

CAYMAN ISLANDS



Procurement Act, 2016

(Act 47 of 2016)

PROCUREMENT (AMENDMENT) REGULATIONS, 2021

(SL 66 of 2021)

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CAYMAN ISLANDS**Procurement Act, 2016****(Act 47 of 2016)****PROCUREMENT (AMENDMENT)
REGULATIONS, 2021****(SL 66 of 2021)**

In exercise of the powers conferred by sections 13 and 20 of the Procurement Act, 2016, the Cabinet makes the following Regulations —

Citation

1. These Regulations may be cited as the Procurement (Amendment) Regulations, 2021.

Amendment of regulation 2 of the Procurement Regulations, 2018 - definitions

2. The *Procurement Regulations, 2018*, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2 as follows —
 - (a) by inserting the following definition in the appropriate alphabetical sequence —

“**approved business case**” means a business case which has been reviewed and approved in accordance with regulation 3(3); and
 - (b) by repealing the definition of “**business case**”.

Amendment of regulation 3 - project appraisal and business case requirement

3. The principal Regulations are amended in regulation 3 as follows —



- (a) by repealing paragraph (3) and substituting the following paragraph —
- “(3) The appraisal process shall be conducted and the business case shall be prepared in accordance with the following requirements —
- (a) where a procurement project is less than one hundred thousand dollars in value, a business case is not required, and —
 - (i) a purchase requisition shall be submitted in the format specified by the Chief Officer or the Chief Executive Officer, or the respective delegate of the Chief Officer or the Chief Executive Officer; and
 - (ii) the requisition or purchase order shall be authorized by the Chief Financial Officer or the Chief Financial Officer’s delegate;
 - (b) where a procurement project is one hundred thousand dollars or greater in value but less than two hundred and fifty thousand dollars —
 - (i) a written business case shall be submitted in a format specified by the Chief Officer or Chief Executive Officer of the initiating entity;
 - (ii) the business case shall be submitted for review to the Entity Procurement Committee by the Head of Department;
 - (iii) the Chief Officer or Chief Executive Officer, on the advice of the Entity Procurement Committee and supported by the written business case review, may initiate procurement, in line with the approved business case and all appendices;
 - (iv) the business case review conducted by the Entity Procurement Committee shall be recorded in a format specified by the Director of the Central Procurement Office; and
 - (v) the business case shall be retained in a file in the entity along with the procurement file;
 - (c) where a procurement project is two hundred and fifty thousand dollars or greater in value but less than ten million dollars in value —
 - (i) a written business case shall be prepared in the format specified by the Director of the Central Procurement Office;



- (ii) a written local impact assessment shall be prepared in the format specified by the Central Procurement Office and shall be appended to the business case;
 - (iii) the business case and the local impact assessment shall be submitted to the Entity Procurement Committee for review;
 - (iv) the business case review conducted by the Entity Procurement Committee shall be recorded in the format specified by the Director of the Central Procurement Office;
 - (v) the Chief Officer or Chief Executive Officer, on the advice of the Entity Procurement Committee and supported by the written business case review, may authorize procurement to proceed in line with the business case including all appendices; and
 - (vi) the business case and all supporting documentation shall be retained by the entity;
- (d) where a procurement project is ten million dollars in value or greater or is deemed to be high risk by the Chief Officer of the Ministry of Finance —
- (i) a written business case shall be prepared in a format specified by the Director of the Central Procurement Office;
 - (ii) a written local impact assessment shall be prepared in the format specified by the Central Procurement Office and shall be appended to the business case;
 - (iii) a written industry consultation report shall be submitted in the format specified by the Central Procurement Office and shall be appended to the business case;
 - (iv) the business case and all appendices shall be submitted for review to the Public Sector Investment Committee, hereinafter referred to as the “PSIC”, by the Chief Officer or Chief Executive Officer;
 - (v) following a review of the business case and all the required documentation, the PSIC shall assess the overall viability of the project and make recommendations to Cabinet as to whether or not the project should proceed as proposed;

- (vi) the PSIC report containing the recommendations shall be submitted to Cabinet by the Chief Officer or Chief Executive Officer;
- (vii) following consideration of the PSIC report referred to in subparagraph (vi), together with all of the submissions of the Chief Officer or Chief Executive Officer, the Cabinet shall determine whether the project receives its approval or not and provide notification of its decision;
- (viii) following notification of the Cabinet's decision, if the Cabinet has approved the project, a copy of the Cabinet's approval, the business case and all appendices shall be forwarded to the Public Procurement Committee by the Chief Officer;
- (ix) approval by the Cabinet shall serve as authorization for the Chief Officer to proceed with project initiation, in line with the business case or any amendments requested by the Cabinet; and
- (x) the business case and all supporting documentation shall be retained by the entity."

Amendment of regulation 5 - direct award process

4. The principal Regulations are amended in regulation 5 as follows —

- (a) in paragraph (1) —
 - (i) by inserting after the word “where” the words “one or more of the following are met”; and
 - (ii) by repealing subparagraph (1);
- (b) in paragraph (3), by repealing subparagraphs (b) and (c) and substituting the following subparagraphs —
 - “(b) with a procurement value of between one hundred thousand dollars and two hundred and fifty thousand dollars requires the endorsement of the Entity Procurement Committee prior to submission for approval to the Chief Officer or Chief Executive Officer; and
 - (c) with a procurement value over two hundred and fifty thousand dollars, requires the endorsement of the Public Procurement Committee prior to submission for approval to the Chief Officer or Chief Executive."



Amendment of regulation 6 - public notice of opportunity

5. The principal Regulations are amended in regulation 6(1) by inserting after the word “Office” the words “except where restricted tendering is used in accordance with regulation 7(2)”.

Repeal and substitution of regulation 7 - competitive procurement methods

6. The principal Regulations are amended by repealing regulation 7 and substituting the following regulation —

“Competitive procurement methods

7. (1) Subject to paragraph (2), an entity shall conduct a competitive procurement process by means of one of the following methods of procurement as specified in the policy of the Central Procurement Office —
- (a) request for quotations;
 - (b) request for proposals without negotiation;
 - (c) two-stage tendering;
 - (d) requests for proposals with dialogue;
 - (e) request for proposals with consecutive negotiations; and
 - (f) competitive negotiations.
- (2) An entity shall conduct procurement by means of open tendering except when restricted tendering can be justified where —
- (a) the subject matter of the procurement, by reason of its highly complex or specialized nature, is available only from a limited number of suppliers or contractors; or
 - (b) the value of the procurement is below one hundred thousand dollars and a minimum of three quotes are available from local suppliers.
- (3) Where restricted tendering is used in accordance with paragraph (2)(a), it shall be preceded by pre-qualification proceedings as specified by regulation 8.
- (4) An entity shall conduct procurement under this regulation in accordance with the policy and procedures established by the Central Procurement Office.
- (5) A procuring entity may use a method of procurement in accordance with paragraphs (6) through (11).
- (6) A procuring entity may engage in procurement by means of a request for quotations —

- (a) for the procurement of readily available goods or services that are not uniquely designed, produced or provided to a particular description of the procuring entity; and
 - (b) for which there is an established and competitive market.
- (7) A procuring entity may engage in procurement by means of a request for proposals without negotiation —
 - (a) where the procuring entity needs to consider the financial aspects of proposals separately; and
 - (b) only after completion of examination and evaluation of the technical, qualitative and performance characteristics of the proposals.
- (8) A procuring entity may engage in procurement by means of two-stage tendering where —
 - (a) the procuring entity assesses that discussions with suppliers or contractors are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with the detail required, and in order to allow the procuring entity to obtain the most satisfactory solution to its procurement needs; or
 - (b) tendering was engaged in but no bids were presented or the procurement was cancelled by the entity and, in the judgement of the Chief Officer or Chief Executive Officer, engaging in new open tendering or other procurement method would be unlikely to result in a procurement contract.
- (9) A procuring entity may engage in procurement by means of a request for proposals with dialogue where —
 - (a) it is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement and the procuring entity assesses that dialogue with suppliers or contractors is needed to obtain the most satisfactory solution to its procurement needs;
 - (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
 - (c) the procuring entity determines that the selected method is the most appropriate method of procurement for the protection of essential security interests of the Islands; or



- (d) open tendering was engaged in but no bids were presented or the procurement was cancelled by the procuring entity and, in the opinion of the Chief Officer or Chief Executive Officer, engaging in new open tendering or any other procurement method would be unlikely to result in a procurement contract.
- (10) A procuring entity may engage in procurement by means of request for proposals with consecutive negotiations where the procuring entity —
- (a) needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the technical, qualitative and performance characteristics of the proposal; and
 - (b) determines that consecutive negotiations with suppliers or contractors are needed to ensure that the financial terms and conditions of the procurement contract are acceptable to the entity.
- (11) A procuring entity may engage in competitive negotiations where the procuring entity determines that the use of any other competitive method of procurement is not appropriate for the protection of essential security interests of the Islands.
- (12) A procuring entity may include an electronic reverse auction in a procurement method listed in paragraph (1) under the following conditions —
- (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
 - (b) there is a competitive market of suppliers or contractors and it is anticipated that the suppliers or contractors will qualify to participate in the electronic reverse auction thereby ensuring effective competition; and
 - (c) the criteria to be used by the procuring entity in determining the successful submission are quantifiable.”.

Amendment of regulation 8 - pre-qualification

7. The principal Regulations are amended in regulation 8(2) by repealing subparagraphs (a) and (b).

Amendment of regulation 13- competitive process and management

8. The principal Regulations are amended in regulation 13 by inserting after paragraph (7) the following paragraph —

“(8) Bids with an estimated value of over two hundred and fifty thousand dollars, which are submitted through the electronic procurement

system which is designated by the Central Procurement Office, shall be opened by the Director of the Central Procurement Office or the delegate of the Director of the Central Procurement Office.”.

Amendment of regulation 14 - procurement documentation

9. The principal Regulations are amended in regulation 14(2) by repealing subparagraphs (a) to (e) and substituting the following subparagraphs —

- “(a) the approved copy of all issued competition documents;
- (b) the business case, together with evidence of all necessary approvals;
- (c) all communications with bidders or potential bidders;
- (d) every addendum issued;”.

Amendment of regulation 17- debriefing bidders

10. The principal Regulations are amended in regulation 17 as follows —

- (a) by deleting the words “(1) An entity shall provide” and substituting the words “An entity shall provide”;
- (b) in subparagraph (d), by deleting the word “and” appearing at the end of the subparagraph;
- (c) in subparagraph (e), by deleting the full stop appearing at the end of the subparagraph and substituting the words “; and”; and
- (d) by inserting after subparagraph (e), the following subparagraph —
 - “(f) that the request by the unsuccessful bidder was made within five business days of notification that the unsuccessful bidder’s bid was not accepted.”.

Repeal and substitution of regulation 18 - complaints

11. The principal Regulations are amended by repealing regulation 18 and substituting the following regulation —

“Complaints

18. Within five business days of debriefing in accordance with regulation 17, a bidder may file a complaint regarding the administration of the procurement process using the established complaints process of the entity concerned.”.

Amendment of regulation 19 - publication of contract award

12. The principal Regulations are amended in regulation 19(3) by repealing the words “Paragraph (1) is” and substituting the words “Paragraphs (1) and (2) are”.



Amendment of regulation 20 - Cayman Islands economic development preference

13. The principal Regulations are amended in regulation 20 as follows —
- (a) by repealing the header and substituting the following header —
“Economic development preference of the Islands”; and
 - (b) in paragraph (2), as follows —
 - (i) by repealing the chapeau and substituting the following chapeau —
“For all procurement projects with a value of two hundred and fifty thousand dollars or greater, an entity shall, where the project is not restricted to local suppliers —”; and
 - (ii) in subparagraph (c), by deleting the words “an entity shall”.

Made in Cabinet the 21st day of September, 2021.

Kim Bullings
Clerk of the Cabinet