



Tuvalu

**PUBLIC PROCUREMENT (AMENDMENT)
REGULATIONS 2021**



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Schedule 1 (Amended)



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PUBLIC PROCUREMENT (AMENDMENT) REGULATIONS 2021

MADE UNDER SECTION 18(3) OF THE PUBLIC PROCUREMENT ACT
2013

Commencement [28th May, 2021]

1 Citation

This Regulation may be cited as the Public Procurement (Amendment) Regulations 2021.

2 Amendments to Part 1

(1) Section 2 is amended by inserting the definition below before the definition of “Act”:

“**abnormally low bid**” means a bid that is priced below the procuring entity’s cost estimate by an amount that raises concern about the bidder’s ability to perform the contract satisfactorily.”

(2) Section 2 is amended by inserting the definition below after the definition of “bid evaluation report”:

“**call off**” means a contracted delivery of goods purchased by a procuring entity from a supplier contracted under a Framework Agreement.”

(3) Section 2 is amended by inserting the definition below after the definition of “threshold”:

“**value for money**” means an advantageous combination of cost, quality and sustainability, which may include life-cycle costs and socioeconomic and environmental development objectives; purchase price alone may not sufficiently represent value for money.”

(4) Section 2 is amended by inserting the definition below after the definition of “direct contracting”:

“Framework Agreement” means an agreement between a procuring entity and a supplier of goods specifying terms and conditions, under which several purchase contracts, or call-offs, can be made during the period of the agreement.”

3 Amendments to Part 5

Section 26 is amended by inserting the section below after section 26:

“26A Framework Agreement

Procurement methods described in Regulations 23, 24 and 25 for the supply of goods may be concluded with the successful bidder in single contracts. Alternatively, multiple delivery contracts, referred to as call-offs, may be specified over a period of time, for which a Framework Agreement containing the conditions of contract for all call-offs, is concluded with the successful bidder.”

4 Amendments to Part 7

Section 35(1) is amended to include a new paragraph (f) and read as:

“(f) if the object of the proposed procurement relates to a project that will require further procurements, the Procurement proposal must show how the proposed procurement relates to further procurements and whether the whole project and budget have or have not yet been approved by Cabinet”

5 Amendments to Part 8

(1) Section 48 is amended by inserting a new section after it and to read as:

“48A Abnormally Low Bid

Bid evaluation criteria that automatically disqualify bids priced above or below a predetermined estimate are not permitted. If an abnormally low bid is identified, the procuring entity shall request the bidder to submit a written analysis of the bid price referencing the scope, proposed methodology, schedule, allocation of risks and responsibilities, and favourable economies of the processes available to the bidder for executing the contract.

After analysing the response of the bidder, the procuring entity may recommend for consideration of the Procurement Review Committee, either:

(a) to accept the bid;

(b) to accept the bid provided that the bidder provides a performance security in an amount recommended by the procuring entity, which in no case shall be less than 20 percent of the bid amount; or

(c) to reject the bid where the analysis supplied does not satisfactorily account for the abnormally low bid price.

(2) Section 48(6) is amended to read as:

“Bids not excluded from consideration under sub-regulations (2), (3) and (5) shall be evaluated in accordance with this Regulation and specific criteria and methodology stated in the bidding documents. The purpose is to identify the best value for money bid, which may not equate to the lowest bid price. The best value for money bid shall be assessed from the bid price and life-cycle costs, which may reflect quality, maintenance and repair costs, operational costs such as power consumption, and socioeconomic and environmental impacts and costs in service and at final disposal.”

(3) Section 48(8) is amended by replacing the last four words “the lowest evaluated bid” with “the best value for money bid”

(4) Section 49(1) is amended to read as:

“The qualifications of the bidder offering the best value for money bid shall be checked against the criteria specified in the bidding documents and, if that bid fails, the same check shall be applied to the next ranked bid.”

(4) Section 49(2) is amended to read as:

“Where prequalification has preceded bidding, the qualifications of the bidder offering the best value for money bid shall be verified again to take account of any change since the prequalification.”

(5) Section 50(2) is amended by replacing the first line with “If the best value for money bid exceeds the budget for the contract by a...”

(6) Section 51(1) is amended to read as:

“The contract shall be awarded to the bidder having submitted a substantially responsive bid also determined to be the best value for money, meeting only those evaluation criteria specified in the bidding documents as confirmed by post-qualification under section 49.

6 Amendments to Part 12

Section 66(3) is amended to read as:

“The debriefing shall state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation or omission leading to rejection of the bid or state that a bid was substantially responsive, but failed to offer the best value for money bid, or highest score, as required.”

7 Amendments to Schedule 1

Schedule 1 is amended by listing the financial thresholds for sections 10, 12 and 13.

SCHEDULE

SCHEDULE 1 (AMENDED)

Regulation	Item	Proposed Amount (AUD)	Current Amount	Time Limit
	Minor and Major Procurement thresholds			
10(a)	Minor Procurement	Not Exceeding 15,000	Not Exceeding 5,000	
10(b)	Major Procurement	Exceeding 15,000	Exceeding 5,000	
	Authority thresholds			
12(a)	Procurement Officer	Not Exceeding 5,000	Not Exceeding 500	
12(b)	Bid Evaluation Committee	Exceeding 5000 but not exceeding 15,000	Exceeding 500 but not exceeding 5,000	
12(c)	Procurement Review Committee	Exceeding 15,000	Not Exceeding 5,000	
	Procurement method thresholds for goods, works and non-consulting services			
13(a)	Direct contracting	Not Exceeding 5,000	Not Exceeding 500	No minimum bidding period
13(b)	Limited Shopping	Exceeding 5,000 but not exceeding 50,000	Exceeding 500 but not exceeding 25,000	No minimum bidding period
13(c)	Open Shopping	Exceeding 50,000 but not exceeding 200,000	Exceeding 25,000 but not exceeding 100,000	20 Calendar Days
13(d)	Open Competitive Bidding	Exceeding 200,000	Exceeding 100,000	35 Calendar Days
	Procurement methods thresholds for consulting services			
13(e)	Methods under sections 56, 57 and 58	Not Exceeding 100,000	Not Exceeding 50,000	No minimum bidding period
13(f)	Request for proposals – shortlist established under section 53(3)	Exceeding 100,000 but not exceeding 200,000	Exceeding 50,000 but not exceeding 100,000	No minimum bidding period
13(g)	Request for proposals – shortlist established under section 53(4)	Exceeding 200,000	Exceeding 100,000	No minimum bidding period