

CAYMAN ISLANDS



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**THE PUBLIC MANAGEMENT AND FINANCE LAW
(2005 REVISION)**

THE FINANCIAL (AMENDMENT) (NO. 2) REGULATIONS, 2006

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ARRANGEMENT OF REGULATIONS

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**THE PUBLIC MANAGEMENT AND FINANCE LAW
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THE FINANCIAL (AMENDMENT) (NO. 2) REGULATIONS, 2006

The Governor, in exercise of the powers conferred by section 35 of the Public Management and Finance Law (2005 Revision), makes the following regulations -

1. These regulations may be cited as the Financial (Amendment) (No. 2) Regulations, 2006. Citation

2. The Financial Regulations (2005 Revision), in these regulations referred to as the “principal Regulations”, are amended in regulation 2 by inserting, in the appropriate alphabetical sequence, the following definitions - Amendment of regulation 2 of the Financial Regulations (2005 Revision) - definitions

“Central Tenders Committee” or “Committee” means the Central Tenders Committee constituted under regulation 40(2);

“pre-qualifying tender process” means a process consisting of the following steps -

- (a) a tender shall be formulated to a preliminary degree of detail and notified in an offer advertised nationally (and internationally, if appropriate) in a newspaper or other appropriate medium; and
- (b) two or more qualifying bidders shall be selected, and they shall be the only participants in a prescribed tendering process which shall be subsequently held and in which tenders shall be formulated to an advanced degree of detail;

“prescribed tendering process” means a process consisting of the following steps -

- (a) the offer of a contract for tender shall be advertised nationally (and internationally, if appropriate) in a newspaper or other appropriate medium;
- (b) the offer shall specify details of the criteria that will be used to evaluate tenders and to select the successful bidder;

- (c) the tenders shall be evaluated, and the successful bidder shall be selected, in accordance with the specified criteria; and
- (d) the prescribed entity, statutory authority or government company offering the contract shall notify all those who tendered of the successful bidder;”.

Insertion of regulation
38A - pre-qualifying
tender process

3. The principal Regulations are amended by inserting after regulation 38 the following regulation -

“Pre-qualifying
tender process

38A.(1) A pre-qualifying tender process shall not be commenced except with the approval of the Central Tenders Committee.

(2) For the purposes of an approval under paragraph (1), application shall be made to the Committee in accordance with a practice manual published by the Committee.

(3) Tenders in the pre-qualifying tender process shall be evaluated by the purchasing prescribed entity, statutory authority or government company, which shall furnish the Committee with a report, prepared in accordance with the manual referred to in paragraph (2), specifying the evaluation criteria used in that process and the respective identities of the qualifying bidders selected.

(4) Notice of the qualifying bidders selected by the prescribed entity, statutory authority or government company shall not be given to participants in the pre-qualification process, nor shall a prescribed tendering process for the award of a contract be commenced until, in accordance with paragraph (5), the Committee gives its approval in relation to -

- (a) the qualifying bidders; and
- (b) the commencement of the prescribed tendering process.

(5) On receipt of a report under paragraph (3), and after making such enquiries, if any, as it sees fit to make, the Committee, if it is satisfied -

- (a) that the evaluation criteria used in the pre-qualifying tender process conform to its original approval under paragraph (2); and
- (b) that those criteria were correctly and regularly applied,

shall give its approval for the purposes of paragraph (4), but otherwise may notify the prescribed entity, statutory authority or government company that it declines to do so, whereupon the pre-qualifying tender process shall be void and of no effect.

(6) Notwithstanding that an application or report under this regulation has been duly prepared in accordance with the manual referred to in paragraph (2), the Committee shall retain the right to be provided with such supplementary information, in a particular case as it sees fit to require, concerning -

- (a) the evaluation criteria that are proposed to be used, or that were used, in any pre-qualifying tender process; or
- (b) any other aspect of the pre-qualifying tender process.

(7) An approval of the Central Tenders Committee under paragraph (1) may be granted unconditionally or may be granted subject to conditions, and where it is granted subject to conditions, the prescribed entity, statutory authority or government company shall not conduct a pre-qualifying tender process otherwise than in accordance with those conditions.”.

4. The principal Regulations are amended by repealing regulation 39 and substituting the following regulation -

Repeal and substitution of regulation 39 - tendering process

“Tendering process

39. (1) The prescribed tendering process shall be used in respect of any contract required by this Part to be offered for public tender.

(2) A pre-qualifying tender process shall not be used in respect of a contract with a value of less than two hundred and fifty thousand dollars.

(3) A pre-qualifying tender process may be used for a contract with a value of two hundred and fifty thousand dollars or more.

(4) In the evaluation of a tender, whether in the prescribed tendering process or a pre-qualifying tender process, any price quoted or indicated in the tender shall be considered, but the least expensive tender is not, by virtue of that fact alone, entitled to succeed.”.

Amendment of
regulation 40 -
evaluation of tenders

5. The principal Regulations are amended in regulation 40 -
- (a) in paragraph (1) by deleting the words “All contracts with a value less than” and substituting the words “Tenders submitted for any contract with a value of less than”;
 - (b) in paragraph (2) by deleting the words “A contract” and substituting the words “Tenders submitted for any contract”; and
 - (c) by inserting after paragraph (2) the following paragraph -
“ (3) Paragraph (2) does not apply to a pre-qualifying tender process, but applies to a prescribed tendering process to which any such pre-qualifying tender process was a preliminary.”.

Saving

6. A tendering process which -
- (a) was commenced, before the date of commencement of these regulations, under Part IX of the Financial Regulations as in force immediately before that date; and
 - (b) was not completed before that date,

may be completed, and any associated contract may be awarded and executed, as if these regulations had not been made.

Made in Cabinet the 11th day of April, 2006.

Carmena Watler

Clerk of the Cabinet.