notwithstanding any law to the contrary, information relating to the content of pre-qualification applications and bids, or the examination, clarification, evaluation and comparison of bids, shall not be disclosed by the procuring entity to —

- (a) suppliers or contractors; or
- (b) any other person not involved officially in the examination, evaluation or comparison of bids or in making the decision whether a bid should be accepted.

42. Examination and evaluation of bids.

- (1) The procuring entity shall, following the opening of bids, examine the bids in order to determine whether —

- (a) bids are complete and have been properly signed by the bidder or bidding entity;
 - (b) required documents to establish the legal validity of the bidder or the bidding entity and required bid security have been furnished; and
 - (c) bids are substantially responsive to the technical specifications and contract conditions set forth in the bidding documents.
- (2) A bid shall be rejected and excluded from further evaluation and comparison where the bid is —
 - (a) not complete or properly signed;
 - (b) not accompanied by a bid security in the prescribed form where such security is required;
 - (c) not accompanied by essential supporting documents such as business registration certificates, business licences and tax receipts; or
 - (d) substantially non-responsive to the technical specifications, or contract conditions or to other critical requirements in the bidding documents.
- (3) In selective bidding, a bid received from an entity other than the pre-qualified bidders shall be rejected and excluded.
- (4) Bids not excluded from consideration pursuant to paragraph (2) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (5) The procuring entity —
 - (a) may seek clarification in writing from any bidder to facilitate evaluation;
 - (b) shall not ask or permit a bidder to change the price or any other aspect of the bid; and
 - (c) where a bidder amends its bid in any manner, shall reject the bid and forfeit the bid security.
- (6) In a bid —
 - (a) the amount in words shall, where there is a discrepancy between figures and words, prevail; and
 - (b) where a discrepancy is due to misplacement of decimal point, the mistake shall be rectified and the bidder notified.
- (7) During an evaluation —
 - (a) minor deviations in a bid which did not merit rejection of the bid at an earlier stage, such as a minor variation, shall where possible be costed; and

- (b) the evaluation cost of a bid referred to in sub-paragraph (a) shall then be compared to those of other bids to determine the lowest evaluated bid.
- (8) In selective bidding, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original pre-qualification.
- (9) In methods other than selective bidding, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents and, if that bid fails, the same check shall be applied to the next ranked bid.

43. Prohibition of negotiations.

- (1) Subject to sub-paragraph (b) of paragraph (2), no negotiations shall take place between the procuring entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor.
- (2) The procuring entity, where the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, shall investigate the causes for the excessive cost and —
 - (a) may consider requesting new bids; or
 - (b) subject to approval by the head of the procuring entity, may negotiate a satisfactory contract with the lowest evaluated bidder for a reduction in the scope of the goods, works or services reflected in a corresponding reduction of the contract price.

44. Contract award.

- (1) The contract shall be awarded to the bidder who submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents.
- (2) The procuring entity shall, prior to the expiry of the bid validity period, give notice as prescribed to the successful bidder of the proposed award, specifying the time within which, subject to any intervening complaints filed, the contract must be signed.
- (3) The procuring entity shall, where a contract is awarded by way of competitive bidding, or has a value in excess of \$20,000, give notice as prescribed to the other bidders specifying —
 - (a) the name and address of the proposed successful bidder;
 - (b) the price of the contract; and
 - (c) that the contract shall not be signed until at least fourteen calendar days have passed following the date of the notice.
- (4) The procuring entity, where the successful bidder fails within the prescribed time limits to sign a written contract or to provide a required performance security, shall —

- (a) accept the next ranked bidder from among the remaining bids that are in force;
 - (b) in selecting the next ranked bidder, comply with the bid opening provisions set out in regulation 40 as appropriate and the notice requirements of paragraph (3).
- (5) A written procurement contract that is required to be signed shall enter into force when the contract is signed by the supplier or contractor and by the procuring entity.
- (6) A procurement contract in accordance with the terms and conditions of the accepted bid shall, where notice is dispatched while the bid is in force in accordance with paragraph (2), enter into force when the notice is dispatched to the successful supplier or contractor that submitted the bid.
- (7) Contracts shall be signed by the head of a procuring entity or a person delegated by the head of such entity.

45. Performance security.

- (1) A procuring entity may request a performance security to secure the contractor's obligation to fulfil the contract and shall set out in the bidding documents and the contract the requirements for such performance security.
- (2) The value of a required performance security shall be no more than ten percent of the contract value and may be expressed either as a fixed amount or as a percentage of the contract value.
- (3) The procuring entity shall, in determining the amount of performance security required, take into account the —
- (a) cost to the contractor of obtaining a performance security;
 - (b) value of the contract;
 - (c) risk of a contractor failing to fulfil his contractual obligations; and
 - (d) extent of protection offered to the procuring entity through alternative means, such as payment retentions.
- (4) The value of a performance security may, where appropriate, be progressively reduced in line with the contractor's progress in delivering or completing the goods, works or services to which the security relates.
- (5) The bidding documents and contract shall state that the performance security must be —
- (a) in accordance with the format and wording provided in the bidding documents;
 - (b) in a form acceptable to the procuring entity;
 - (c) where the security is issued by a financial institution, from an institution acceptable to the procuring entity; and
 - (d) valid for the period prescribed in the contract.

- (6) The conditions for forfeiture of the performance security shall be specified in the contract.
- (7) The procuring entity shall release the performance security promptly to the contractor upon —
 - (a) completion of all the contractor's contractual obligations which are subject to the security; or
 - (b) termination of the contract for a reason that is not attributable to any fault of the contractor.

46. Request for proposals award, quality and cost selection.

- (1) The selection of the successful proposal in a request for proposals method shall, as appropriate, be based on the —
 - (a) technical quality of the proposal, the consultant's relevant experience, the expertise of its staff, the proposed work methodology, and the price of the proposal;
 - (b) quality of the technical proposal submitted within a predetermined fixed budget; or
 - (c) best financial proposal submitted by the candidates that have obtained an acceptable technical score pre-disclosed in the request for proposals.
- (2) The method of selection and the criteria to be applied shall be set out in detail in the request for proposals.
- (3) A consultant may be selected exclusively on the basis of the technical quality of the proposal where —
 - (a) the head of the procuring entity has approved the use of such method; and
 - (b) the services —
 - (i) are of an exceptionally complex nature;
 - (ii) will have a considerable impact on future projects or national economy; or
 - (iii) may lead to the submission of proposals which are difficult to compare.

47. Bidder debriefing.

- (1) A procuring entity shall, upon request, communicate promptly to a bidder the reason for the rejection of its application to pre-qualify, or of its bid.
- (2) A debriefing shall be provided in writing within a reasonable period of time of the receipt of the request.
- (3) A debriefing shall state —

- (a) at which stage of the evaluation the bid was rejected and provide brief details of any material deviation, reservation or omission leading to rejection of the bid; or
 - (b) that a bid was substantially responsive but failed to offer the lowest evaluated price or highest score as required.
- (4) A debriefing shall not provide details on any other bids, other than information that is publicly available from bid openings or published notices.

48. Contract award notice.

The procuring entity shall publish promptly, and in any event within two months of the contract award, a notice of all procurement contract awards in accordance with the requirements for procurement notices under regulation 30.

PART VII – PROCUREMENT REVIEW TRIBUNAL

49. Appointment of Tribunal president.

- (1) The Governor-General acting on the advice of the Judicial and Legal Service Commission shall appoint the president of the Tribunal.
- (2) A person shall not be eligible for appointment as president of the Tribunal unless such person —
 - (a) is a member of The Bahamas Bar for a period of at least ten years; and
 - (b) appears to the Judicial and Legal service Commission to have appropriate experience and knowledge to enable him to discharge his functions as a member of the Tribunal.
- (3) A person may not be appointed to serve as president for more than an aggregate period of eight years.
- (4) Notwithstanding paragraph (3), the president may be temporarily re-appointed for the purpose of continuing to act as a member of the Tribunal as constituted in order to complete any proceedings instituted before the end of the president's term of office.
- (5) The President may at any time resign his office by notice in writing to the Judicial and Legal Services Commission.
- (6) The Governor-General acting on the advice of the Judicial and Legal Services Commission may remove a person from office as president where satisfied that the president is unable, unwilling or unfit, for whatever reasons, to perform his functions as a member of the Tribunal.
- (7) Subject to this regulation, the president shall hold and vacate office in accordance with the president's terms of appointment.

50. Appointment of Tribunal members.

- (1) The Governor General shall, acting on the advice of the president, appoint a maximum of four (4) persons to serve as ordinary members of the Tribunal.
- (2) Members appointed pursuant to paragraph (1) —
 - (a) shall be persons with experience, expertise or professional qualifications that the Governor General considers relevant to exercising the jurisdiction of the Tribunal; and
 - (b) may include economists, lawyers, surveyors, accountants or persons with substantial and relevant experience in public procurement and related fields of expertise.
- (3) A minimum of one third of all members of the Tribunal shall be legal members.
- (4) A person shall not be eligible for appointment as a legal member unless such person —
 - (a) is a member of The Bahamas Bar and has been for a period of at least seven years; and
 - (b) appears to the President to have appropriate experience and knowledge to enable him to discharge his functions as a legal member of the Tribunal.
- (5) A person shall not be appointed as a member of the Tribunal for more than eight years in aggregate.
- (6) Notwithstanding paragraph (5), a member may be temporarily re-appointed for the purpose of continuing to act as a member of the Tribunal as constituted in order to complete any proceedings instituted before the end of the member's term of office.
- (7) A members may resign his office at any time by notice in writing to the President.
- (8) The Governor General acting on the advice of the president may remove a member from office where satisfied that the member is unable, unwilling or unfit, for whatever reasons, to perform the member's functions as a member of the Tribunal.
- (9) Subject to this regulation, members shall hold and vacate office in accordance with their terms of appointment.

51. Tribunal registrar.

- (1) The president shall appoint, and supervise, a registrar of the Tribunal who shall be responsible for the administration of the Tribunal.
- (2) The president may by order assign such functions to the registrar as the president deems fit.

- (3) The registrar shall serve for a term of four years and shall be eligible for re-appointment.
- (4) Subject to any order of the president, the functions, powers and duties of the registrar are to —
 - (a) require any application or other reference to the Tribunal to be amended in accordance with the rules, practice and procedure of the Tribunal or to be re-presented after an amendment has been made at the direction of the registrar;
 - (b) register applications and maintain the register of applications;
 - (c) fix dates and make all other practical arrangements, including the issuing of notices to parties and witnesses, for sittings of the Tribunal or a panel of the Tribunal;
 - (d) arrange for publication of the proceedings and judgements of the Tribunal;
 - (e) give directions for any formal amendment of the record of the Tribunal;
 - (f) order the provision of copies of documents to parties; and
 - (g) grant leave to inspect the records of the Tribunal.
- (5) The registrar shall have custody of the seal and records of the Tribunal and shall exercise such other functions as may be assigned to the registrar by order of the President.
- (6) The functions of the registrar may also be carried out by the public procurement department as appropriate.

Tribunal panels.

- (1) The functions of the Tribunal shall be exercised by panels of the Tribunal.
- (2) A panel of the Tribunal shall sit at such time and in such place as the president may direct and more than one panel may sit at a time.
- (3) The president shall make arrangements for determining which members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function.
- (4) Arrangements made pursuant to paragraph (3) shall ensure that each panel is constituted as —
 - (a) the president sitting alone;
 - (b) the president sitting with two ordinary members; or
 - (c) a legal member sitting with two ordinary members.

PART VIII – COMPLAINTS PROCEDURE AND APPEAL TO TRIBUNAL

52. Complaints.

- (1) A potential or actual bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by these Regulations may at any stage apply by way of complaint to the procuring entity for a review of the procurement proceedings.
- (2) The procuring entity shall not process an application made pursuant to paragraph (1) unless —
 - (a) the complaint which is the subject of the application is made in writing;
 - (b) the complaint identifies the specific act of omission or commission alleged to contravene these Regulations and the bidding documents; and
 - (c) the complaint is made in respect of a contract award.
- (3) A procuring entity shall process a complaint by way of a review of the procurement proceedings where such complaint —
 - (a) concerns alleged improprieties in the solicitation of bids or applications to pre-qualification; and
 - (b) such alleged improprieties were not apparent prior to bid opening but have come to light after bid opening.???

53. Procuring entity review procedure.

- (1) A complaint prior to the entry into force of a contract shall be made by the bidder, in the first instance, in writing to the head of the procuring entity.
- (2) The head of the procuring entity shall not entertain a complaint made pursuant to paragraph (1) unless the complaint was submitted within fourteen working days of the bidder becoming aware of the circumstances giving rise to the complaint, or should have become aware of such circumstances, whichever is earlier.
- (3) The head of the procuring entity shall, unless the complaint is resolved by mutual agreement —
 - (a) suspend the procurement proceedings unless satisfied that urgent public interest considerations require the procurement to proceed;
 - (b) review the complaint; and
 - (c) within five working days after submission of the complaint, issue a written decision to the complainant stating the reasons the complaint has been rejected or, where the complaint is upheld, the corrective measures to be taken.

- (4) The complainant may, where the head of the procuring entity upon review does not issue a decision within five days or the complainant is not satisfied with the decision issued, appeal to the Procurement Review Tribunal.

54. Appeal to Tribunal.

- (1) A person may make an application to the Procurement Review Tribunal for review where such person —
 - (a) is aggrieved by a decision of the head of procuring entity made pursuant to regulation 55; or
 - (b) has a complaint in respect of the award of a contract that has already come into force.
- (2) An application for review may be made to the Tribunal —
 - (a) in the form of an appeal by the complaining bidder against a decision by the head of a procuring entity filed within ten working days of the date on which the procuring entity's decision was communicated to the complaining bidder;
 - (b) where the head of a procuring entity to whom a complaint is made fails to render a decision within the required time and the application is filed within ten working days of the expiry of the required time for decision-making by the procuring entity;
 - (c) where the contract has already entered into force, in the form of an appeal in the first instance to the Tribunal filed within ten working days of the bidder becoming aware of the circumstances giving rise to the complaint, or should have become aware of such circumstances, whichever is earlier.
- (3) The president of the Tribunal shall within ten working days of receiving an application for review —
 - (a) appoint a panel to hear the matter; and
 - (b) fix a date, to be known as the date of establishment, for the commencement of the panel's deliberations.

55. Panel decision.

- (1) A panel of the Procurement Review Tribunal shall make a written decision, containing the reasons for the decision, within ten working days after its date of establishment.
- (2) A panel decision shall be binding on all the parties.
- (3) An application for review may be dismissed for —
 - (a) failure to comply with any of the prescribed requirements;
 - (b) containing only obligations that do not —
 - (i) state a valid basis for a complaint; or

- (ii) set forth a detailed legal and factual statement;
 - (c) having been filed in an untimely manner —
 - (i) at the initial level of review by the procuring entity; or
 - (ii) with respect to deadlines for filing of an application with the Tribunal;
 - (d) being concerned with contract implementation or administration rather than contract award.
- (4) The Tribunal panel may, on review of an application brought before it, dismiss a complaint or order a remedy —
- (a) prohibiting the procuring entity from acting or deciding in an unauthorised manner or from following incorrect procedure;
 - (b) annulling in whole or in part any unauthorized act or decision of a procuring entity, other than an act or decision bringing the contract into force;
 - (c) reversing a decision by the head of a procuring entity, or substituting its own decision for such a decision, other than a decision bringing the contract into force.
- (5) Subject to paragraph (6), the submission of an application for review within the time periods specified in these Regulations shall suspend the procurement proceedings until a decision on the matter is issued by the Tribunal panel.
- (6) The president of the Tribunal may upon the application of the procuring entity end the suspension of procurement proceedings pursuant to paragraph (5) where the procuring entity satisfies the president that the continuation of the suspension would cause disproportionate harm to —
- (a) the public interest;
 - (b) the procuring entity; or
 - (c) other suppliers and contractors.
- (7) The lifting by the president of a suspension pursuant to paragraph (6) shall —
- (a) permit the procuring entity to continue with the procurement procedure up to contract award; and
 - (b) not permit a contract to be concluded before a decision is made by the Tribunal panel.
- (8) The proceedings of the Tribunal panel shall be governed by the Tribunal's rules of procedure —
- (a) adopted in accordance with section 19G(1)(e) of the Act; and
 - (b) which shall in all cases ensure that all parties to a dispute are heard and given fair opportunity to make their case.

PART IX – MISCELLANEOUS

56. Execution of procurement contracts.

- (1) Notwithstanding any provision of these Regulations or any other law, a procurement contract shall lapse upon the dissolution of Parliament where such contract —
 - (a) has not yet come into force; and
 - (b) has not been executed by all the parties.
- (2) The Minister may by order, where a state of national emergency has been declared by the Government of The Bahamas, waive the prohibition referred to in paragraph (1) either generally or with respect to specific contracts.

57. Domestic quotas.

- (1) The Public Procurement Board shall, in performing its functions, use its best efforts to ensure that on an annual basis a quota of at least twenty per cent in value of all Government procurement contracts are awarded to small businesses —
 - (a) of less than twenty-five employees; and
 - (b) owned by persons who are citizens of The Bahamas.
- (2) The Board shall, in its advice, opinions, recommendations, policy and other guidance given to the Minister and the public procurement department, promote and facilitate —
 - (a) the achievement of the quota referred to in paragraph (1); and
 - (b) the inclusion by the public procurement department in its manuals, circulars, standards, guidance and other materials issued to procuring entities of an obligation to facilitate the award of procurement contracts, to the greatest extent possible consistent with these Regulations, to ensure that annually the quota is achieved.

58. Records and reports of procurement activities.

- (1) A procuring entity shall maintain an individual record for each procurement requirement which shall be marked with the relevant procurement reference number.
- (2) An individual record shall contain the originals and copies, where appropriate, of all information documents and communications related to that procurement proceeding, including —
 - (a) a description of the object of the procurement;
 - (b) a list of the participating bidders and their qualifications;
 - (c) bid prices;

- (d) a summary of the evaluation of bids;
 - (e) a summary of all review proceedings and related decisions;
 - (f) requests for clarifications and the response to such requests;
 - (g) a statement of the reason for choosing a procurement method except in the case of competitive bidding or a request for proposals for services; and
 - (h) any other information required to be recorded by these Regulations.
- (3) The record shall —
- (a) be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.
 - (b) on request be made available to any person after a bid has been accepted unless a portion of the record is required to be disclosed earlier pursuant to law or by order of a competent court or a duly appointed arbitrator.
- (4) Procurement records shall be kept for a minimum period of five years following completion or termination of the contract or cancellation of the procurement proceedings.
- (5) Procuring entities shall submit report summaries on their procurement activities to the public procurement department in accordance with templates issued by the department.

59. Conduct of procurement officers.

A person responsible for any aspect of the procurement of a procuring entity including the requisitioning, planning, preparing and conducting procurement proceedings, and administering the implementation of procurement contracts, shall be subject to the rules governing the Public Service in accordance with Chapter VIII of the Constitution and shall —

- (a) ensure that each decision is in accordance with these Regulations based on adequate information having due regard to the circumstances and is made in good faith for a proper purpose in the best interest of The Bahamas;
- (b) assure fair competitive access by contractors to procurement proceedings and contract awards;
- (c) avoid circumstances in which such person might personally benefit from a decision or from his official actions, either directly or indirectly through family and associates, or would give the appearance of so benefiting;
- (d) not commit corrupt or fraudulent acts, such as the solicitation or acceptance of bribes.
- (e) not reveal confidential information received in connection with procurement proceedings and bids, including bidders' proprietary information.

60. Procurement offences.

A person who breaches any provisions of these Regulations commits a disciplinary offence which shall be governed by the rules governing the Public Service in accordance with Chapter VIII of the Constitution and any other applicable legislation.

61. Suspension and debarment.

The Public Procurement Board may, after reasonable notice to the concerned bidder and a reasonable opportunity for such bidder to be heard, for cause debar a person in accordance with the procedures set out in the *First Schedule*.

62. Repeals.

Regulations 56 to 58 of the Financial Regulations¹ are hereby repealed.

¹*Sub. Leg., Vol. VI, (Ch. 359-5)*

SCHEDULE (Regulations 5 and 60)

DEBARMENT PROCEDURES

to be provided

SECOND SCHEDULE (Regulation 15(2))**PROCUREMENT CONTRACT VALUATION RULES****1. Estimated value.**

- (1) The calculation of the estimated value of a public procurement contract shall —
- (a) be based on the total anticipated amount payable, inclusive of all taxes, as estimated by the contracting procuring entity; and
 - (b) in taking account of the anticipated total amount, include any form of option, renewals or extensions of the contract.
- (2) The estimated value shall be valid at the time at which —
- (a) the procurement notice is sent in accordance with regulation 30; or
 - (b) where no procurement notice is required, the procuring entity commences the contract award procedure.

2. Value of lots.

- (1) Account shall be taken of the total estimated value of all lots where a proposed work or purchase of services, or a proposal for the acquisition of similar supplies, may result in contracts being awarded at the same time in the form of separate lots.
- (2) Where the aggregate value of separate lots is equal to or exceeds a threshold triggering the use of a specific procurement method, that procurement method shall apply to the awarding of each lot.

3. Works contracts.

Calculation of the estimated value of public works contracts shall take account of both —

- (a) the cost of executing the works; and
- (b) the total estimated value of the supplies necessary for executing the works placed at the contractor's disposal by the contracting procuring entity.

4. Lease, rental or hire purchase contracts.

The basis for valuation of contracts for the lease, rental or hire purchase of products or services, or of contracts which do not specify a total price, shall be —

- (a) in the case of fixed-term contracts —
 - (i) where the term is twelve months or less, the total value for the duration of the contract; or

- (ii) where the term exceeds twelve months, the total value of the contract including the estimated residual value;
- (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight.

5. Regular contracts.

Calculation of the estimated contract value for public supply or service contracts which are regular in nature, or which are intended to be renewed within a given period, shall be based on the —

- (a) total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract; or
- (b) total estimated value of the successive contracts awarded during —
 - (i) the twelve months following the first delivery; or
 - (ii) the financial year, if the financial year is longer than twelve months.

6. Services contracts.

Calculation of the estimated contract value for public services contracts shall be based, where appropriate, on the value of —

- (a) in the case of services contracts which indicate a total price —
 - (i) for insurance services, the premium payable and other forms of remuneration;
 - (ii) for banking and other financial services, the fees, commissions, interest and other forms of remuneration;
 - (iii) for design services, the fees, commission payable and other forms of remuneration;
- (b) in the case of services contracts which do not indicate a total price —
 - (i) for fixed-term contracts where the term is forty-eight months or less, the total value for the full term;
 - (ii) for contracts without a fixed term or with a term greater than forty-eight months, the monthly value multiplied by forty-eight.

7. Framework contracts.

Calculation of the estimated contract value for framework contracts shall be based on the maximum estimated, value inclusive of all taxes, of all contracts envisaged for the total term of the framework contract.