

ANTIGUA AND BARBUDA



THE PROCUREMENT ADMINISTRATION (TRANSITIONAL) REGULATIONS, 2021  
STATUTORY INSTRUMENT

2021, No. 97

*[Published in the Official Gazette Vol. XLI No. 75  
dated 21st October, 2021.]*

Printed at the Government Printing Office, Antigua and Barbuda,  
by Noel F. Abraham, Government Printer  
— By Authority, 2021

235—11.21

*[Price \$9.60]*



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**THE PROCUREMENT ADMINISTRATION (TRANSITIONAL) REGULATIONS, 2021**

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**ANTIGUA AND BARBUDA****THE PROCUREMENT ADMINISTRATION (TRANSITIONAL) REGULATIONS, 2021****STATUTORY INSTRUMENT****2021, NO. 97****THE PROCUREMENT ADMINISTRATION (TRANSITIONAL) REGULATIONS 2021  
MADE BY THE MINISTER IN EXERCISE OF THE POWERS CONFERRED ON HIM  
UNDER SECTION 52 OF THE PROCUREMENT ADMINISTRATION ACT NO. 16 OF  
2011****PART I - PRELIMINARY****1. Short title and Commencement**

(1) These Regulations may be cited as the Procurement Administration (Transitional) Regulations 2021.

(2) These Regulations shall be deemed to have come into operation on the 1<sup>st</sup> day of June, 2021.

**2. Interpretation**

(1) In these Regulations unless the context provides otherwise –

“**Act**” means the Procurement Administration Act 2011, No. 16 of 2011;

“**Accountant General**” includes any public officer acting in the post of Accountant General;

“**accounting officer**” means a public officer designated as such under section 8(1) of the Finance Administration Act, 2006;

“**Board**” means the Procurement Board established under section 38(1) of the Act;

“**Chief Procurement Officer**” means the Chief Procurement Officer appointed under section 9(1) of the Act;

“**competitive quotations**” means a quotation in the prescribed form submitted in response to an advertisement or request for construction, goods or services;

“**competitive sealed bid**” means a sealed bid in the prescribed form submitted in response to an advertisement or request for construction, goods or services;

**“construction”** means the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works and includes services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection therewith if the value does not exceed the value of the construction, reconstruction, erection, installation, repair, renovation or extension or demolition of the building, structure or works;

**“department”** includes a unit or part of a department;

**“donor organisation”** means an organisation based outside Antigua and Barbuda which provides, or joins in providing, grants, credits or loans to the Government of Antigua and Barbuda or its agencies;

**“estimate of the amount of contract award”** means the estimate of the amount of the contract award referred to in section 17 of the Act;

**“Financial Secretary”** includes a public officer acting in the post of Financial Secretary;

**“goods”** means tangible personal property and software, whether on a CD-ROM or other tangible medium or as a download from the Internet or otherwise, and includes services incidental to the supply of goods if the value of those services does not exceed the value of the goods;

**“Government”** means the Government of Antigua Barbuda;

**“Minister”** means Minister with responsibility for Finance;

**“Permanent Secretary”** includes anyone acting in the post of the Permanent Secretary;

**“person”** means a corporation, association, individual, sole proprietorship, partnership or joint venture and includes their assigns and heirs, executors and administrators or other legal representatives;

**“procurement”** means—

(a) all activities that pertain to the solicitation for construction, the purchase, lease, rental or acquisition of goods or the rendering of services and includes the award of contract, execution of a contract and other activities related to the finalization of a contract for the construction, the purchase, lease, rental or acquisition of goods or the rendering of services; and

(b) where the context permits, includes the construction, goods or services procured;

**“public officer”** means a person working in the government service and includes but is not limited to the meaning of “public officer” in section 127 (1) of the Antigua and Barbuda Constitution Order 1981, Cap. 23;

**“responsible authority”**, in respect of the solicitation of construction, goods or services, means the responsible authority listed in the following paragraphs—

- (a) the accounting officer of the department designated by the Board under section 44(1)(a) of the Act in respect of specified construction, goods and services approved as centralized solicitations;
- (b) the accounting officer of the department in respect of—
  - (i) a solicitation by competitive sealed bids,
  - (ii) a solicitation by competitive sealed proposals, or
  - (iii) a solicitation by competitive quotation;
  - (iv) sole source solicitation where the estimate of the amount of the contract award for the procurement is that of a small procurement or more; or
- (c) the Chief Procurement Officer in respect of—
  - (i) an emergency solicitation or sole source solicitation where the estimate of the amount of the contract award for the procurement is less than that of a small procurement, or
  - (ii) a solicitation by competitive quotations;

“**services**” means the supply of—

- (a) labour, time or effort, not involving furnishing a tangible end-product other than a report or goods or other tangible property produced or supplied incidental to the labour, time or effort but does not include the employment of a public officer;
- (b) insurance coverage or other similar services; or
- (c) electricity, telecommunications, water and other similar services and includes goods, products or other tangible property supplied in connection with electricity, telecommunications, water and other similar services;

but does not include services exempted under the Act;

“**small procurement**” means a procurement for which the value of an estimate for an award of contract, goods or services is less than an amount prescribed by the Cabinet by order published in the *Gazette* pursuant to section 22 of the Act;

“**solicitation**”, in relation to construction, the purchase, lease, rental or acquisition of goods or the rendering of services, means all the activities commencing with the preparation of the solicitation documents for one of the solicitation procedures referred to in section 18, 19, 20, 21, 23, 24 or 25 of the Act and ending with the delivery of the submissions to the responsible authority;

“**standard solicitation documents**” means—

- (a) documents approved by the Board under section 44(1)(c)(i) of the Act; and
- (b) all variations or amendments of standard solicitation documents approved by the Board under section 44(1)(c)(ii) of the Act; and

“**submission**” means the response to a solicitation.

- (2) Unless the context otherwise requires, the cognates and grammatical forms of a word or phrase in this Act have the same meaning as the word or phrase.
- (3) Where a power to delegate, designate, appoint or authorise a person to do an act or thing is given under these Regulations, the delegation, designation, appointment or authorisation may be made by the person’s name, title or office and where a delegation, designation, appointment or authorisation is by title or office, delegation, designation, appointment or authorisation applies to every person while he holds that title or office.
- (4) Where under these Regulations a public officer delegates the performance of his duties or the exercise of his powers to any public officer, the delegate, in addition to the public officer making the delegation, is liable for the proper performance of the duty or the proper exercise of the power that is delegated.

## **PART II - PROCUREMENT ADMINISTRATION**

### **3. Procurement Board**

- (1) The Tenders Board established under the Tenders Board Act (Cap. 424A) shall cease to exist on the date of entry into force of these Regulations.
- (2) Immediately on the cessation of the Tenders Board, the members of the Tenders Board at the date of cessation shall become members of the Procurement Board subject to the following:
  - (a) the Permanent Secretary of the Ministry shall fulfil the role of the member designated in section 38(1)(b) of the Act;
  - (b) the legal officer nominated by the Attorney General shall fulfil the role of the member designated in section 38(1)(c) of the Act;
  - (c) the two public officers appointed by virtue of the section 5(1)(a) of the Tenders Board Act shall continue to serve until the end of their current term of office;
  - (a) the two persons appointed by virtue of the section 5(1)(e) of the Tenders Board Act shall fulfil the role of the members designated in section 38(1)(a) of the Act;
- (3) Subject to the members under subregulation (2)(c) hereof, the Board shall be constituted in accordance with section 38 of the Act no later than 12 months after the entry into force of the Act.
- (4) The Chairperson of the Board shall be appointed by the responsible Minister.
- (5) The Deputy Chairperson of the Board shall be appointed by the responsible Minister.
- (6) No member of the Board may carry out the assigned functions in respect of a department or statutory body by which they are employed.



#### **4. Chief Procurement Officer**

- (1) Until such time as a Chief Procurement Officer is appointed by the Board in accordance with section 9 of the Act, the Board shall delegate the functions of the Chief Procurement Officer to a member of the Board.
- (2) The functions of the Board member delegated under Regulation 4(1) shall cease upon the appointment of the Chief Procurement Officer.

#### **5. Transition Committee**

- (1) The Board shall as soon as practicable constitute a Transition Committee under section 43 of the Act which shall be responsible for operating the transitional arrangements of Part III and for recommending to the Board a transfer of procurement responsibility to a responsible authority under those transitional arrangements.
- (2) The Transition Committee shall comprise at least 5 members as follows:
  - (a) one public officer nominated by the Permanent Secretary of Finance with experience in public finance management or procurement;
  - (b) one public officer nominated by the Permanent Secretary responsible for public works with experience in construction or procurement;
  - (c) one legal officer nominated by the Attorney-General;
  - (d) one auditor nominated by the Accountant General; and
  - (e) one of the continuing members of the Board under Regulation 3(2)(c) appointed by virtue of the section 5(1)(a) of the Tenders Board Act.
- (3) No member of the Transition Committee may carry out the assigned functions in respect of a department or statutory body by which they are employed.

#### **6. Procurement Function of Responsible Authority**

- (1) The accounting officer of every department and the CEO of every statutory authority shall establish a procurement unit to carry out procurement activities.
- (2) The accounting officer or CEO shall decide the size, location, and structure of the procurement unit, taking into account its procurement requirements and the availability of trained and experienced officers.
- (3) The procurement unit may also consist of persons in different units provided their duties and functions and lines of responsibilities are clearly established.
- (4) Where the level of procurement activity does not justify the creation of a procurement unit, the accounting officer or CEO may:
  - (a) nominate a single public officer to carry out the functions of a procurement unit;  
or

- (b) appoint the procurement unit of another responsible authority; or
- (c) request the procurement unit of the Ministry to carry out procurement on its behalf.

(5) Where no procurement unit has been established in accordance with this Regulation or where the Transition Committee finds that there is no procurement capacity within the procurement unit, the procurement of that department or statutory body shall be carried out by the procurement unit of the Ministry under the direction of the Board and/or the Chief Procurement Officer until such time as this Regulation and the requirements of Part III have been met.

(6) Responsible authorities whose procurement is carried out in accordance with subregulation (5) shall be deemed to have complied with the Act and these Regulations insofar as the Procurement Unit of the Ministry has complied with them.

### **PART III - TRANSITIONAL ARRANGEMENTS**

#### **7. Transfer of Procurement Responsibility**

(1) Notwithstanding section 11(1) of the Act, Regulation 12 shall apply in full only where the responsible authority of a department or statutory body receives notice from the Procurement Board authorising the transfer of the duties and powers listed in section 11(1) of the Act.

(2) Without prejudice to Regulation 6(5), in determining whether to grant such authorisation, the following criteria shall be considered:

- (a) the level of compliance of the responsible authority with Regulation 6; and
- (b) the capacity of the responsible authority to conduct procurement, which may be measured by factors including the availability of officers to carry out procurement, the number of officers trained and/or experienced in procurement, and the availability of information technology and communication facilities of the authority;
- (c) conformity of the authority's contract award procedures and practices with the Act.

(3) The Board shall be guided by the recommendation of the Transition Committee which shall conduct a review of the procurement function of each responsible authority either:

- (a) on the basis of a request by the responsible authority; or
- (b) of its own motion.

(4) The Board shall determine the timetable for review by the Transition Committee but initial reviews of all responsible authorities shall be completed within 18 months of the date of entry into force of these Regulations.

(5) To the extent that any irregularities are identified in respect of Regulation 7(2)(c), before granting authorisation the Board would need to be satisfied that those irregularities have been corrected and measures, including disciplinary measures, where appropriate, have been taken to ensure that those irregularities are not repeated.

- (6) For any responsible authority which is not given authorisation under subregulation (1),
- (a) the Transition Committee shall undertake reviews every 6 months to determine compliance; and
  - (b) until such time as the Procurement Board is satisfied that the responsible authority meets the criteria of subregulation (2), the supervision of the Board provided for under Regulation 8 shall continue.

## **8. Supervision by the Procurement Board**

- (1) Until such time as the responsible authority of a department or statutory body receives authorisation by the Board under Regulation 7(1), the responsible authority shall:
- (a) seek the approval of the Board in relation to the membership of any Evaluation Committee established under Regulation 13 and make any adjustments required by the Board;
  - (b) seek the approval of the Board of its choice of procurement method under Regulation 12(1)(c);
  - (c) send to the Board a copy of the proposed solicitation documents prepared in accordance with Regulation 12(1)(a), including the technical requirements and make the adjustments required, if any;
  - (a) for procurements with an estimated value of less than the amount determined by Cabinet under section 22 of the Act and for small emergency solicitations falling within the terms of section 24(1)(b) of the Act, seek the approval of the Board of the award recommendation made under Regulation 12(2)(c) and (a); and
  - (e) for procurements conducted by way of sealed bids with an estimated value exceeding the amount determined by Cabinet under section 22 of the Act, send to the Board a copy of the proposed solicitation documents prepared in accordance with Regulation 12(3)(a), including the technical requirements and make the adjustments required, if any.
- (2) The requirements of subregulation (1) shall apply until authorisation is granted under Regulation 7(1) or until these Regulations cease to have effect, whichever is earlier.

## **PART IV - TECHNICAL REQUIREMENTS AND QUALIFICATION**

### **9. Determining the Subject-matter of Procurement**

- (1) The department's detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements shall be set out clearly in the solicitation documents.
- (2) All relevant solicitation and pre-qualification documents shall provide objective descriptive information that does not unnecessarily favour a particular bidder by stating

the desired performance or output requirements of the object of the procurement wherever possible rather than design or descriptive characteristics.

(3) The statement of requirements shall include, where appropriate:

- (a) the purpose and objectives of the procurement;
- (b) a full description of the requirement;
- (c) a generic specification to an appropriate level of detail;
- (d) a functional description of the requirements, including any environmental or safety features;
- (e) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be judged;
- (f) process and materials descriptions;
- (g) inspection and testing requirements; and
- (h) any applicable standards.

(4) No requirement or reference is to be made in the requirements to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other practical way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications.

## **10. Eligibility and Non-discrimination**

Bidders shall not be excluded from participation in public procurement on the basis of nationality, race or any other criterion, not having to do with their qualifications or decisions taken against any bidder under Regulation 11, provided always that they are not nationals of a country with which commercial relations has been suspended or prohibited either –

- (a) in accordance with international agreements to which Antigua and Barbuda is a party; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

## **11. Permitted Bidder Qualification Criteria**

(1) Bidders shall meet such of the following eligibility criteria as the procurement unit considers appropriate and relevant in the circumstances of the particular procurement-

- (a) that they have the legal capacity to enter into the procurement contract;
- (b) that they are not insolvent, under judicial management, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;

- (c) that they have paid all taxes, duties and rates for which they are liable in Antigua and Barbuda, together with any contributions or payments due to social security; and
- (a) that they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of 3 years preceding the commencement of the procurement proceedings.

(2) Qualification criteria shall be limited to those criteria which are 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 and capacity to finance.

(3) Qualification criteria shall not be unduly restrictive or designed to reduce competition and shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.

(4) The procurement unit shall clearly state the qualification criteria in all solicitation documents and shall, where it deems fit, require bidders to provide signed statements or documentary evidence to certify their qualifications.

(5) The procurement unit shall not impose any requirement as to qualifications in the invitation to bid other than a requirement specified in this Regulation.

(6) The procuring entity shall evaluate the qualifications of bidders in accordance with the qualification criteria and procedures set out in the pre-qualification documents, if any, and in the solicitation documents.

(7) Evidence of the bidders' technical capacity may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the goods, works or services, including evidence of:

- (a) experience and reliability;
- (b) financial resources, equipment and other physical facilities;
- (c) personnel;
- (a) managerial capability;
- (e) possession of the necessary professional and technical qualifications and competence; and
- (j) 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.

## **PART V - CONDUCT OF PROCUREMENT**

### **12. Functions of the Procurement Unit**

- (1) In making a procurement under the Act, the procurement unit of the responsible authority shall, in addition to the duties and powers conferred by section 11 of the Act:
  - (a) plan the procurement activities of the responsible authority;
  - (b) identify a procurement requirement and prepare an accurate estimate of the budget required for the contract award envisaged;
  - (c) select the appropriate method of procurement pursuant to the conditions of Part IV of the Act and Part V of these Regulations;
  - (a) subject to Regulation 17, prepare all necessary solicitation documents based on the standard solicitation documents approved by the Board under section 44(1)(c) of the Act;
  - (e) in respect of each procurement, ensure through consultation with the relevant officers of the department that the solicitation documents accurately reflect the
    - (i) technical requirements of the goods, works or services to be procured;
    - (ii) qualifications required of persons making submissions to demonstrate their capability to provide the goods, works or services to be procured; and
    - (iii) evaluation criteria to be applied to the submissions received that will secure value for money for the Government.
- (2) For procurements with an estimated value of less than the amount determined by Cabinet under section 22 of the Act and for small emergency solicitations falling within the terms of section 24(1)(b) of the Act:
  - (a) prepare and dispatch all
    - (i) requests for quotations for procurements conducted by the competitive quotation method; or
    - (ii) written enquiries in respect of procurements conducted by the sole source method; and
    - (iii) receive and safeguard all quotations and proposals in response to the written enquiries.
  - (b) evaluate the requests for quotation and recommend the award to the accounting officer;
  - (c) in the case of sole source contracts, negotiate the terms of the contract with the sole provider and recommend the award to the accounting officer;

- (a) manage the contract process and manage the contract in accordance with section 11(1) paragraphs (a) to (g) of the Act; and
  - (e) maintain complete records of each procurement.
- (3) For procurements conducted by way of sealed bids with an estimated value exceeding the amount determined by Cabinet under section 22 of the Act:
- (a) prepare the notice of solicitation or notice to pre-qualify in accordance with the templates contained in the standard solicitation documents;
  - (b) send the notices to the Chief Procurement Officer for publication in accordance with section 26(2) of the Act;
  - (c) attend the public bid opening conducted by the Chief Procurement Officer and transmit the bid opening record to the Evaluation Committee;
  - (a) respond to requests for clarification from bidders and organize and record the results of pre-bid meetings or site visits, if any;
  - (e) send the submissions received in the case of a solicitation by competitive sealed bids to the Evaluation Committee established pursuant to Regulation 13;
  - (j) assist the Evaluation Committee in seeking clarifications from bidders;
  - (g) receive the evaluation report from the Evaluation Committee and
    - (i) prepare a recommendation for review by the accounting officer;
    - (ii) with the concurrence of the accounting officer, transmit to the Board the recommendation, evaluation report and any additional documents or copies of submissions required by the Board; and
    - (iii) where the Board declines to make the award, follow any instructions given by the Board for re-evaluation, re-bidding or any other action required.
  - (h) where the Board awards the contract to the recommended bidder, manage the contract process and manage the contract in accordance with section 11(1) paragraphs (a) to (g) of the Act; and
  - (i) maintain complete records of each procurement.

### **13. Establishment of Evaluation Committee**

- (1) For every procurement with an estimated value exceeding the amount determined by Cabinet under section 22 of the Act, the accounting officer of the department shall appoint an evaluation committee.
- (2) The Evaluation Committee shall be composed of a minimum of three members which shall include:

- (a) the officer responsible for preparing the requirement or technical specification or person with equivalent technical expertise;
- (b) a financial officer of the department; and
- (c) other members to provide technical, legal or commercial expertise, as appropriate.

(3) In addition to the members appointed under subregulation (2), the Evaluation Committee shall also include a representative of the department's procurement unit who shall be a non-voting member, but who may:

- (a) provide any information requested by the Evaluation Committee in respect of the procurement procedure;
- (b) transmit requests for clarification to the bidders and transmit the responses provided to the Evaluation Committee;
- (c) transmit the Evaluation Report to the accounting officer.

(4) The members possessing the skills, knowledge or experience referred to in subregulation (5)(a) or (c) may be from the department, another department of Government or from the private sector.

(5) Members of the Evaluation Committee shall be individuals possessing skills, knowledge and experience relevant to the procurement requirement, which may include:

- (a) technical skills relevant to the procurement requirement;
- (b) end user representation;
- (c) procurement and procuring skills;
- (a) financial management or analysis skills; or
- (e) legal expertise.

(6) Members of the Evaluation Committee shall sign a declaration of impartiality and confidentiality.

#### **14. Functions of the Evaluation Committee**

The duties of the Evaluation Committee shall include:

- (a) receiving from the procurement unit the bid opening record and bids;
- (b) evaluating bids impartially and in good faith;
- (c) seeking clarifications from bidders where appropriate;
- (a) preparing the bid evaluation report, including recommendations for award of a contract;
- (e) responding to any queries raised by the procurement unit or accounting officer; and



- (j) complying with any instructions from the Board, if any, in respect of any re-evaluation required.

## **PART VI - PROCUREMENT PROCEDURES**

### **15. Pre-qualification**

- (1) Solicitation by competitive sealed bids may be preceded by pre-qualification in the case of particularly high value or complex procurement with a view to identifying, prior to the submission of bids, those bidders that are qualified.
- (2) The requirements and criteria for assessing the qualifications of bidders shall be those referred to in Regulations 10 to 11.
- (3) In the pre-qualification stage the:
  - (a) procurement unit shall provide prequalification documents to all bidders responding to the invitation to prequalify published in accordance with section 26(2)(b) of the Act;
  - (b) prequalification documents shall provide bidders with the information required to prepare and submit applications for prequalification and shall be based on standard solicitation documents for prequalification pursuant to Regulation 17; and
  - (c) procurement unit shall in accordance with Regulation 18 respond promptly to any request by a bidder for clarification of the prequalification documents that is received by the department within a reasonable time prior to the deadline for the submission of applications to prequalify.
- (4) The procurement unit shall make a decision with respect to each application to prequalify and all bidders that have been prequalified shall be invited to submit bids in the procurement proceeding.
- (5) At any time prior to contract award, the procurement unit may require a bidder that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such bidder and the procurement unit shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.
- (6) In all other respects, the provisions of the method for solicitation by competitive sealed bids apply.

### **16. Minimum submission periods**

- (1) Solicitation documents shall be ready for distribution prior to the publication of the notice pursuant to section 28(1) of the Act.
- (2) The submission period shall start on the date of the first publication of the notice and shall finish on the date of the bid submission deadline.
- (3) The minimum bidding period shall be:
  - (a) 30 days for competitive sealed bids;

- (b) 20 days for competitive sealed bids pre-qualification, where pre-qualification has taken place;
- (c) 30 days following a notice to pre-qualify for the submission of pre-qualification applications.

(4) Where it is envisaged that international bidders will participate in a solicitation by way of competitive sealed bids, 10 days must be added to the submission periods set out in subregulation (3).

(5) In determining the appropriate bidding period for each requirement, the procuring entity shall take into account, in addition to the minimum bidding period:

- (a) the time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
  - (b) any need for bidders to submit authenticated legal documents 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 solicitation document and for the delivery and submission of bids to the Chief Procurement Officer; and
- (a) any restrictions relating to the time the goods, works or services are required.

## **17. Solicitation Documents**

(1) A procurement unit shall use the standard solicitation documents approved by the Board under section 44(1)(c) of the Act, save that, until such standard solicitation documents have been prepared, the Board may approve the use of any standard solicitation documents:

- (a) in use by the Tenders Board before its cessation; or
- (b) used by the responsible authority in previous procurements; or
- (c) provided by donor organisations or adapted therefrom.

(2) The procurement unit shall provide, in an expeditious and non-discriminatory manner, the solicitation documents to all potential bidders that respond to the notice to submit or, in the case of competitive sealed bids with pre-qualification, to all bidders that have been prequalified.

(3) The price that may be charged for the solicitation documents shall reflect only the cost of printing and distributing the documents and, where solicitation documents are delivered by electronic means, they shall be free of charge.

(4) The solicitation documents shall provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the department, and shall at a minimum inform bidders of the following:

- (a) the description 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) where not already determined through any pre-qualification, bidder qualification requirements and the documentation required to satisfy those requirements which will require the bidder to show that it 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 as set out in the standard solicitation documents;
- (c) information as to site visits and pre-bid conferences, if any;
- (a) instructions for preparation and submission of bids, including the deadline for submission of bids, time and place of bid opening;
- (e) components to be reflected in the price;
- (j) the criteria and methodology for evaluation of bids and the selection of the successful bidder in accordance with the provisions of section 30(1) of the Act;
- (g) any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
- (h) the required validity period of bids;
- (i) the manner in which bidders may obtain review of actions, omissions and decisions of the procurement unit; and
- (j) such other matters as may be required in regulations, manuals and standard forms as may be prescribed.

(5) For the purposes of subsequent communications, the procurement unit shall make a record of the name, postal address, telephone and email address of all bidders to whom solicitation documents have been issued together with the details of the relevant contact person and shall file a copy of it in the procurement records.

## **18. Clarifications**

- (1) Clarifications of the solicitation documents may be requested in writing by any bidder up to 10 days prior to the deadline for the submission of bids.
- (2) The procurement unit shall respond promptly and in writing to any request by a bidder for clarification of the solicitation documents and in any event no later than 4 days prior to the deadline for the submission of bids.
- (3) Responses to requests for clarification shall be communicated simultaneously and in writing to all bidders participating in the procurement proceedings without disclosing the source of the request.

- (4) The procurement unit may make modifications to the solicitation documents at any time prior to the deadline of the submission of bids.
- (5) If necessary to allow bidders to do so, the Chief Procurement Officer shall, at the request of the procurement unit, extend the deadline for submission of bids so as to allow bidders an opportunity to take modifications into account in preparing their bids.

## **19. Cancellation of procedure or rejection of all bids**

- (1) The cancellation of procurement procedures shall be avoided whenever possible, but is permitted where there is written finding that:
  - (a) the procurement need has ceased to exist or changed significantly;
  - (b) insufficient funding is available for the procurement;
  - (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details such that it is necessary to start over the procurement procedures;
  - (a) insufficient, or no responsive bids are received; or
  - (e) it is otherwise in the public interest.
- (2) If so specified in the solicitation documents, the accounting officer may reject all bids at any time prior to their acceptance where the bids submitted are not substantially responsive, or where there is evidence of lack of competition.
- (3) A procurement unit shall upon request by the bidder communicate the grounds for rejecting a bid.
- (4) A department shall incur no liability towards bidders solely by virtue of its invoking this Regulation.
- (5) Notice of the rejection shall be given promptly to all participating bidders.
- (6) Where no responsive bids are received or procurement proceedings are otherwise unsuccessful, the procuring entity shall investigate the failed procurement proceedings and record in the procurement record the reasons why the procurement was unsuccessful and the course of action taken.

## **20. Submission of Bids or Applications to Prequalify**

- (1) A bid or application to pre-qualify, as the case may be, shall be submitted to the Chief Procurement Officer in writing, duly signed and in a sealed envelope.
- (2) Bids or applications received in hard copy after the deadline for submission of bids shall not be opened and shall be made available for bidders to collect within 30 days from the bid closing date, but thereafter they may be destroyed.
- (3) Invitations for prequalification and solicitation documents shall permit submission of applications to prequalify or bids by hand or mail or by courier at the option of the bidder.

- (4) Bids shall remain valid for the period of time indicated in the solicitation documents.
- (5) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned.

## **21. Bid opening**

- (1) The Chief Procurement Officer shall prepare a record of the information read aloud in accordance with section 27(2) of the Act.
- (2) A copy of the record shall be made available to any bidder on request.
- (3) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.
- (4) Following opening of the bids, and until the preliminary decision on award has been notified to the successful bidder, a bidder shall not make any unsolicited communication to the procurement unit or try in any way to influence the examination and evaluation of the bids.

## **22. Confidentiality**

Notwithstanding any law to the contrary, information relating to the content of pre-qualification applications, bids or to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted.

## **23. Examination and Evaluation of Bids**

- (1) The purpose of the bid evaluation process shall be to determine which of the bids received are responsive and thereafter compare the responsive bids against each other to select the lowest evaluated responsive bid.
- (2) Following receipt of the bids from the Chief Procurement Officer, the procurement shall deliver them to the Evaluation Committee established in accordance with Regulation 13.
- (3) The Evaluation Committee shall first examine the bids in order to determine whether the bids are complete and responsive to the requirements of the solicitation documents.

## **24. Corrections, Errors and Omissions**

- (1) Where a bid is substantially responsive, the Evaluation Committee may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation.
- (2) The non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids.
- (3) The Evaluation Committee may correct purely arithmetical errors in bids in accordance with the procedure stated in the solicitation document.

- (4) Bidders shall be notified of any arithmetic corrections and requested, in writing, to agree to the correction.
- (5) Any Bidder who does not accept the correction of an arithmetical error shall be rejected.

## **25. Clarification of Bids**

- (1) The Evaluation Committee may seek clarification from a bidder of its bid.
- (2) The request and the clarification shall only be in writing.
- (3) The request for clarification shall not seek and the bidder shall not be permitted to:
  - (a) amend its bid price, except to accept the correction of arithmetic errors;
  - (b) change the substance of the bid; or
  - (c) substantially alter anything which is a deciding factor in the evaluation.
- (4) Any clarification received which is not in response to a request from the procuring entity shall not be taken into account.
- (5) The failure of a bidder to reply to a request for clarification may result in the rejection of its bid.

## **26. Disqualification**

- (1) The Evaluation Committee shall recommend the disqualification of a bidder if it finds that the information submitted in a bid concerning its qualifications is false or misleading.
- (2) Evaluation Committee may recommend the disqualification of a bidder if it finds that the information submitted in a bid concerning its qualifications is materially inaccurate or materially incomplete.

## **27. Prohibition of Negotiations**

- (1) Except as provided in subregulation (2)(b), there shall be no negotiation between the department and a bidder with respect to a bid submitted by the bidder.
- (2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the procurement unit shall investigate the causes for the excessive cost and may:
  - (a) consider requesting new bids; or
  - (b) negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope which can be reflected in a reduction of the contract price.

## **28. Competitive Quotations**

- (1) Under this method, quotations shall be requested in writing from as many bidders as practicable, but from at least three bidders, using the standard solicitation documents approved by the Board.

- (2) The written request for quotations shall contain a clear statement of the requirements of the department as to quality, quantity, terms and time to delivery, as well as, any other special requirements.
- (3) Bidders shall be given adequate time to prepare and submit their quotations, but each bidder shall be permitted only one quotation which may not be altered or negotiated.
- (4) Quotations shall be submitted in writing.
- (5) A purchase order shall be placed with the bidder that provided the lowest priced quotation meeting the delivery and other requirements of the department.
- (6) A purchase order shall include the:
  - (a) quoted price;
  - (b) purchase order number;
  - (c) name of the contractor or of the supplier;
  - (d) name of the officer of the contractor or of the supplier who signed the contract;
  - (e) terms and conditions of contract; and
  - (f) date of delivery.

## **29. Sole Source Solicitations**

- (1) In exercising their powers under section 21 and section 25 of the Act, the Board and Chief Procurement Officer may consider the following as grounds for the use of sole source solicitations:
  - (a) when no suitable bids have been submitted in response to a solicitation for sealed bids on condition that the requirements of the initial bid are not substantially modified;
  - (b) when, 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 additional deliveries of goods or services by the original supplier where a change of supplier would compel the department to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the department;
  - (d) when additional services which were not included in the initial contract but which were within the objectives of the original solicitation documents have, through unforeseen circumstances, become necessary to complete the services described

therein, provided that the total value of contracts awarded for the additional services shall not exceed 50 percent of the amount of the original contract;

- (e) for products purchased on a commodity market; and
- (j) for small procurements.

(2) Under this method:

- (a) the procurement unit shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery;
- (b) a bid shall be invited from the sole bidder by way of written enquiry;
- (c) where feasible, a time limit as may be given to the bidder to prepare and submit its offer or agreed by mutual agreement;
- (a) the compliance of the offer with the specifications, terms and conditions shall be considered; and
- (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.

## PART VII - MISCELLANEOUS

### 30. Procurement Records

- (1) The procurement unit shall maintain an individual record for each procurement requirement, which shall be marked with the relevant procurement reference number.
- (2) The record shall contain the originals and copies, where appropriate, of all information, documents and communications related to that procurement proceeding and shall, to the extent that not already contained in the proposed procurement plan, also include at least the following:
  - (a) a description of the object of the procurement;
  - (b) a list of the participating bidders and their qualifications;
  - (c) any requests for clarifications and any responses thereto;
  - (a) a statement of the reason for choice of a procurement method other than competitive sealed bids;
  - (e) copies of the bids received;
  - (j) bid prices;
  - (g) copy of the evaluation report;
  - (h) summary of any review proceedings under Part VI of the Act, and the related decisions; and



- (i) any other information required to be recorded by the Board or Chief Procurement Officer.

(3) The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(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) Procurement units shall during the validity of these Transitional Regulations, submit reports on their procurement activities to the Transition Committee every two (2) months.

### **31. Conduct of public officers**

- (1) Every officer responsible for any aspect of procurement within a department or statutory body, including the requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of procurement contracts, shall, as a procurement officer:

- (a) ensure that each decision is based on adequate information in light of the circumstances, and is made in good faith, for a proper purpose in accordance with the Act and in the best interests of the Government;
- (b) assure fair competitive access by bidders to procurement proceedings and contract awards;
- (c) avoid circumstances in which he or she might personally benefit from a decision, either directly or indirectly through family and associates, from his or her official actions or that would give the appearance of the same;
- (a) not commit corrupt or fraudulent acts, such as the solicitation or acceptance of bribes; or
- (e) not reveal confidential information received in connection with procurement proceedings and bids, including bidders' proprietary information.

### **32. Conduct of bidders**

- (1) Bidders shall at all times abide by their obligations under the Act, procurement contracts and other instruments applicable to their conduct and activities related to procurement.

(2) A bidder shall not engage in or abet corrupt or fraudulent practices, including the offering or giving, directly or indirectly, of improper inducements, or the misrepresentation of facts, in order to influence a procurement process or the execution of a contract, including by inducing the commission of inappropriate acts.

(3) Bidders shall not engage in collusion, prior to or after bid submission, designed to allocate procuring entities among bidders, establish bid prices at artificial non-competitive levels or otherwise to deprive the procuring entity of the benefits of free and open competition.

(4) The Board shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subregulation (2) and promptly notify the rejection of the bidder concerned to the relevant law enforcement authorities.

(5) Bidders who engage in fraudulent and corrupt practices in connection with public procurement are subject to prosecution under the applicable criminal laws.

Made this 8th day of October, 2021

**Hon. Gaston Browne,**  
*Prime Minister, and*  
*Minister with responsibility for Finance.*