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GOVERNMENT NOTICE

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Statutory Instrument

No. 133 of 2023 — Public Procurement Regulations.

Public Procurement Regulations

SAINT LUCIA

STATUTORY INSTRUMENT, 2023, No. 133

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*Public Procurement Regulations***SAINT LUCIA**

STATUTORY INSTRUMENT, 2023, No. 133

[10th October, 2023]

In exercise of the power conferred under section 120 of the Public Procurement Act, Cap. 15.10, the Minister responsible for finance, after consultation with the Director of Public Procurement, makes these Regulations:

PRELIMINARY**Citation**

1. These Regulations may be cited as the Public Procurement Regulations, 2023.

Interpretation

2. In these Regulations —

“Accountant General” has the meaning assigned under the Public Finance Management Act, Cap. 15.01;

“Act” means the Public Procurement Act, Cap. 15.10;

“audit” means a compliance check of the actions and procedures conducted during the public procurement;

“Bureau” means the Saint Lucia Bureau of Standards established under the Standards Act, Cap. 13.25;

“competent authority” —

(a) in relation to a public procurement of a minor value, means the accounting officer;

(b) in relation to a public procurement of an intermediate value, means the Public Procurement Committee;

(c) in relation to a public procurement of a major value, means the Board;

“contract” includes an agreement evidenced by the issue of a purchase order;

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- “deadline” in relation to the submission of a tender, proposal or quotation, means the date and time for submission;
- “deviation”, in relation to the clarification of a tender, means a departure from the requirements specified in the tendering documents;
- “Director of Finance” has the meaning assigned under the Public Finance Management Act, Cap. 15.01;
- “electronically” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
- “invitation to tender” means a procurement procedure which announces a procurement requirement by describing the required specifications and invites tenderers to submit tenders for goods, works or services;
- “in writing” means to communicate or give notice of information in a hard copy or an electronic form;
- “lowest evaluated substantially responsive tender” means a substantially responsive tender which offers the best value for money on the basis of objective criteria set out in the tendering document;
- “omission”, in relation to the clarification of a tender, means the failure to submit part or all of the information or documentation required in the tender document;
- “performance security” —
- (a) means a financial guarantee that a contractor will perform as set out in the contract;
 - (b) includes —
 - (a) a performance bond;
 - (b) an irrevocable letter of credit;
- “pre-qualification documents” means documents that set out the terms and conditions for pre-qualification for a procurement procedure issued by a procuring entity;

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“procurement document file” includes every document generated for each public procurement procedure that is performed;

“request for proposal” means a procurement procedure announcing a procurement requirement, used mainly for consultancy services that —

- (a) describes the procurement requirements;
- (b) details the required qualifications; and
- (c) solicits proposals from qualified consultants to meet the requirement;

“request for sealed quotations” means a procurement procedure announcing a procurement requirement that —

- (a) details the required specifications; and
- (b) invites tenderers to provide quotations for the provision of the required goods, works or services;

“reservation”, in relation to the clarification of a tender, means the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document;

“responsive”, in relation to a tender, means —

- (a) the tender fulfills the requirements of section 64 of the Act;
- (b) the tender complies with the terms and conditions set out in the tendering document; and
- (c) the tender addresses the technical specifications set out in the tendering document;

“sealed” in relation to an electronic submission of a tender means an encryption;

“substantially responsive tender” means a tender that meets the requirements of the standard tendering document without a material deviation, reservation, or omission.

*Public Procurement Regulations***Application**

3. These Regulation apply to all public procurement including public procurement that is undertaken by electronic means under section 5(2) of the Act.

**PART I
PREPARATION, PUBLICATION AND PAYMENT FOR
ADVERTISEMENT AND NOTIFICATION**

Preparation of advertisement and issuance of notification

4. An advertisement prepared under section 9(2)(e) of the Act or a notification issued under section 9(2)(f) of the Act must specify —

- (a) the name and contact information of the procuring entity;
- (b) the nature of the required procurement;
- (c) the manner in which the documents for public procurement may be obtained; and
- (d) the deadline for receipt of the tender.

Publication of advertisement or notification

5.—(1) A Public Procurement Unit —

- (a) shall publish an advertisement or a notification —
 - (i) in the *Gazette*, and
 - (ii) a newspaper of general circulation within Saint Lucia;
- (b) may publish an advertisement or a notification on the website of the Government.

(2) Subject to the Act, a procuring entity shall not communicate with a supplier or contractor with respect to a public procurement opportunity after the publication of the public procurement opportunity.

Payment for advertisement or notification

6. A procuring entity shall make provision, out of the vote provided under its control, for the payment of an advertisement or a notification.

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**PART II
PUBLIC PROCUREMENT PROCEDURES
FOR CONSULTANCY SERVICES**

*Division 1
Selection Methods for Consultancy Services*

Quality and cost-based selection

7.—(1) A quality and cost-based selection is based on —

- (a) the quality of the proposals; and
- (b) the cost of the services to be provided.

(2) The procuring entity shall use the quality and cost-based selection —

- (a) where the competent authority is able to —
 - (i) precisely define the scope of work of the assignment, and
 - (ii) clearly and unambiguously specify the terms of reference relating to the work; or
- (b) where the competent authority and the consultants are able to estimate with reasonable accuracy and precision —
 - (i) the staff time and other inputs, and
 - (ii) other related costs;
- (c) for a consultancy service —
 - (i) in feasibility studies and designs, where —
 - (A) the nature of the investment is clear and well defined;
 - (B) a known technical solution is being considered; and
 - (C) the evaluation of the impact from the project is certain or easy to estimate,
 - (ii) for the preparation of detailed designs,
 - (iii) for supervision of construction of works and installation of equipment,

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(iv) for technical assistance services and institutional development, and

(v) for procurement and inspection services.

(3) A request for a proposal under the quality and cost-based selection may indicate the estimated staff time required by the procuring entity to carry out the assignment.

(4) Subject to subregulations (5) and (6), a consultant shall submit the technical and financial proposals using the one stage two envelope tendering process.

(5) The competent authority shall, immediately after the closing time for submission of proposals —

- (a) open the envelopes containing the technical proposal; and
- (b) keep the financial proposals sealed until the completion of evaluation of technical proposals and the report for the evaluation.

(6) On completion of an evaluation of technical proposals and the report for the evaluation, the competent authority shall disclose, in public, the technical scores simultaneously to the consultants who submitted proposals.

(7) The competent authority shall, after the disclosure of the technical scores under subregulation (6) —

- (a) evaluate the financial proposal of each consultant who submitted a responsive technical proposal which attains the minimum qualifying mark;
- (b) compute the combined evaluation score of the technical and financial proposals of each consultant by weighting and adding the quality and the cost scores; and
- (c) invite the consultant who obtains the highest combined score for negotiations, except with respect to staff rates and other unit rates.

(8) The estimated staff time under subregulation (3) does not bind the consultants who propose the level of inputs that the consultants consider appropriate.

*Public Procurement Regulations***Quality-based selection**

- 8.—(1) Quality-based selection is based on —
- (a) an evaluation of the quality of the proposals; and
 - (b) the subsequent negotiation of the financial proposals.
- (2) A quality-based selection may be used where —
- (a) the downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the successful outcome of the project;
 - (b) the scope of work of the assignment and the terms of reference are difficult to define based on —
 - (i) the novelty or complexity of the assignment,
 - (ii) the need to select among innovative solutions, and
 - (iii) particular physical conditions;
 - (c) the assignment may be carried out in substantially different ways and the cost proposals may not easily be comparable; and
 - (d) the introduction of cost as a factor of selection renders competition unfair.
- (3) The procuring entity shall award the public procurement contract to the successful tenderer who submits the highest ranking evaluated responsive technical proposal.

Technical proposal-based selection

- 9.—(1) A technical proposal-based selection is based on an evaluation of the technical proposals of the proposed consultants.
- (2) On completion of the evaluation under subregulation (1), the competent authority shall invite the consultant with the highest-ranking evaluated responsive technical proposal to present its financial proposal.
- (3) Where a procuring entity intends to use the technical proposal-based selection, the procuring entity shall specify in the request for proposals its estimate of the staff-months required for the assignment.

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(4) Where a technical and financial proposals are required under section 46(1) of the Act —

- (a) a consultant shall submit the financial proposal and the technical proposal at the same time and in separate envelopes; and
- (b) the competent authority shall —
 - (i) keep the financial proposals secured until the completion of the evaluation of the technical proposal,
 - (ii) only open the financial proposal of the consultant with the highest-ranking evaluated responsive technical proposal, and
 - (iii) subject to successful conclusion of negotiations with the consultant identified under subparagraph (ii), return to the unsuccessful consultants their unopened financial proposals.

Fixed budget selection

10.—(1) A competent authority may approve the selection of consultants for the award of a public procurement contract under a fixed budget selection if —

- (a) the fixed budget in respect of the consultancy service cannot be exceeded; or
- (b) the competent authority is able to precisely assess the time and staff-month effort required from the consultants.

(2) Without prejudice to subregulation (1), a procuring entity shall use the fixed budget selection for well-defined and simple assignments with a low financial risk for the consultants including —

- (a) sector studies, market studies and surveys of limited scope;
- (b) simple pre-feasibility studies and review of existing feasibility studies;
- (c) review of existing technical designs and tendering documents; and

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- (d) project identification for which the level of detail can be matched with the available funds.

(3) The procuring entity shall, for the purpose of permitting consultants to present clear and responsive proposals, ensure that the terms of reference —

- (a) are consistent with the fixed budget; and
- (b) contain a well-specified scope of work.
- (c) ensure that the fixed budget is compatible with the terms of reference;
- (d) ensure that consultants are able to perform the tasks within the fixed budget;
- (e) disclose the available fixed budget to a selected consultant in the request for proposals; and
- (f) invite persons to submit their technical and financial proposals in separate envelopes.

(4) Where a proposal does not cover any minor technical aspects set out in the terms of reference, the evaluated price of that proposal shall be calculated by adding to the offered price, the estimated cost of the missing minor technical aspects.

(5) The competent authority shall —

- (a) reject a proposal which exceeds the fixed budget after adjustments and corrections; and
- (b) select the consultant who submits the highest ranking technical proposal.

Least cost selection

11.—(1) The procuring entity may use the least cost selection where assignments are standard or routine and —

- (a) well-established practices and standards exist;
- (b) a specific and well-defined outcome is expected; and
- (c) the consultancy may be executed at different costs.

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(2) The practices, standards, outcomes and costs under subregulation (1) include —

- (a) standard accounting audits;
- (b) engineering designs or supervision of simple projects;
- (c) repetitive operations, maintenance work and routine inspections; and
- (d) simple surveys.

(3) The procuring entity shall —

- (a) subject to paragraphs (b) and (c), establish a minimum qualifying mark for quality;
- (b) indicate the minimum qualifying mark in the request for proposals;
- (c) set the minimum qualifying mark at approximately seventy-five to eighty per cent —
 - (i) to ensure quality, and
 - (ii) to avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality;
- (d) invite consultants who have been selected from a list of pre-qualified consultants to submit proposals.

(4) The competent authority —

- (a) shall reject every proposal which attains a score which is less than the minimum technical qualifying mark;
- (b) shall, for the purpose of awarding the public procurement contract, select the consultant with the lowest evaluated substantially responsive tender.

Individual consultant

12.—(1) A procuring entity may engage an individual consultant on contracts for which —

- (a) the experience and qualifications of the individual are the dominant factors;
- (b) no support from a home office is needed for the individual consultant; and

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- (c) teamwork or a multi-disciplinary approach is unnecessary.
- (2) The procuring entity shall —
- (a) prepare terms of reference for the consultancy services, including the scope of work and its estimated budget;
 - (b) request an expression of interest from suitable consultants, or advertise the contract opportunity, if necessary, requesting suitable consultants to submit a curriculum vitae.
- (3) The competent authority shall —
- (a) conduct an evaluation of the individual consultants who submit an expression of interest with respect to the assignment on the basis of —
 - (i) academic qualification,
 - (ii) experience, and
 - (iii) knowledge of particular physical conditions, where necessary; and
 - (b) select the successful consultant on the basis of the comparison of the academic qualification of that consultant with the academic qualifications of the other consultants.

Utilizing a selection method

13. A procuring entity shall, when choosing a selection method, consider —

- (a) the nature, size and complexity of the consultancy;
- (b) the likely impact of the consultancy; and
- (c) the technical and financial considerations.

*Public Procurement Regulations**Division 2
Ineligibility of Consultant
and Terms of Reference***Ineligibility of a consultant**

14. An architect or engineer who executes a contract for consultancy services for a feasibility study or design service in relation to an earlier phase of a project shall not —

- (a) make or participate in an invitation to pre-qualify;
- (b) submit a proposal; or
- (c) be awarded a contract for the execution of any works in respect of consultancy services related to the prior consultancy service which is rendered.

Terms of reference

15.—(1) The terms of reference awarded for a consultant may not be changed substantially from the advertised terms of reference.

(2) The negotiation of proposals under section 50 of the Act with respect to —

- (a) any technical proposal, covers minor aspects; and
- (b) any financial proposal, does not include any aspect respecting the rates of remuneration.

(3) Notwithstanding subregulation (2), negotiations with respect to a financial proposal may, for purposes of compatibility with the work plan and clarification of any tax liability, include minor re-arrangements of activities and staff.

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**PART III
PUBLIC PROCUREMENT PROCEDURES FOR GOODS, WORKS
AND SERVICES**

*Division 1
Emergency Public Procurement*

Request for emergency public procurement

16.—(1) Prior to the issue of directions for the public procurement of goods, works and services for an emergency public procurement under section 53 of the Act, the procuring entity shall make a written request to the Minister for emergency public procurement.

(2) A request under subregulation (1) must contain —

- (a) the nature of the emergency;
- (b) a detailed description of the goods, works and services required;
- (c) the total expected value of the public procurements to be undertaken.

Report on each emergency public procurement

17.—(1) A procuring entity must submit to the Minister, at the conclusion of the emergency period or as otherwise directed by the Minister, a written report of each emergency public procurement.

(2) A report under subregulation (1) must contain details for each public procurement procedure.

*Division 2
Standard Tendering Documents for Public Procurement Procedures*

Documents for use in public procurement procedures

18. Where goods, works or services are procured, the standard tendering documents for tendering includes —

- (a) the invitation to tender;
- (b) the instructions to a tenderer;

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- (c) the form of tender;
- (d) the form of contract;
- (e) the general or special conditions of contract;
- (f) where applicable, the specifications and drawings or performance criteria;
- (g) where applicable, the list of goods or bill of quantities;
- (h) the delivery time or completion schedule;
- (i) where applicable, the qualification criteria for the award of the contract;
- (j) the tender evaluation criteria;
- (k) where applicable, the format of all securities required;
- (l) the details of standards, if any, that are to be used in assessing the quality of goods, works or services specified; and
- (m) any other detail that the procuring entity considers necessary.

Provision of standard tendering documents for public procurement procedures

19.—(1) Where the Director issues standard tendering documents under section 5(1)(c) of the Act, a procuring entity shall provide a prospective tenderer with the standard tendering documents in relation to a particular public procurement procedure.

(2) After the publication of an advertisement and on the request of a supplier or contractor, or publication of a notification, immediately provide the standard tendering documents to a supplier or contractor.

Request for clarification on standard tendering documents

20. After the publication of an advertisement and the issue of the standard tendering documents, prospective tenderers may request clarification of the standard tendering documents.

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Notice of clarification to prospective tenderers

21. On receipt of a request for clarification under regulation 20, the procuring entity shall —

- (a) in a timely manner and on an equal opportunity basis, provide to the prospective tenderers the clarification requested by a prospective tenderer;
- (b) in the same manner as the original advertisement, notify the prospective tenderers of any change or modification, including an addition, or deletion to the tendering documents.

*Division 3
Pre-Qualification, Qualification, Eligibility
and Disqualification of Tenderer*

Pre-qualification procedure

22.—(1) A tenderer shall prepare a pre-qualification application to pre-qualify in respect of a procurement of goods, works and services or as directed in writing by the procuring entity.

(2) A tenderer shall —

- (a) sign an application to pre-qualify in respect of any procurement of goods, works or services; and
- (b) enclose an application to pre-qualify in respect of a procurement of goods, works or services in a sealed envelope addressed to the procuring entity in accordance with pre-qualification procedures under this regulation.

(3) Where the tenderer is a company, partnership or business firm, the tenderer shall cause the applications to pre-qualify in respect of a procurement of goods, works or services to be signed by an employee or a person authorized by the tenderer.

(4) Where a procuring entity performs a pre-qualification procedure, the procuring entity shall —

- (a) specify, in the pre-qualification documents, the criteria against which an application for prequalification is considered and determined;

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- (b) supply a set of pre-qualification documents to each tenderer requesting the pre-qualification documents; and
 - (c) apply the criteria specified in the pre-qualification documents in considering and determining which tenderers are pre-qualified.
- (5) A procuring entity —
- (a) may require a tenderer to pay a fee under section 60(3)(f) of the Act for the supply of the pre-qualification documents;
 - (b) shall respond, without delay, to any request for clarification of the pre-qualification documents made by a tenderer who has submitted an application before the specified deadline for submission of an application to pre-qualify;
 - (c) may require a tenderer who has pre-qualified to provide updated information in relation to its qualifications;
 - (d) shall disqualify a tenderer who fails to provide updated information in relation to its qualifications;
 - (e) shall, without delay, notify each tenderer requested to provide updated information under subregulation (5)(c) on, whether the tenderer has successfully pre-qualified.

(6) The fee under subregulation (5)(a) shall not exceed the costs of printing and providing the pre-qualification documents.

(7) After the completion of the pre-qualification procedure, the procuring entity shall, without delay and simultaneously, furnish the competent authority and each applicant with a list containing the names of the tenderers that have qualified.

Qualification of tenderer

23.—(1) For a tenderer to meet the qualification criteria for a public procurement contract under section 63 of the Act, the procuring entity may require a tenderer to furnish evidence of his or her capacity and resources to fulfil the requirements of the public procurement contract.

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(2) Evidence of the financial capacity to fulfil the requirements of a public procurement contract under subregulation (1) may be in the form of —

- (a) certified statements from bankers, including, if necessary, details of available lines of credit;
- (b) presentation of the tenderer's balance sheet or extracts from the balance sheets for the last three years; and
- (c) overall turnover and the turnover with respect to civil works, supply of goods or services similar to those required in the contract for the three previous years.

(3) The procuring entity must specify, in the tendering document —

- (a) the level of financial capacity required from the tenderers;
- (b) the references required in the tendering document.

(4) Depending on the nature, quantity and purposes of the goods, works or services, evidence of technical ability may be furnished by —

- (a) the professional and educational qualifications of the tenderer and the managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;
- (b) in the case of works, a list of works carried out over a period specified in the tender document, together with certificates of completion for similar works, issued by previous clients;
- (c) in the case of goods and services, a list of supplied goods and services in the past three years with the sums, dates and purchasers whether public and private;
- (d) a list of the tenderer's machinery, such as, tools, plants and technical equipment, including a quality control system directly carried out or by sub-contracting;
- (e) in the case of the seller of goods, where authorization to sell is required, detailed descriptions and types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified;

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- (f) in the case of goods, where quality control standards exist, a certificate issued by the International Standards Organization, the Bureau or another quality control agency attesting conformity to specifications or standards for goods.

(5) A certificate under subregulation (4)(b) must indicate the value, date and site of the works and specify whether the works were properly executed.

(6) A list under subregulation (4)(c) is evidenced by a certificate issued or signed by the purchaser.

Eligibility of tenderer

24. The invitation to tender, request for proposals or request for sealed quotations or, if a document is used to pre-qualify persons, must set out the eligibility criteria.

Disqualification of tenderer

25.—(1) The Evaluation Committee may disqualify a tenderer for submitting false, inaccurate or incomplete information in relation to his or her qualifications.

(2) A tenderer is disqualified from participating in public procurement procedure, if he or she —

- (a) fails to meet the standards or satisfy the eligibility criteria to participate in the procurement procedures with respect to a procurement of goods, works or services; or
- (b) is suspended under section 114 of the Act, for the duration of the period of suspension.

Division 4

Preparation, Form of Accompanying Documents for Submission of Tenders, Tender Security or Tender Securing Declaration and Receipt of Tenders

Preparation of tenders

26.—(1) A tenderer shall —

- (a) prepare tenders and applications to pre-qualify in respect of a procurement of goods, works or services —

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- (i) in the English language,
- (ii) using the standard tendering documents;
- (b) sign tenders and applications to pre-qualify in respect of any procurement of goods, works or services; and
- (c) enclose the tender, and applications to pre-qualify in respect of a procurement of goods, works or services in a sealed envelope addressed to the procuring entity as specified in the tendering documents.

(2) Where the tenderer is a company, partnership or business firm, the tenderer shall cause the tenders and applications for prequalification in respect of a procurement of goods, works or services to be signed by an employee of or a person authorized by the tenderer.

Form and accompanying documents for submission of tenders

27.—(1) A tenderer responding to an invitation to tender shall submit a tender to the procuring entity in the form specified in the tendering document.

(2) In the case of a tender that is signed by an employee or a person authorized by the tenderer, the tender must be accompanied by —

- (a) the Articles of Incorporation;
- (b) the Bye-Laws; or
- (c) any other authorization document.

Tender security or tender securing declaration

28.—(1) Subject to subregulation (2), in determining whether a tender security or tender securing declaration is required in the tendering document under section 70 of the Act, the procuring entity shall —

- (a) consider that a prospective tenderer is likely to neglect or refuse —
 - (i) to provide the required performance security within the time stipulated in the invitation to tender,
 - (ii) to execute the public procurement contract;
- (b) determine the amount of the tender security required.

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(2) A tender may be accompanied by a tender security in an amount of not more than five per cent of the tender.

(3) The tender security must be —

- (a) a financial letter of guarantee in a form approved by the Director;
- (b) a bank draft;
- (c) a certified cheque; or
- (d) such other financial instrument in a form approved by the Director or the Accountant General.

(4) The competent authority shall ensure that the tender security is signed by the tenderer or his or her sureties.

(5) The competent authority must verify, sign and lodge the tender security with the Accountant General.

Receipt of tenders

29. Without prejudice to section 71 of the Act, the procuring entity shall issue the tenderer with a receipt showing the date and time of submission of the tender.

Unopened tenders

30.—(1) Tenders received late shall not be opened.

(2) Tenderers may arrange with the procuring entity to collect the unopened tender.

**PART IV
TENDER EXAMINATION AND EVALUATION**

Examination of tenders

31.—(1) Each tender which is opened to determine whether the tenderer is eligible, shall, without delay, be examined by a Tender Evaluation Committee.

(2) The Tender Evaluation Committee shall examine the technical aspects of the tender submitted in accordance with required

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specifications detailed in the tendering documents, to confirm that all requirements have been met without any material deviation or reservation, or omission.

(3) In subregulation (2), a material deviation, reservation, or omission —

- (a) if accepted, may, in a substantial way —
 - (i) affect the scope, quality, or performance of the goods, works or services specified in the tender document, or
 - (ii) limit the inconsistency with the tender document, the procuring entities rights or the tenderer's obligations under the contract; or
- (b) if rectified, may unfairly affect the competitive position of other tenderers presenting a substantially responsive tender.

Evaluation criteria

32. Each procuring entity shall specify in the tendering documents —

- (a) the criteria to be considered for the purposes of tender evaluation;
- (b) the weighting assigned to each criterion under paragraph (a); and
- (c) the manner in which each criterion under paragraph (a) applies.

Clarification of tenders during evaluation

33.—(1) The Tender Evaluation Committee may request, in writing, to assist in the examination, evaluation, comparison of tenders, and qualification of tenderers, clarification from a tenderer.

(2) Clarification submitted by a tenderer in respect of the tender that is not in response to a request under subregulation (1) shall not be considered by the Tender Evaluation Committee.

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(3) A change in the prices or substance of the tender shall not be sought, offered, or permitted, except to confirm the correction of arithmetic errors in accordance with regulation 34 discovered in the evaluation of the tenders.

(4) If a tenderer does not provide clarification of a tender by the date and time set in the request for clarification under subregulation (1), the Tender Evaluation Committee may reject the tender.

Arithmetical errors

34.—(1) The Tender Evaluation Committee shall correct arithmetical errors in a substantially responsive tender, where there is —

- (a) a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity;
- (b) an error in a total corresponding to the addition or subtraction of subtotals, the subtotals prevail and the total shall be corrected; and
- (c) a discrepancy between words and figures, the amount in words prevails, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to paragraphs (a) and (b).

(2) Where there is an obvious misplacement of the decimal point in the unit price under subregulation (1)(a), the corrected unit price prevails and the line item total must be corrected.

Omissions

35.—(1) The Tender Evaluation Committee may waive any errors or omissions in a substantially responsive tender.

(2) In the case of a substantially responsive tender, the Tender Evaluation Committee may request the tenderer to submit the necessary information or documentation, within a reasonable period, to rectify omissions in the tender.

(3) An error or omission is not related to any aspect of the price of the tender.

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(4) Where the tenderer fails to comply with a request under subregulation (2), the Tender Evaluation Committee may reject the tender.

(5) The Tender Evaluation Committee shall rectify quantifiable omissions in a substantially responsive tender that are related to the price of the tender.

(6) The price of the tender shall be adjusted, for comparison purposes, to reflect the price of a missing or erroneously stated item by adding the average price of the item or component quoted by substantially responsive tenderers.

(7) Where the price of an item or a component is omitted in a substantially responsive tender and cannot be derived from the submission of other substantially responsive tenders, the Tender Evaluation Committee shall use the market price of the item or component.

Other instances to reject tenders

36.—(1) The Tender Evaluation Committee shall ensure that a tenderer responding to an invitation to tender submits the tender by or before the deadline for the submission of tenders.

(2) The Tender Evaluation Committee shall reject —

- (a) each tender received after the deadline for the submission of tenders;
- (b) a tender showing a major deviation with respect to the factors set out under subregulation (3);
- (c) the tender of a supplier who does not accept the correction of a minor deviation in that tender;
- (d) a tender that is not substantially responsive to the requirements of the standard tendering document.

(3) Major deviations in a tender —

- (a) with respect to the clauses in an offer —
 - (i) an unacceptable sub-contracting, alternative design and price adjustment, and

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- (ii) where time is of the essence, an unacceptable timeline;
 - (b) with respect to the status of the tenderer, where a tenderer is ineligible, uninvited or not pre-qualified;
 - (c) with respect to the tender document, where a tender is unsigned; and
 - (d) with respect to time, date and location for submission of tenders —
 - (i) a tender received after the date and time for submission of tenders as stipulated in the tendering documents, and
 - (ii) a tender submitted at the wrong location.
- (4) Where a tender that is received by the Tender Evaluation Committee, shows a major deviation, the Tender Evaluation Committee —
- (a) shall not consider the tender any further, if the tender has been opened; and
 - (b) in the case of subregulation (3)(d), the tender remains unopened.
- (5) Where the competent authority rejects all tenders, the procuring entity shall —
- (a) without delay, notify, in writing, all tenderers of the determination of the procuring entity and the reasons for the determination; and
 - (b) place a copy of the minutes of the meeting of the Tender Evaluation Committee, with respect to the rejection of all tenders, in the procurement document file.
- (6) Where the procuring entity intends to publish a new advertisement or notification for the procurement of goods, works or services —
- (a) the Public Procurement Unit shall examine the reason for the rejection of the tenders or the cancellation of the public procurement procedures; and
 - (b) the procuring entity shall modify the technical specifications or contract conditions, as required.

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Other instances of failed public procurement procedures

37. Without prejudice to section 83 of the Act, a public procurement procedure fails where —

- (a) there is a lack of effective competition;
- (b) all tenders are not substantially responsive;
- (c) all tenders do not meet the specified qualification criteria;
- (d) the lowest evaluated substantially responsive tender is substantially higher than the updated estimated cost or available budget for the procurement.

Cancellation of public procurement procedures

38.—(1) Where a procuring entity —

- (a) rejects all tenders at any time before the acceptance of a tender; and
- (b) cancels the public procurement procedures in the public interest, the procuring entity shall not incur any liability to the tenderers.

(2) Notwithstanding subregulation (1), where the procuring entity

—

- (a) cancels procurement procedures, the competent authority may direct the payment of the cost incurred by a tenderer with respect to the preparation and submission of the tender; or
- (b) by reason of a cancellation of procurement procedures, publishes anew an advertisement or notification or request for proposals, the Board may direct that a tenderer affected by the cancellation is furnished with the new tendering documents or request for proposals without charging the tenderer, if the Board is of the opinion that the refund or, as the case may be, the receipt of such documents or request without charge is in the public interest.

(3) Where a procurement procedure is cancelled, the procuring entity shall —

- (a) without delay, give written notice of its determination and the reason for its determination; and

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- (b) ensure that a copy of the notice is placed in the procurement document file.

Return of tender security

39. The competent authority shall, within fourteen business days, return the tender security —

- (a) to an unsuccessful tenderer, where a successful tenderer complies with the requirements with respect to the execution of a contract and provision of a performance security; or
- (b) to each tenderer, where a procuring entity notifies the tenderers of its rejection of all tenders.

PART V**AWARD OF PUBLIC PROCUREMENT CONTRACT****Special circumstances for negotiations with successful tenderer**

40.—(1) The special circumstances in which a procuring entity may negotiate with the successful tenderer under section 75(1) of the Act are, where there is disparity between —

- (a) procurement requirements in the standard tendering documents and the submitted tendering documents;
- (b) specifications in the standard tendering documents and the submitted specifications.

(2) Prior to a negotiation under subregulation (1), the procuring entity shall —

- (a) review the causes of possible deficiencies in the procurement requirements in the standard tendering documents and the specifications;
- (b) first seek the approval of the competent authority.

(3) Where there are no deficiencies in the procurement requirements and specifications, the procuring entity may —

- (a) negotiate with the successful tenderer to obtain a satisfactory public procurement contract through a reduction in

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the procurement requirements, specifications and reallocation of risks and responsibilities; or

- (b) consider inviting new tenders.

Notice to successful and unsuccessful tenderers

41. The procuring entity shall, on completion of the evaluation process —

- (a) in writing, simultaneously notify the successful tenderer and the unsuccessful tenderers of the selection of the tender for the award of the public procurement contract; and
- (b) specify, in the notice, the name and address of the successful tenderer and the price of the public procurement contract.

Performance security

42.—(1) In awarding a public procurement contract, the procuring entity shall determine whether a performance security is required and the amount of the performance security for a public procurement contract and the risk of default by a successful tenderer.

(2) A performance security under subregulation (1) shall not exceed an amount of ten per cent of the value of the public procurement contract.

(3) The accounting officer shall ensure that the performance security is signed the tenderer or his or her sureties and verify and lodge the performance security with the Accountant General.

(4) A performance security may be in the form of —

- (a) a financial letter of guarantee approved by the Director;
- (b) a bank draft;
- (c) a certified cheque; or
- (d) a financial instrument approved by the Director.

*Public Procurement Regulations***Award of public procurement contracts**

43.—(1) Subject to this regulation, a competent authority may —

- (a) after considering the report under section 73(9) of the Act; and
- (b) if satisfied that sufficient funds are available,

approve the award of a contract to the tenderer who submits, on the basis of the evaluation criteria specified in the standard tendering documents, the lowest evaluated substantially responsive tender.

(2) Where an invitation for tender provides for the sub-division of a procurement into lots, the procuring entity may make more than one award of a public procurement contract in respect of an invitation for a tender.

Publication of notice of award of public procurement contracts

44. Without prejudice to section 76(7) of the Act, the Director shall publish a quarterly notice of award of public procurement contracts —

- (a) in the *Gazette*;
- (b) where applicable, the website of the Ministry of Finance;
or
- (c) by other means, including electronically, as considered appropriate.

**PART VI
PUBLIC PROCUREMENT CONTRACTS**

Vetting of public procurement contracts

45. Where a public procurement contract is awarded under section 76 of the Act, a public procurement contract shall not be entered into under these Regulations unless the contract is vetted by the Attorney General prior to its execution.

*Public Procurement Regulations***Amendment of general conditions of public procurement contract**

46.—(1) In amending the contents of a public procurement contract under section 85(2) of the Act, the procuring entity shall, prior to the amendment, request the approval of the Director.

(2) The Director may, on receipt of a request for amendment under subregulation (1), refer the request to the Attorney General for vetting.

Signing of public procurement contracts

47. A public procurement contract shall be signed in the name of the Government and the accounting officer concerned or his or her delegate.

Copies of public procurement contract documents

48. A procuring entity shall send a copy of each public procurement contract document to the Accountant General and the Director of Audit.

Extension of public procurement contracts

49. A procuring entity may, prior to the expiration period of a public procurement contract, extend a public procurement contract if —

- (a) the conditions of an extension are specified in the contract;
and
- (b) funds are available for the extension.

Record of public procurement contracts

50.—(1) Each procuring entity shall keep information in respect of each public procurement contract which is sufficient to permit the procuring entity, at a later date, to provide documentary evidence of all decisions taken in connection with —

- (a) the qualification and selection of contractors, suppliers or service providers;
- (b) the award of public procurement contracts; or
- (c) the use of any restricted tendering, without competition.

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(2) Without prejudice to section 81(4) of the Act, the records of each public procurement contract must include —

- (a) if, as part of the procurement process anything was advertised in a newspaper or publication, a copy of that advertisement as it appeared in the newspaper or publication;
- (b) for each tender, proposal or quotation submitted —
 - (i) the name and address of the tenderers participating,
 - (ii) the price or the basis for determining the price, and
 - (iii) a summary of the principal terms and conditions of the tender, proposal or quotation;
- (c) a summary of the evaluation criteria used and the result of the evaluation and comparison of the tenders, proposals or quotations;
- (d) where the procurement proceedings were terminated without resulting in a contract, an explanation respecting the termination;
- (e) a copy of every document required to be prepared and supplied by the procuring entity under the Act and these Regulations; and
- (f) such other information or documents as may be required in accordance with requests under the Act.

(3) A person shall not disclose any information under subregulation (2), if the disclosure of the information is contrary to section 90(1)(h) of the Act, but a disclosure of any information under subregulation (3) is deemed not to be contrary to that section.

(4) A procuring entity shall maintain a proper filing system with clear links between the procurement document file and expenditure files.

*Public Procurement Regulations***PART VII
REVIEW****Lodging an application for review**

51. Without prejudice to section 84(2) of the Act, an application for review —

- (a) shall not be lodged by a tenderer before the tenderer exhausts its right to complain under section 83A of the Act;
- (b) shall specify whether the procuring entity has notified the tenderer of any steps it has or proposes to take to rectify the breach alleged in a complaint, and if it has done so, the reasons that the tenderer is dissatisfied with the steps taken by the procuring entity.

Non-refundable fee for processing an application for review

52. The non-refundable fee for processing an application for review under section 84(5) of the Act is specified under the Schedule.

Notice of receipt of an application for review

53. On receipt of an application for review under regulation 51, the Director shall give written notice to the procuring entity.

Request for information and documents by independent expert

54. The Director shall, during consultation with an independent expert under section 84(9) of the Act, provide the necessary support to the independent expert by facilitating any requests for information and documents for use in considering an application for review.

Considerations for dismissing an application for review

55. The Director may dismiss an application for review under section 84(9)(b) of the Act, where —

- (a) the grounds for review do not constitute a valid basis for the review; or

Public Procurement Regulations

- (b) the tenderer that lodged the application for review has failed to establish the grounds for review.

Recording of applications for review

56. The Director shall keep a record of applications for review received under regulation 52.

**PART VIII
MISCELLANEOUS****Registration of suppliers**

57. A procuring entity may electronically register a supplier under section 57A(3) of the Act.

Division of public procurement contracts into lots

58. Where a procuring entity intends to sub-divide a public procurement contract into lots under section 79 of the Act, the procuring entity shall consider —

- (a) the economic aspect of the procurement, for instance, whether the subdivision would restrict competition;
- (b) the technical aspect of the procurement, for instance, the risks to render the execution of the contract technically difficult or expensive; and
- (c) the performance aspect of the procurement, for instance, the capacity of the procuring entity to ensure co-ordination of the performance of the public procurement contract.

Access to public procurement document file

59. For the purposes of an audit by a donor organization, a procuring entity shall, on the request of the donor organization, provide access to a procurement document file to the officials of the donor organization, where funds of the donor organization have been used for the procurement of goods, works or services.

*Public Procurement Regulations***Procurement reference number**

60.—(1) The procurement reference number must distinguish —

- (a) procurements performed by invitations for tenders;
- (b) procurements performed by request for quotations;
- (c) procurements performed by requests for proposals;
- (d) invitations to pre-qualify;
- (e) framework agreements;
- (f) exempt procurements;
- (g) emergency procurements;
- (h) direct public procurements.

(2) The procuring entity shall number each public procurement for each financial year —

- (a) in the chronological order of the procurement;
- (b) in an ascending number sequence, commencing with the number “1”.

Application of similar public procurement procedures

61. When a procedure is not provided for, or is insufficiently provided for under these Regulations, the procedure is determined —

- (a) in accordance with the procedures set out in a manual prepared by the Director under section 5(1)(b) of the Act; or
- (b) by applying a similar public procurement procedure that has been applied.

Repeal

62. The Finance (Administration) (Procurement and Stores) Regulations, Cap. 15.10 are repealed.

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SCHEDULE

(Regulation 52)

**NON-REFUNDABLE FEE FOR
APPLICATION FOR REVIEW**

	Fee
Application for review	300

Made this 9th day of October, 2023.

PHILIP J. PIERRE,
Minister responsible for finance.