

**MONTSERRAT**

**STATUTORY RULES AND ORDERS**

**S.R.O. 11 OF 2012**

**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)  
(PROCUREMENT) REGULATIONS 2012**

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**THE PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) (PROCUREMENT) REGULATIONS 2012 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET UNDER SECTION 58 OF THE PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) ACT 2008.**

PART 1

PRELIMINARY

**Citation and commencement**

1. These Regulations may be cited as the Public Finance (Management and Accountability) (Procurement) Regulations 2012 and shall come into force on the 1st day of April, 2012.

**Interpretation**

2. In these Regulations—

“**Act**” means the Public Finance (Management and Accountability) Act, 2008;

“**construction**” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;

“**consulting services**” means services of an intellectual nature which may not lead to a physically measurable result;

“**Departmental Tenders Committee**” means a committee appointed under regulation 18;

“**domestic supplier**” means a supplier who has his principal place of business in Montserrat;

“**goods**” include raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;

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- “**Minister**” means the Minister with responsibility for finance; and  
“**Ministry**” shall be construed accordingly;
- “**open tendering**” involves publicly publishing a request or invitation for tenders and considering all submissions received in response to the invitation;
- “**prequalification document**” means any document submitted to suppliers in prequalification proceedings under regulation 6;
- “**procurement**” means the acquisition of goods by any means including purchase, rental, lease or hire-purchase, and the acquisition of construction, consulting and other services;
- “**procurement contract**” means a contract between the procuring entity and a supplier or contractor resulting from the procurement process;
- “**procuring entity**” means any ministry, department, agency or other unit, or any subdivision of the Government or a public organisation that engages in procurement;
- “**public emergency**” means a period of public emergency declared in accordance with section 18 of the Montserrat Constitution Order 2010;
- “**Public Procurement Board**” means the Public Procurement Board established under regulation 15;
- “**public service law**” means any law relating to the matters referred to in section 24(2)(a)–(c) of the Montserrat Constitution Order, 2010;
- “**publish**” has the meaning assigned in regulation 52;
- “**services**” means services of a general nature other than consulting and construction services;
- “**supplier**” means according to the context, any party or potential party to a procurement contract with the procuring entity and includes a consultant;
- “**tender document**” means any document that seeks to solicit proposals, offers or quotations from suppliers at any stage of the procurement process; and
- “**tender security**” means a security provided to the procuring entity to secure the fulfilment of any obligation under a procurement contract and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes, and bills of exchange.

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**Application**

3. (1) These Regulations apply to all procurement by a procuring entity unless—

- (a) the procurement is for purposes of national defence, public emergency or national security; or
- (b) the regulations conflict with a provision of an international agreement.

(2) The application of these Regulations may be extended to the type of procurement referred to in subregulation (1) if and to the extent that a procuring entity expressly declares the application of the Regulations to suppliers in its initial tender document.

PART 2

GENERAL PROVISIONS

**Qualification of suppliers**

4. (1) A supplier must qualify to participate in a procurement process by meeting the following criteria to the extent that the procuring entity considers appropriate in a particular procurement process—

- (a) the supplier possesses or has access to the technical competence, financial resources, equipment and other physical facilities, personnel, managerial capability, experience and reputation, to complete the procurement contract;
- (b) the supplier has the legal capacity to enter into the procurement contract;
- (c) the supplier is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer and its business activities have not been suspended;
- (d) the supplier is not the subject of legal proceedings for any of the matters mentioned in paragraph (c);
- (e) the supplier has fulfilled or has made substantial arrangements satisfactory to the relevant authorities, to fulfil its obligations to pay taxes and social security and other contributions of its employees;
- (f) the supplier has not, and its directors or officers have not, been convicted of any criminal offence related to—
  - (i) its professional conduct;

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- (ii) the making of false statements; or
- (iii) misrepresentations as to its qualifications to enter into a procurement contract

within a period of 10 years preceding the commencement of the procurement process;

- (g) the supplier, its directors or officers have not been disqualified from a procurement process pursuant to suspension or debarment proceedings in this or other jurisdictions;
- (h) the supplier's past performance substantiated by documentary evidence is satisfactory and warrants serious consideration for the award of the procurement contract.

(2) If a supplier is a public officer or a public officer owns or has an interest in a supplier, the public officer may only qualify to participate in a procurement process if he declares his interest—

- (a) to the procuring entity on submission of a prequalification application, where submission is required; or
- (b) where the procuring entity does not engage in prequalification proceedings, to the Departmental Tender Committee or the Public Procurement Board, on submission of his tender document.

(3) If a public officer in subregulation (2) does not declare his interest, he or the supplier is liable to lose the procurement contract, if the tender is accepted.

(4) Subject to the right of a supplier to protect its intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in the procurement process to provide appropriate documentary evidence or other information to satisfy itself that the supplier is qualified in accordance with the criteria listed in subregulation (1).

(5) A procuring entity shall set out in any prequalification document or tender document the applicable criteria for qualification referred to in subregulation (1) and the criteria shall apply equally to all suppliers.

(6) A procuring entity shall not impose a criterion, requirement or procedure with respect to the qualifications of suppliers other than those identified in these Regulations.

(7) The procuring entity shall not establish a criterion, requirement or procedure with respect to the qualifications of suppliers that—

- (i) discriminates against or among suppliers or against categories of suppliers on the basis of nationality; or

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- (ii) that is not justifiable for the performance of the procurement contract,

except when it is in the national interest to do so and this is expressed in the tender documents.

**Evaluation and disqualification of suppliers**

5. (1) A procuring entity shall evaluate the qualifications of suppliers in accordance with the qualification criteria and procedure set out in the prequalification or tender documents.

(2) A procuring entity may disqualify a supplier from a procurement process if it finds that the supplier knowingly submitted information concerning its qualifications that was materially inaccurate, materially incomplete or false.

(3) If a supplier knowingly submits information concerning its qualification which is materially inaccurate, materially incomplete or false on more than one occasion, a procuring entity may, with the approval of the Public Procurement Board—

- (a) suspend the supplier, for a period of 1 to 2 years, from being considered for any procurement contract by the procuring entity; or
- (b) debar the supplier from participation in any or a certain type of procurement process, subject to any condition it considers necessary.

**Prequalification proceedings and documents**

6. (1) A procuring entity may conduct prequalification proceedings with a view to identifying suppliers that are qualified prior to the submission of tenders, proposals or offers in any procurement process.

(2) If the procuring entity decides to engage in prequalification proceedings it shall publish an invitation to prequalify which shall state—

- (a) the method of obtaining prequalification documents; and
- (b) the fee payable for the documents.

(3) A procuring entity shall provide prequalification documents to each supplier who requests them in the manner provided in the invitation to prequalify and who pays the applicable fee.

(4) The prequalification documents shall include the following information—

- (a) instructions for preparing and submitting a prequalification application;



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- (b) a summary of the required terms and conditions of the procurement contract to be entered into at the conclusion of the procurement process;
- (c) any document or other information that must be submitted by suppliers as evidence of their qualifications;
- (d) the manner and place for the submission of applications to prequalify;
- (e) the deadline for submission, expressed as a specific date and time; and
- (f) any other requirements that may be established by the procuring entity in conformity with these Regulations.

(5) A procuring entity shall ensure that the deadline for submission of a prequalification application allows suppliers sufficient time to prepare and submit their applications but should also take into account the needs of the procuring entity.

(6) A procuring entity shall respond in a timely manner to a justifiable query by a supplier for clarification of the prequalification documents that is received by the procuring entity within a reasonable time, prior to the deadline for the submission of applications to prequalify.

(7) The response to any query in subregulation (6) shall, without identifying the source of the query, be communicated to all suppliers who received prequalification documents.

(8) A procuring entity shall only apply the criteria set out in prequalification documents when evaluating each prequalification application and deciding whether a supplier prequalifies to participate in the procurement process.

(9) A procuring entity shall promptly notify each supplier that submits a prequalification application whether or not it has prequalified and shall, upon request—

- (a) make available to any member of the public, the names of all suppliers that have prequalified; and
- (b) communicate to any supplier that has not been prequalified, the grounds for its decision.

(10) Only prequalified suppliers are entitled to participate further in the relevant procurement process.

(11) A supplier that has not satisfied the prequalification requirements may request a review of the decision in accordance with Part 7.

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**Form of communication**

7. (1) A document, notification, decision or other communication that these Regulations require—

- (a) a procuring entity to submit to a supplier; or
- (b) a supplier to submit to a procuring entity,

shall be in a form, electronic or otherwise, that provides a record of the content of the communication.

(2) If communication, referred to in sub regulation (1), between the supplier and the procuring entity occurs by a form of communication that does not provide a record of the content of the communication, confirmation of the communication shall be given to the recipient of the communication by the sender in a form which provides a record of the confirmation.

(3) The procuring entity shall not discriminate against or among suppliers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

**Rules concerning documentary evidence provided by suppliers**

8. (1) If a procuring entity requires notarization or authentication of a document provided by a supplier as evidence of the supplier's qualifications in the procurement process, the procuring entity shall not impose any requirement as to the authentication or notarization of the documents other than those provided for by law.

(2) The procuring entity shall require authentication or notarization of documents only from the bidder who submitted the lowest evaluated bid or the bidder who has been recommended to be awarded the tender.

**Record of procurement process**

9. (1) The procuring entity shall maintain a record of the procurement process including the following information for at least 5 years—

- (a) a brief description of the goods, services, construction, or consulting services to be procured;
- (b) the names, addresses and other relevant contact information of suppliers that submitted prequalification applications, tenders, proposals, or quotations;
- (c) the name and address of the supplier or contractor with which the procurement contract is entered into and the contract price;
- (d) information relating to the qualification, or lack thereof, of suppliers or contractors that submitted prequalification applications, tenders, proposals, offers or quotations;

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- (e) the price, or the basis for determining the price, and a summary of the other material terms and conditions of each prequalification application, tender, proposal, offer or quotation;
  - (f) the means used to solicit suppliers and a record of any such advertisement;
  - (g) the time and place for the opening of tenders;
  - (h) the names of the suppliers or their representatives and members of the public attending the opening of tenders or proposals;
  - (i) the form of tender and those pages containing the original bill of quantities for construction;
  - (j) a summary of the evaluation and comparison of tenders, proposals, offers or quotations; and
  - (k) any other information required to be recorded by these regulations.
- (2) The portion of the record referred to in subregulation (1)(a) and (b) shall, on request, be made available to any person—
- (a)(i) after a tender has been accepted; and
  - (ii) a notice under regulation 10 has been published; or
  - (b) after the procurement process has been terminated.
- (3) After a tender has been accepted or the procurement process has been terminated, the record referred to in subregulation (1)(c) to (j) shall, be made available on request, to suppliers that applied for prequalification or tenders.
- (4) A court of competent jurisdiction may, at any stage of the procurement process, on the application of a supplier that submitted a prequalification application, tender, proposal or quotation, order the procuring entity to disclose a portion of the record referred to in subregulation (1) , but, subject to the conditions of the order, the procuring entity shall not disclose information—
- (a) if its disclosure would—
    - (i) be contrary to law;
    - (ii) impede law enforcement;
    - (iii) not be in the public interest;
    - (iv) prejudice legitimate commercial interests of the other parties; or
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(v) inhibit fair competition; or

(b) relating to the examination or evaluation of tender proposals,

but non-disclosure shall not be construed as preventing the disclosure of scoring sheets or rankings, or any other documents that provide a qualitative or quantitative comparison of the tender proposals.

(5) The procuring entity shall not be liable to suppliers for damages solely for a failure to maintain a record of the procurement process in accordance with this regulation if the procuring entity has acted in good faith.

**Publication of contract awards**

10. A procuring entity shall, within 10 days of awarding a procurement contract, publish a notice of the contract, if the value of the contract exceeds—

(a) \$10,000 for procurement of services; or

(b) \$20,000 for any other procurement.

**Inducements from suppliers**

11. A procuring entity or the Public Procurement Board shall reject a tender or proposal, if the supplier that submitted it offers, gives or agrees to give, to any current or former officer or employee of the procuring entity—

(a) a gratuity in any form;

(b) an offer of employment; or

(c) any other thing or service or value;

as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the procurement process and the rejection of the tender or proposal and the reasons for the rejection shall be recorded in the record of the procurement process under regulation 9 and promptly communicated to the supplier.

**Rules regulating obstacles against the participation of suppliers**

12. (1) A procuring entity shall not include or use in the prequalification documents or tender documents—

(a) a specification, plan, drawing or design setting out the technical or quality characteristic of goods, services or construction;

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- (b) a requirement concerning testing and test methods, packaging, marking or labelling or conformity certificate; or
- (c) a symbol, terminology or description of goods,

if it creates an obstacle, including obstacles based on nationality, to the participation of suppliers in the procurement process.

(2) Subject to subregulation (3), a specification, plan, drawing, design and requirement shall be based on the relevant objective technical and quality characteristics of the goods, services, or construction to be procured.

(3) There is no requirement for or reference to a particular trade mark, name, patent, design, type, specific origin or producer in a specification, plan, drawing, design or requirement, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, services, or construction to be procured.

(4) Where there is a requirement for or reference to a particular trade mark, name, patent, design, type, specific origin or producer, the words such as “or equivalent” must be included.

(5) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, services, or construction to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the tender documents.

(6) Regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of all relevant aspects of the tender documents and the procurement contract to be entered into as a result of the procurement process.

**Splitting procurement contracts**

13. A procuring entity shall not—

- (a) split or cause a procurement contract to be split; or
- (b) divide or cause a procurement contract to be divided,

into separate procurement contracts where the sole purpose for doing so is to avoid the application of any provision of these Regulations.

**Language of documents**

14. All solicitations, invitations to tenders and other documents required under these Regulations shall be in English and may also be in any other language that the procuring entity specifies.

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PART 3

ADMINISTRATIVE STRUCTURE FOR  
PUBLIC PROCUREMENT

**Establishment of a Public Procurement Board**

15. (1) There is established a body known as the Public Procurement Board.

(2) The Public Procurement Board shall consist of the Deputy Financial Secretary, who shall be an *ex officio* member and Chairperson, and five other members of personal and professional integrity, appointed by the Deputy Governor as follows—

- (a) a representative from the Ministry with responsibility for development policy;
- (b) a person with at least 5 years legal experience;
- (c) a person with at least 5 years experience in finance or public auditing;
- (d) a person who has shown competence in business or administration; and
- (e) a person not in active practice who possesses technical expertise in engineering, architecture or other relevant technical field.

(3) A director, head of a department, a representative of a donor agency or a designated representative of a procuring entity may attend meetings of the Public Procurement Board when matters concerning the relevant procuring entity are being considered but shall not be entitled to vote.

(4) A term of membership on the Public Procurement Board shall be 3 years except in the case of the Deputy Financial Secretary.

(5) Three members, including the Chairman, shall constitute a quorum at meetings of the Public Procurement Board.

**Functions of the Public Procurement Board**

16. (1) The Public Procurement Board shall be responsible for—

- (a) exercising jurisdiction over tenders, the value of which, exceeds \$50,000.00;
- (b) maintaining efficient record keeping and quality assurance systems;
- (c) making rules governing procurement to carry out the provisions of these regulations;

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- (d) determining the forms of documents for procurement including, but not limited to—
  - (i) standard bidding documents;
  - (ii) prequalification documents;
  - (iii) procurement contracts;
  - (iv) anti-collusion statements to be signed by suppliers;
  - (v) evaluation forms; and
  - (vi) procurement manuals, guidelines, and procedures;
- (e) organizing training seminars regarding procurement;
- (f) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending any amendment to these Regulations that may be necessary to improve the effectiveness of the procurement process;
- (g) reviewing decisions of procuring entities, upon request, as provided for in regulation 46; and
- (h) adjudicating proceedings for the suspension or debarment of a supplier from procurement proceedings.

(2) The Public Procurement Board shall submit to the Financial Secretary, reports of its decisions and other activities every quarter and at any other time that the Financial Secretary requires.

#### **Secretariat of the Public Procurement Board**

17. (1) The Ministry shall provide to the Public Procurement Board, a secretariat, which is responsible for the operational and day-to-day activities of the Public Procurement Board.

(2) The Ministry shall ensure that the secretariat receives the training and other resources necessary to discharge its responsibilities.

#### **Appointment of Departmental Tender Committees**

18. (1) The Public Procurement Board shall appoint a Department Tenders Committee for each procuring entity which, subject to the functions of the Public Procurement Board under regulation 16, shall have jurisdiction for and oversee the administration of procurement by the relevant Ministry, department, agency or public organisation if the value of the procurement contract is less than \$50,000.00.

(2) A Departmental Tenders Committee shall consist of—

- (a) an accounting officer, who shall be the Chairman of the Committee; and

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(b) two other persons, one of whom shall be an employee of the procuring entity,

appointed after consultation with the relevant Minister.

(3) A Departmental Tenders Committee shall prepare tender documents, using standardized forms and criteria prepared by the Public Procurement Board, for tenders subject to its jurisdiction; and may, with the approval of the Public Procurement Board, make such minor alterations or modifications to the forms and criteria as are deemed necessary.

(4) A Departmental Tenders Committee shall determine whether suppliers satisfy the qualification requirements under regulation 33 and shall submit to the Public Procurement Board reports of decisions, justifications for decisions and the minutes of meeting when decisions are taken.

(5) Each procuring entity for which a Departmental Tenders Committee has been appointed is responsible for its operational and day-to-day activities and shall ensure that its officers receive the training and other resources necessary to discharge their responsibilities.

#### **Procurement by corporations and certain other bodies**

19. (1) A corporations or other body in which the controlling interest is vested in the Crown may conduct procurement proceedings according to its own rules or regulations, provided that those rules and regulations are approved by the Public Procurement Board.

(2) Despite subregulation (1), if the rules or regulations of the corporation or other public body conflict materially with these Regulations, these Regulations shall prevail.

(3) The Public Procurement Board may review the rules and regulations of the corporation or public body referred to in subregulation (1) from time to time, and may approve or revoke its approval of the rules and regulations unconditionally or subject to certain amendments.

(4) A corporation or other body that receives funds from the Consolidated Fund for a specific procurement shall for that procurement, follow the procedures set out in these Regulations.

#### PART 4

#### METHODS OF PROCUREMENT OF GOODS, CONSTRUCTION AND SERVICES AND CONDITIONS FOR USE

#### **Open tendering**

20. (1) A procuring entity shall, subject to subregulation (2), use public tendering for the procurement of goods, construction and services.



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(2) A procuring entity may use a method of procurement other than open tendering proceedings in accordance with regulations 21, 22 and 23, and shall include in the record kept under regulation 9 a statement of the grounds and circumstances on which it relies to justify the use of that particular method of procurement.

#### **Restricted tendering**

21. (1) A procuring entity may engage in procurement by means of restricted tendering in accordance with this regulation when—

- (a) the goods, construction or service by reason of its highly complex or specialized nature, is available only from a limited number of suppliers or contractors;
- (b) the estimated cost of the procurement contract is below \$20,000.00; or
- (c) the time and cost required to examine a large number of tenders would be disproportionate to the value of the goods, construction or service to be procured.

(2) If a procuring entity relies on the ground in subregulation (1)(a) to engage in restricted tendering, all suppliers from whom the goods, construction or service is available shall be invited to submit tenders.

(3) When a procuring entity relies on any other ground to engage in restricted tendering, the procuring entity shall select suppliers from whom to solicit tenders in a non-discriminatory manner and shall select sufficient suppliers to ensure effective competition, but not fewer than two.

(4) When the restricted tendering procedure is used—

- (a) all the steps and requirements applicable to open tendering prescribed in this Part shall be complied with except that only suppliers invited by the procuring entity can submit tenders; and
- (b) the procuring entity shall cause a notice of the restricted tendering to be published.

#### **Request for quotations**

22. (1) The procuring entity may engage in procurement by means of a request for quotations for the procurement of readily available goods and services—

- (a) that are not specifically produced or provided to the particular specifications of the procuring entity; and
- (b) for which there is an established market,

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provided that the estimated value of the procurement contract does not exceed \$20,000.00.

(2) Before awarding a procurement contract under this regulation, the procuring entity shall obtain and compare quotations from as many qualified suppliers as reasonably practicable, but not fewer than two.

(3) The procuring entity shall use its best efforts to check prices on the internet and other sources to ensure the reasonableness of quoted prices and shall at least once quarterly, publish the price of its procurements that exceed the price of \$5,000.00.

(4) Each supplier is permitted to give only one price quotation, which it is not permitted to change, and the procuring entity is not permitted to engage in negotiations with a supplier with respect to a quotation submitted by the supplier.

(5) The procurement contract shall be awarded to the supplier that—

- (a) submitted the lowest priced quotation; and
- (b) complied with all the requirements of the request.

(6) The procuring entity shall keep a record of all quotations received.

#### **Single-source procurement**

23. A procuring entity may engage in single-source procurement if—

- (a) the goods or construction is available only from a particular supplier, or a particular supplier has exclusive rights with respect to the goods or construction, and no reasonable alternative or substitute exists;
- (b) the services, by reason of their highly complex or specialized nature, are available from only one source;
- (c) owing to a public emergency or national disaster, there is an urgent need for a goods, service or construction, and it is impractical to use the prescribed methods of procurement because of the time involved in using those methods;
- (d) the procuring entity, having procured goods, services, equipment or technology from a supplier, determines that additional supplies must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, services, equipment or technology, taking into account—
  - (i) the effectiveness of the original procurement in meeting the needs of the procuring entity;

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- (ii) the limited size of the proposed procurement in relation to the original procurement;
  - (iii) the reasonableness of the price; and
  - (iv) the unsuitability of alternatives to the original procurement; or
- (e) the procuring entity applies regulation 3(2), to procurement involving national defence or national security and determines, as a result of national security concerns, that single-source procurement is the most appropriate method of procurement.

PART 5

PROCEDURE FOR SOLICITING TENDERS

*Subpart I – Invitation to Tender*

**Procedure for soliciting tenders**

24. (1) A procuring entity shall solicit tenders by causing an invitation to tender to be published.

(2) The invitation to tender shall contain the following information—

- (a) the name and address of the procuring entity;
- (b) the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided;
- (c) the desired time for the supply of the goods or for completion of construction or the timetable for the provision of services;
- (d) the criteria and procedures to be used under regulation 4 for evaluating the qualifications of suppliers;
- (e) the means of obtaining the tender documents and the place from which they may be obtained;
- (f) the price, if any, charged by the procuring entity for tender documents;
- (g) the language or languages in which the tender documents are available;
- (h) a copy of the anti-collusion statement prescribed by the Public Procurement Board; and

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- (i) the place and deadline for the submission of tenders.

**Two-stage tendering**

25. (1) Subject to the approval of the Public Procurement Board, a procuring entity may engage in open tendering by means of two-stage tendering—

- (a) when the complex nature of the procurement contract makes it difficult for the procuring entity to—
- (i) formulate detailed specifications for the goods or construction or,
  - (ii) in the case of services, identify the characteristics or elements of the service;
- (b) in order to obtain the most satisfactory solution for the procurement needs or to a problem;
- (c) when it is necessary to negotiate with suppliers because of the technical character of the goods or construction or because of the nature of the service; or
- (d) when it seeks to enter into a procurement contract for the purpose of research, experiment, study or development.

(2) Two-stage tendering may be preceded by pre-qualification proceedings in accordance with regulation 6.

(3) During the first stage of a two-stage tender, suppliers shall be invited to submit—

- (a) technical proposals on the basis of a conceptual design or performance-based specifications provided in the tender documents; or
- (b) proposals or offers as to possible solutions to a problem or the procurement needs of the procuring entity,

without submitting prices and these proposals may then be subject to further specification on technical and commercial requirements.

(4) During the second stage, suppliers shall be invited to submit final technical proposals with prices on the basis of revised tender documents, following the first stage.

**Tender documents**

26. (1) The procuring entity shall provide tender documents to suppliers in accordance with the procedure and requirements specified in the invitation to tender and subject to the payment of the prescribed fee.

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(2) If prequalification proceedings have been conducted, the procuring entity shall provide tender documents to each prequalified supplier.

(3) The tender documents shall include, at least, the following information—

- (a) instructions for preparing tenders;
- (b) the criteria and procedures, in conformity with the provisions of regulation 4;
- (c) the requirements as to documentary evidence or other information that must be submitted by suppliers to demonstrate their qualifications;
- (d) the description, nature and technical or quality characteristics of the goods, construction or services to be procured, in conformity with regulation 12, and any incidental services to be performed; the location where the construction is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the construction is to be completed or the services are to be provided;
- (e) the criteria to be used to determine the successful tender, including the relative weight to be assigned to each criterion;
- (f) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
- (g) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services, such as any applicable transportation and insurance charges, customs duties and taxes;
- (h) the currency or currencies in which the tender price is to be formulated and expressed;
- (i) the language or languages, in conformity with regulation 14, in which tenders are to be prepared;
- (j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by suppliers,

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- (k) any requirements for any security for the performance of the procurement contract to be provided by the supplier, including securities such as labour and materials bonds;
- (l) if applicable, a statement that a supplier may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security;
- (m) the manner, place and deadline for the submission of tenders, in conformity with regulation 28;
- (n) the means by which, pursuant to regulation 27, suppliers may seek clarification of the tender documents and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of suppliers;;
- (o) the period of time during which tenders shall be in effect, pursuant to regulation 30;
- (p) the place, date and time for the opening of tenders, pursuant to regulation 32;
- (q) the procedures to be followed for opening and examining tenders;
- (r) the currency that will be used for the purpose of evaluating and comparing tenders pursuant to regulation 33 and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (s) references to these Regulations and other legislation directly pertinent to the procurement process, provided, however, that the omission of any such reference shall not constitute grounds for review under Part 7 or give rise to liability on the part of the procuring entity;
- (t) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers in connection with the procurement process;
- (u) notice of the right provided under Part 7 to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement process;
- (v) if applicable, a statement pursuant to regulation 34 that the procuring entity reserves the right to reject all tenders;

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- (w) any formalities that will be required for a procurement contract to enter into force, once a tender has been accepted, including, where applicable—
  - (i) the execution of a written procurement contract pursuant to regulation 36;
  - (ii) the approval by the Governor acting on the advice of Cabinet; and
  - (iii) the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval; and
- (x) any other requirements established by the procuring entity in conformity with these Regulations and any other legislation relating to the preparation and submission of tenders and to other aspects of the procurement process.

**Clarification and modification of tender documents**

27. (1) A supplier may request a clarification of the tender documents from the procuring entity and the procuring entity shall—

- (a) respond within a reasonable time to any request for clarification that is received so as to enable the supplier to make a timely submission of its tender; and
- (b) communicate the clarification to all suppliers to whom the procuring entity has provided tender documents, without identifying the source of the query.

(2) If the procuring entity convenes a meeting of suppliers prior to the submission of tenders, it shall prepare minutes of that meeting containing the queries submitted at the meeting for clarification of the tender documents and its responses to those queries, without identifying the sources of the queries.

(3) The procuring entity shall promptly provided the minutes of a meeting held under subregulation (2) to all suppliers to whom tender documents were given, to enable those suppliers to take the minutes into account in preparing their tenders.

(4) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, modify the tender documents, and may extend the deadline for submission of tenders.

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*Subpart II – Submission of Tenders*

**Submission of tenders**

28. (1) Subject to subregulation (2), a supplier shall submit three signed written originals of each tender, by delivery, in a sealed envelope addressed to—

- (a) if the value of the tender is less than \$50,000.00, the relevant Departmental Tender Committee; or
- (b) if the value of the tender exceeds \$50,000.00, the Public Procurement Board.

(2) The supplier shall clearly mark on the envelope the name, functional title and address of the procuring entity or the representative of the procuring entity who is authorised to communicate with and to receive communications directly from suppliers in connection with the procurement process.

(3) Without prejudice to the right of a supplier to submit a tender in the form referred in a subregulation (1), a tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

(4) A procuring entity shall record the time and date when the tender was received, and on request, provide the supplier with a receipt containing that information.

**Deadline for submission of tenders**

29. (1) The procuring entity shall fix—

- (a) the place; and
- (b) a specific date and time as the deadline,

for the submission of tenders.

(2) If pursuant to regulation 27, the procuring entity issues a clarification or modification of the tender documents, or holds a meeting with suppliers, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.

(3) A procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline where it considers, based on documentary evidence, that suppliers were prevented from meeting the deadline by factors beyond their control.



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(4) A procuring entity shall promptly give notice of any extension of the deadline to each supplier to whom it provided the tender documents.

(5) A tender received by the procuring entity after the deadline for the submission of tenders shall be so marked, returned to the supplier and shall not be opened except for the purpose of ascertaining the name and address of the supplier.

**Periods of effectiveness of tenders; modification and withdrawal of tenders**

30. (1) Tenders shall be in effect during the period of time specified in the tender documents.

(2) Prior to the expiration of the period of effectiveness of tenders, the procuring entity may request a supplier to extend such period for an additional specified period of time.

(3) A supplier may refuse the request without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiration of the unextended period of effectiveness.

(4) A suppliers who agrees to an extension of the period of effectiveness of its tender shall extend or procure an extension of the period of effectiveness of tender security provided by it or provide new tender security to cover the extended period of effectiveness of its tender and a supplier whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

(5) Unless otherwise specified in the tender documents, a supplier may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security and the modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

**Tender security**

31. (1) When a procuring entity requires suppliers to provide a tender security—

- (a) the requirement shall apply equally to all the suppliers;
- (b) the tender documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
- (c) the procuring entity shall not reject a tender on the grounds that the tender security was not issued by an issuer in Montserrat if the tender security and the issuer otherwise

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conform to the requirements specified in the tender documents;

- (d) a supplier may, prior to submitting a tender, request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer, if required;
- (e) the procuring entity shall respond promptly to a request under paragraph (d);
- (f) confirmation by the procuring entity of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness;
- (g) the procuring entity shall specify in the tender documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security.

(2) The procuring entity shall not make a claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, after any one of the following events—

- (a) the expiration of the tender security;
- (b) the entry into force of a contract and the provision of a security for the performance of the contract, if such a security is required by the tender documents;
- (c) the termination of the tendering proceedings without entry into force of a procurement contract; or
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the tender documents stipulate that no such withdrawal is permitted.

*Subpart III – Evaluation of Tenders*

**Opening of tenders**

32. (1) Tenders shall be opened—

- (a) at the time specified in the tender documents as the deadline for the submission of tenders; or
- (b) at the time specified in the last extension of the deadline,

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at the place and in accordance with the procedures specified in the tender documents.

(2) All suppliers who have submitted tenders, or their representatives, may attend the opening of tenders.

(3) The name and address of each supplier whose tender is opened and the tender price shall, be announced to those persons present at the opening of tenders, and communicated, on request, to suppliers that have submitted tenders but are not present or represented at the opening of tenders, and recorded immediately in the record of the tendering process kept under regulation 9.

**Examination and evaluation of tenders**

33. (1) The procuring entity shall promptly transmit all tenders received from suppliers after the opening of tender under regulation 32 to—

- (a) the Departmental Tenders Committee if the value of the tender is less than \$50,000.00; or
- (b) the Public Procurement Board if the value of the tender exceeds \$50,000.00.

(2) A Departmental Tenders Committee or the Public Procurement Board shall, using only the evaluation criteria outlined in the tender documents—

- (a) evaluate tenders transmitted under subregulation (1);
- (b) determine the successful tender; and
- (c) convey its recommendation to the procuring entity within a reasonable period of time after it determines the successful tender, but not longer than 14 days unless a review has been sought under regulation 46.

(3) The Public Procurement Board or the Departmental Tender Committee may co-opt up to 2 persons with relevant technical experience if the nature of the procurement or the evaluation criteria is such that such experience is necessary for the performance of its functions under subregulation (2).

(4) A person who is co-opted under subregulation (3) may advise the Board or Committee but that person is not entitled to vote and shall not be provided with more information than is required for the performance of an advisory function.

(5) The advice of a person co-opted under subregulation (3) shall be given or recorded in writing and signed by that person.

(6) The successful tender shall be the lowest evaluated tender ascertained on the basis of the criteria specified in the tender documents.

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(7) In determining the lowest evaluated tender, a Departmental Tenders Committee or the Public Procurement Board shall, to the extent that it is practical, express all evaluation criteria in monetary terms based on the assigned weight to each criterion and may consider the following—

- (a) the tender price;
- (b) the cost of operating, maintaining and repairing the goods or construction;
- (c) the time for delivery of the goods, completion of construction or provision of the services;
- (d) the terms of payment and of guarantees in respect of the goods, construction or services;
- (e) the effect that acceptance of a tender would have on the balance of payments position and foreign exchange reserves of Montserrat;
- (f) the countertrade arrangements offered by suppliers;
- (g) the extent of local content, including manufacture, labour and materials, in goods, construction or services being offered by suppliers;
- (h) the potential for economic development offered by tenders, including domestic investment or other business activity, the encouragement of employment, the reservation of certain production for domestic suppliers, the transfer of technology and the development of managerial, scientific and operational skills; and
- (i) national defence, public emergency and security considerations.

(8) The Departmental Tenders Committee or the Public Procurement Board may, within a reasonable period of time, ask suppliers for clarifications of their tenders in order to assist in the examination and comparison of tenders but shall not seek, offer or permit a change to a matter of substance in the tender, including changes in price and changes aimed at making a nonresponsive tender responsive.

(9) Despite subregulation (8), the Departmental Tenders Committee or the Public Procurement Board shall correct purely arithmetical errors or oversights that are capable of being corrected without affecting the substance of the tender that are discovered during the examination of tenders and shall give prompt notice of any such correction to the supplier that submitted the tender.

(10) A Departmental Tenders Committee or the Public Procurement Board shall reject a tender if—

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- (a) the supplier that submitted the tender is not qualified;
  - (b) the supplier that submitted the tender does not accept a correction of an arithmetical error made pursuant to subregulation (9);
  - (c) the tender is not responsive; or
  - (d) the circumstances referred to in regulation 11 exist.
- (11) For the purpose of this regulation—
- “**responsive tender**” means a tender which conforms to the requirements and conditions of the tender documents without material deviation or qualification; and
- “**material deviation or qualification**” means a deviation or qualification which would—
- (a) detrimentally affect the scope, quality or performance of the goods, service or construction identified in the tender document; or
  - (b) change the supplier’s risk and responsibilities under the procurement contract.

#### Rejection of all tenders

34. (1) A procuring entity may reject all tenders at any time prior to the acceptance of a tender, subject to, if so specified in the tender documents, approval by the Public Procurement Board.

(2) Where the procuring entity rejects the tenders under subregulation (1), it shall—

- (a) promptly give notice of the rejection of all tenders to all suppliers who submitted tenders; and
- (b) upon request, communicate to any supplier who submitted a tender the grounds for its rejection of all tenders, but is not required to justify those grounds.

(3) A procuring entity shall not incur any liability towards suppliers that have submitted tenders, solely because it invoked subregulation (1).

#### Prohibition of negotiations

35. (1) A procuring entity or a person engaged in the procurement process on behalf of a procuring entity shall not prior to the determination of the successful tender, engage in negotiation with a supplier in respect of a tender submitted by the supplier.

(2) A person who breaches subregulation (1) commits a summary offence and is liable—

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- (a) in the case of a member of a procuring entity who participated in the commission of the offence, to a fine of \$5,000.00 and to revocation of his appointment; or
- (b) in the case of a person, to a fine of \$2,000.00 and to revocation of his appointment.

(3) In the case of a public officer, in addition to the penalties imposed under subregulation (2), he is subject to dismissal from the public service or any other punishment prescribed by the public service law.

**Acceptance of tenders and entry into force of procurement contract**

36. (1) Subject to regulation 34, the tender that has been determined to be the successful tender shall be accepted and the procuring entity shall give—

- (a) a notice of acceptance of the tender; and
- (b) a copy of the procurement contract, if the supplier is required to sign a written procurement contract,

to the supplier who submitted the tender within 21 days of receipt of the recommendation under subregulation 33(2)(c).

(2) Despite subregulation (6), the tender documents may require the supplier whose tender has been accepted to sign a written procurement contract conforming to the tender and in such case, the procuring entity and the supplier shall sign the procurement contract within a reasonable period of time after the notice referred to in subregulation (1) is given to the supplier.

(3) Subject to sub regulation (4), where a written contract is required to be signed pursuant to subregulation (2)—

- (a) the contract enters into force when the contract is signed by the supplier and by the procuring entity; and
- (b) neither the procuring entity nor the supplier shall take any action that interferes with the entry into force of the contract or with its performance between the time when the notice referred to in subregulation (1) is given to the supplier and the entry into force of the contract.

(4) A procuring entity shall file the signed original of all procurement contracts at the office of the Attorney General and copies shall be distributed to the—

- (a) supplier;
- (b) Accountant General;
- (c) Ministry of Finance;

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(d) Auditor-General.

(5) Except as provided in subregulation (3) a procurement contract in accordance with the terms and conditions of the successful tender enters into force when the notice referred to in subregulation (1) is given to the supplier who submitted the tender, provided that notice is given while the tender is in force.

(6) For the purpose of this regulation, notice is given when it is properly addressed or otherwise directed and transmitted to the supplier, in the form of communication prescribed by regulation 7.

(7) If the supplier whose tender has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the procurement contract within a reasonable time, the procuring entity may, subject to the approval of the Departmental Tenders Committee or Public Procurement Board, withdraw the offer of tender to that supplier and offer it to the supplier who provided the second lowest evaluated tender.

(8) Despite subregulation (7) and regulation 34, the procuring entity may, subject to the approval of the Departmental Tenders Committee or Public Procurement Board, reject all remaining tenders.

**Notice to other suppliers**

37. The procuring entity shall—

- (a) upon the entry into force of the procurement contract; and
- (b) if required by the tender documents, upon the provision by the supplier of a tender security for the performance of the contract,

give notice to the other suppliers, specifying the name and address of the supplier that has entered into the contract and the contract price.

PART 6

METHOD OF PROCUREMENT FOR CONSULTING SERVICES

**Request for proposal**

38. (1) A procuring entity shall request proposals for consulting services or, where applicable, applications to prequalify by causing a notice to be published, seeking expressions of interest in submitting a proposal,

(2) The notice shall contain, at a minimum, the name and address of the procuring entity, a brief description of the consulting service to be procured, the means of obtaining the request for proposals or prequalification documents and the price, if any, charged for the request for proposals or for the prequalification documents.

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**Contents of the request for proposals**

39. The request for proposals shall include comparable information to that required for invitations to tender under regulation 24 and a statement of the manner in which the proposals are to be prepared and submitted and the draft procurement contract.

**Criteria for the evaluation of proposals**

40. (1) The Public Procurement Board shall evaluate the proposals based on technical quality of the proposal, and shall take into account such considerations as the consultant's relevant experience and the expertise of its staff, the proposed work methodology and the price of the proposal.

(2) The method of selection shall be stated in the request for proposals and shall be based on—

- (a) a combination of quality and price, according to the relative weights stated in the request for proposals;
- (b) the quality of the technical proposal within a predetermined fixed budget specified in the request for proposals; or
- (c) the best financial proposal submitted by a bidder that has obtained the minimum qualifying score.

**Quality-based selection**

41. A procuring entity may select a consultant based exclusively on the technical quality of the submitted proposal where the consulting services are of an exceptionally complex nature, will have a considerate impact on future projects, or may lead to the submission of proposals, which are difficult to compare.

**Clarification and modification of request for proposal**

42. (1) A consultant may request clarification of the request for proposals from the procuring entity prior to the deadline for submission of proposals and the procuring entity shall respond to a request for clarification within a reasonable time so as to enable the consultant to make a timely submission of its proposal and shall, without identifying the source of the request, communicate the clarification to all consultants to whom the request for proposals was provided.

(2) At any time prior to the deadline for submission of proposals, the procuring entity may, for any reason, whether on its own initiative, or as a result of a request for clarification by the consultant, modify the request for proposals by issuing an amendment and the amendment shall be communicated promptly to all consultants to which the procuring entity has provided the request for proposals and shall be binding on them.



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(3) If the procuring entity convenes a meeting prior to the submission of proposals, it shall prepare minutes of the meeting outlining the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests.

(4) The procuring entity shall promptly provide the minutes of the meeting to all consultants participating in the procurement process, so as to enable those consultants to take the minutes into account in preparing their proposals.

(5) The relevant provisions of these Regulations apply, as they apply to the procurement of goods or construction, *mutatis mutandis* to the procurement of services.

**Single source procurement**

43. A procuring entity may engage in single-source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

**Cost verification**

44. Procurement contracts may be awarded only if the selected contractor agrees to be subjected to cost verification during the performance of the consulting services and the procurement contract shall indicate the accounting obligations of the contractor including the obligation to present appropriate accounts or documents allowing the determination of the cost of the services.

**Negotiations**

45. (1) A procuring entity may, with the approval of the Public Procurement Board, negotiate the terms of the contract with the selected consultant but shall not, under any circumstances—

- (a) engage in negotiations with more than one consultant simultaneously; or
- (b) permit less than 2 persons to conduct the negotiations on its behalf.

(2) When a procuring entity engages in negotiations with a consultant, the procuring entity shall record the details of all negotiations with the consultant and forward a copy of those records to the Public Procurement Board.

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PART 7

DISPUTE RESOLUTION

**Right to Review**

46. (1) A supplier who claims to have suffered, or that he is likely to suffer loss or injury due to a breach of a duty imposed on a procuring entity by these Regulations may seek review under this Part.

(2) Despite subregulation (1), the following is not subject to review—

- (a) the method of procurement selected;
- (b) a decision of the procuring entity to reject all tenders under regulation 34; or
- (c) an omission referred to in regulation 26(3)(s).

(3) A supplier shall submit a request for review in writing within 7 business days of the date of the notice of award of the procurement contract under regulation 37.

(4) A request for review after the period stipulated in subregulation (3) will not be entertained.

(5) The request for review must be submitted to—

- (a) the Chairperson of the Public Procurement Board, if the procurement contract has not entered into force; or
- (b) the Financial Secretary, if the procurement contract has entered into force.

**Review by the Public Procurement Board or Financial Secretary**

47. (1) Within 14 days from the date on which a complaint is received by the Public Procurement Board or the Financial Secretary, the Public Procurement Board or the Financial Secretary shall either—

- (a) resolve the matter by mutual agreement with the supplier; or
- (b) issue a written decision and reason for the decision to the supplier.

(2) When a written decision is issued under subregulation (1), the Public Procurement Board or the Financial Secretary shall inform the supplier that a written request for an appeal of its decision may be lodged with the Complaints Commission within 14 days of the supplier's receipt of the decision.

(3) The decision of the Public Procurement Board or the Financial Secretary shall be final unless a written request for appeal is lodged within the 14 day period referred to in subregulation (2).

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**Appeal to Complaints Commission**

48. (1) Upon receipt of a written request for appeal, the Complaints Commission shall request all records in respect of the relevant procurement process from the procuring entity, the Public Procurement Board or the Financial Secretary.

(2) The Complaints Commission shall recommend, in writing, appropriate resolution of the complaint and reasons for its recommendation within 14 days of receipt of the request for appeal and a copy of the recommendation shall be given to the supplier, the procuring entity, the Public Procurement Board and the Financial Secretary.

(3) The decision of the Complaints Commission shall be final and immediately binding upon the procuring entity and Public Procurement Board.

(4) This regulation shall not be construed as authorising the Complaints Commission to award a procurement contract.

PART 8

MISCELLANEOUS

**Information to be confidential**

49. (1) A Departmental Tenders Committee or the Public Procurement Board (each hereinafter in this Part referred to as “a body”), or a person concerned with the administration of these Regulations, shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any provision of these Regulations and shall not divulge such information or the contents of any document to any person except to the extent necessary to discharge its or his functions under these Regulations or any other written law or for the purpose of prosecuting an offence or other legal proceedings.

(2) A member of a body or person referred to in subregulation (1) who violates subregulation (1) commits a summary offence and is liable—

- (a) in the case of a member of a body who participated in the commission of the offence, to a fine of \$5,000.00, dismissal or revocation of his appointment; or
- (b) in the case of a person, to a fine of \$2,000.00, dismissal or revocation of his appointment.

(3) A person who receives any information or any document or part of a document, having solicited the information, knowing or having reasonable ground to believe at the time he receives it, that it is communicated to him in contravention of this regulation, is guilty of an

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offence and is liable on summary conviction to a fine of \$3,000.00 and to imprisonment for 6 months.

(4) Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers—

- (a) a member of a body or an officer thereof, or
- (b) a person referred to in subregulation (1),

a gift of money or other thing with respect to a matter that is expected to come before the body or person, commits an offence and is, in addition to being disqualified from being awarded a contract, liable to a fine of \$5,000.00.

(5) Despite anything contained in any other written law, a person who—

- (a) attempts to commit;
- (b) conspires with any other person to commit;
- (c) solicits, incites, aids, abets or counsels any other person to commit or;
- (d) causes or procures or attempts to cause or procure the commission of,

an offence under sub regulation (4) is, in addition to being disqualified from being awarded a contract, liable to be charged, tried, convicted and punished in all respects as if he were a principal offender.

(6) A member of a body or a person concerned with the administration of the body is not personally liable for any act of the body done in good faith in the course of its operations or administration.

#### **General or special direction of the Minister**

50. (1) In the exercise of its powers and the performance of its functions, the procuring entity, the Public Procurement Board and the Departmental Tenders Committee shall conform with any general or special directions given to it by Cabinet.

(2) All directions given by the Cabinet must be in writing and must be in relation to the economy, development, national defence, security and other matters of public interest or support some principle aimed at improving the level of transparency, equity and fairness.

(3) The Cabinet may only give directions to a procuring entity, the Public Procurement Board or the Departmental Tenders Committee prior to the deadline for submission of a tender.

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**Disclosure of interest in procurement process**

51. (1) It shall be the duty of a member of a body who is in any way directly or indirectly, interested in any deliberations of that body regarding the bidding process, to declare the nature of his interest at a meeting of the body.

(2) The declaration required to be made by this regulation shall be made by the member at the meeting of the body at which the matters referred to in subregulation (1) are being considered for the first time or at the earliest opportunity thereafter.

(3) A member of a body shall not vote in respect of any of the matters referred to in subregulation (1) in which he is directly or indirectly interested and if he shall so vote his vote shall not be counted nor shall he be counted in the quorum at the meeting.

(4) Any member of a body who fails to comply with or contravenes this regulation shall on summary conviction be liable to a fine of \$200,000.00 and to imprisonment for 6 months.

**Meaning of “publish”**

52. (1) Where a document or information is required to be published in these Regulations, the requirement for publication is satisfied if the contents of the document or the information is disseminated on an internet website created or designated by the Public Procurement Board for matters related to procurement proceedings and at least one of the following—

- (a) a newspaper of nationwide circulation;
- (b) a public notice board designated by the Public Procurement Board for this purpose; or
- (c) a local public radio or television broadcast station.

(2) A document or information that is required to be published under regulation 10 and 21 shall also be notified in the next issue of the *Gazette* after publication, as required under subregulation (1), and shall include a statement of the date, place and method in which the document or information was published.

**Repeal**

53. The following are repealed—

- (a) the Financial Orders (1978); and
- (b) Part III of the Procurement and Stores Regulations (No. 15 of 2002).

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Made by the Governor acting on the advice of Cabinet this 16th day of February, 2012.

**Cabinet Secretary**

Published by exhibition by the Cabinet Secretary at the Office of the Legislature, Farara Plaza, Brades this            day of            , 2012.

**Cabinet Secretary**