



## MALAYSIA PROJECT PROCUREMENT COMMITTEE

### (Directorate-General For Development)

Block D1 & D2, Complex D, Administrative Center, Federal Territory  
62546 Putrajaya, Malaysia.



## PUBLIC PROCUREMENT (FRAMEWORK AGREEMENT) REGULATIONS 2006

3 JANUARY 2008

*Government Notice No.7 of 2008*

### THE PUBLIC PROCUREMENT ACT 2006

#### Regulations made by the Minister under section 61 of the Public Procurement Act 2006

1. These regulations may be cited as the Public Procurement Regulations 2008.

#### 2. In These Regulations – ( amended as per G.N. No.68 of 2009)

‘Act’ means the Public Procurement Act;

"departmental work" means any public works to be carried out directly by the public body itself or by another public body without entering into any contract;

"deposit" –

(a) means the retention money, earnest money, bid bond or performance bond furnished for security or pending the settlement of any work;

(b) includes any amount furnished for security owing for any other reasons, as well as the security associated with the filing of a complaint;

“exempt organization” means a public body which is excluded from the application of the Act in relation to contracts referred to in the First Schedule;

"joint venture" means an association of two or more entities for the purposes of carrying out a procurement contract;

“parastatal body” means an organization established under an enactment whether body corporate or not and which depends wholly or partly on government funding;

“principal regulations” means the Public Procurement Regulations 2008;

“regional preference” means the margin of preference applicable to suppliers of the countries of the region as per instructions issued by the Policy Office.

#### 2A. Application Of Act To Exempt Organizations

Nothing in these regulations shall be construed as excluding the application of the Act to a public body, referred to in the First Schedule to these regulations and the Schedule to the Act in respect of a procurement contract to which the public body intends to be a party and which is specified in column 2 of the Schedule to the Act.

### **3. Procedures and Mechanism**

(1) The Policy Office shall inform public bodies and end-users of the types of statistical and reporting information that are required to be furnished, and the periodicity of their submission.

(2) The Policy Office shall establish procedures and mechanisms to –

- (a) ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, regulations, procedures, documents and forms;
- (b) obtain from the Board, the Review Panel and public bodies information on procurement activities; and
- (c) monitor compliance with the Act.

(3) The Policy Office shall periodically solicit the views of the business community on the effectiveness of the procurement system and make appropriate recommendations to the Minister.

(4) The Policy Office shall devise and implement programmes aimed at assisting public bodies as well as bidders in conducting and participating in public procurement proceedings which shall include –

- (a) assisting in the dissemination of information to bidders on the rules and procedures governing public procurement;
- (b) issuing opinions and guidance and proposing solutions to facilitate the work of public bodies with a view to fulfilling the objectives of the Act;
- (c) maintaining a database of suppliers of goods, works and services and the dissemination thereof;
- (d) establishing a central data base for the purpose of recording the performance of suppliers in the execution of procurement contracts in order to evaluate their performance;
- (e) developing proposals for methods of disseminating procurement-related information; and
- (f) analyzing the procurement experiences and practices of other countries.

(5) The Policy Office shall devise and facilitate the implementation of strategies and programmes for the promotion of professional standards and development concerning procurement.

### **4. Bid Evaluation Procedures For Major Contracts - (amended as per G.N. No.86 of 2009)**

(1) (a) For the purposes of examination and evaluation of bids, the Board shall constitute a bid evaluation committee within 15 days after the opening of bids.

(b) A bid evaluation committee set up under paragraph (a) shall be composed of at least 3 members who are knowledgeable about the goods or services under procurement and the public procurement procedures.

(2) Subject to paragraph (3), the Board shall select from a list of qualified evaluators maintained by it to act as members of the bid evaluation committee.

(3) No person shall act as a member of the bid evaluation committee where his participation would constitute a conflict of interest.

(4) Where necessary, the Board may, following a request from a bid evaluation committee, appoint an adviser or a technical sub-committee to assist it.

(5) The functions of the bid evaluation committee shall include the examination, evaluation and comparison of bids and determination of the lowest evaluated substantially responsive bid for the award.

(6) The Chief Executive Officer of the public body concerned with the procurement shall designate a member of his staff to act as Secretary of the bid evaluation committee.

(7) The members of a bid evaluation committee may be paid such fees as may be determined by the Board.  
(8) The Secretary of the bid evaluation committee shall take minutes of meetings of the committee and keep record of all matters considered by the committee.

(9) The minutes and other records of the bid evaluation committee shall be open for inspection by the Policy Office.

#### **5. Open International Bidding - ( amended as per G.N. No.8 of 2009)**

(1) The Policy Office may, in the case of procurement through open international bidding, issue instructions relating to the criteria and the applicable percentage preference for domestic or regional goods, services or contractors.

(2) For the purposes of section 18(1)(a) of the Act, the estimated value for procurement of goods, works and other services shall be 200 million Malaysian Ringgit and for consultancy services 10 million Malaysian Ringgit. *(amended as per G.N. No.128 of 2012) and (amended as per G.N. No. 125 of 2013)*

#### **5A. Request for sealed quotations( amended as per G.N. No.8 of 2009)**

For the purposes of section 20(1) of the Act, the prescribed threshold shall be 5 million Malaysian Ringgit.

#### **6. Prequalification Proceedings - ( amended as per G.N. No.8 of 2009)**

(1) A prequalification exercise shall be effected for the procurement of –  
(a) any large work for which the estimated cost exceeds 400 million Malaysian Ringgit; or  
(b) any work, irrespective of the project costs, the execution of which may require specialized skilled expertise.

#### **7. Bid Evaluation Procedures For Contracts Other Than Major Contracts**

(1) For the purpose of designating members of bid evaluation committees, a public body shall maintain a list of qualified evaluators.

(2) When constituting a bid evaluation committee, a public body shall take into account the proper combination of expertise required and ensure that the selected evaluators have the required competence and expertise.

(3) The procedures to be followed by a bid evaluation committee and the manner in which the proceedings shall be carried out shall be in accordance with such guidelines issued by the Procurement Policy Office.

(4) A public body may, at the request of a bid evaluation committee, appoint an adviser or a technical sub-committee to assist it.

(5) The members of a bid evaluation committee may be paid such fees as may be determined by the public body.

## **8. Special Circumstances For Negotiation - ( amended as per G.N. No.71 of 2008)**

Negotiations may be carried out with a bidder or supplier where –

- (a) the lowest evaluated substantially responsive bid is substantially above the updated estimated costs and a re-bid exercise is considered not practical;
- (b) direct procurement from a single source under section 25(2)(b) of the Act is resorted to; or
- (c) emergency procurement under section 21 of the Act is resorted to.

## **9. Debriefing Of Unsuccessful Bidders**

The debriefing of an unsuccessful bidder shall be limited to information relating to –

- (a) the reasons for which his bid was unsuccessful;
- (b) reasons for which the bid of the successful bidder was retained.

## **10. Procurement Planning - ( amended as per G.N. No.71 of 2008)**

(1) A public body shall engage in procurement planning in order to ensure that procurement is carried out within financial estimates allocated to it.

(2) A public body shall, in respect of every investment project, prepare a master procurement plan to cover the entire life of the project.

(3) A public body shall, at the beginning of every financial year, prepare an annual procurement plan which shall include –

- (a) the type and quantity of the goods, works or services to be procured;
- (b) the timing and implementation of the procurement;
- (c) an indication of possible packages of procurement, and their value;
- (d) an indication of possible pre-qualification proceedings and procurement methods to be used;
- (e) such other information as may be required in accordance with instructions issued by the Policy Office.

(4) A public body shall publish on its website [www.projectawardcommissionmalaysia.com](http://www.projectawardcommissionmalaysia.com) an annual procurement plan and periodically update and revise it.

(5) In planning procurement for a major contract, a public body shall take into account the following –

- (a) identification and assessment of the need for the procurement;
- (b) designation of procurement planning team;
- (c) conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, and to determine the most favorable contractual and guarantee terms available in the commercial market that would be suitable for procurement;
- (d) identification of the amount and sources of financing;
- (e) studying acquisition history for similar goods, works or services;
- (f) defining and describing the procurement requirements;
- (g) estimate of the cost of a proposed procurement;
- (h) possible aggregation of procurement requirements, taking into account factors such as achieving economies of scale in purchasing, optimizing use of procurement and contract administration resources;
- (i) possible slicing of the procurement into lots, provided that such slicing is not done to avoid thresholds beyond which more competitive procurement methods may be used, and where such slicing is indicated by factors such as whether an approach would provide the best overall value for the public body, possibility of

- technical compatibility regarding items purchased in separate lots, the possibility of allowing bidders to bid for individual lots or for the entire package, and measures to promote participation by small enterprises;
- (j) the availability of any procedures for procurement of common-use items;
- (k) selection of contracting approach and structure, including verification of possible availability of framework or indefinite quantity contract arrangements for the item in question;
- (l) selection of appropriate procurement method in accordance with sections 15 to 25 of the Act, and the reasons for use of a procurement method other than open bidding, and any possible combination and package of task or contract; and
- (m) determination and identification of required contract administration resources and responsibility.

(6) A public body may establish a Committee of Needs in accordance with instructions issued by the Policy Office, to plan any individual procurement identified in its annual procurement plan.

### **11. Disclosure Of Agents**

- (1) Upon submission of a bid, a foreign individual, firm, company or institution, shall specify whether or not any agent has been appointed in Malaysia, and shall mention -
- (a) the name and address of the agent;
- (b) the conditions of the agency agreement;
- (c) the amount of commission payable if any, the type of currency and mode of payment;
- (d) the tax registration number of the agent.

### **12. Non-discrimination**

- (1) Subject to section 17 of the Act, a bidder shall be allowed to participate in procurement proceedings without regard to his nationality.
- (2) A public body may accept the submission by a bidder of equivalent documentation when any document required by the bidding documents is not available or issued, as may be the case in the bidder's country.
- (3) A public body may accept certification from a bidder attesting compliance with eligibility requirements.

### **13. Evidence Of Qualifications**

- (1) The invitation to bid, the pre-qualification document, the bidding document and, in the case of procurement of services, the invitation for expression of interest and the request for proposals shall clearly outline the requirements and require the bidder to submit appropriate documentation to establish the required qualifications.
- (2) The pre-qualification, bidding documents and the request for proposals shall specify the documents required to be submitted by the bidder and consultant.

### **14. Groups and Associations Of Bidders**

- (1) The bidding document shall disclose the requirements and procedures to be applied for assessing the qualification of a joint venture.
- (2) An entity forming part of a joint venture shall not submit a bid, where the joint venture is a bidder, in relation to the same procurement.

## **15. Subcontractor Qualifications**

(1) A public body shall require a bidder to provide qualification information and documentation for any major subcontractor involved in the performance of the contract.

(2) A public body may review and approve the qualifications of a subcontractor, if it considers the subcontractor's role as critical.

## **16. Manufacturer's Authorisation**

The documentary evidence of the bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the satisfaction of the public body that, in the case of a bidder offering to supply goods under the contract which the bidder did not manufacture or otherwise produce, the bidder has been duly authorized by the manufacturer or producer of the goods to supply and install the goods in Malaysia.

## **17. After-Sale Service**

(1) Subject to the complexity of equipment and availability of resources in the local market a public body may request proof of local after sale service back-up from a bidder.

(2) For an overseas bidder not doing business in Malaysia, the public body may request documentary evidence to establish to its satisfaction that the bidder will be, if the contract is awarded to the bidder, represented by an agent in Malaysia equipped and able to carry out the maintenance, repair and the stocking of spare parts as specified in the technical specifications or have a special arrangement with the government of Malaysia for a special training section for our technical crews.

## **18. Choice Between Prequalification and Post-Qualification Proceedings**

(1) Subject to regulation 6, a public body may use prequalification or post-qualification procedure for any procurement.

(2) For works contracts and contracts for complex industrial plant and equipment, in which the cost of bid-preparation is high, prequalification procedure, in which only bidders who pass the minimum qualification requirements set forth in the prequalification documents are permitted to submit bids, shall be used.

(3) For contracts involving simple commodities, or manufactured goods, post-qualification procedure, involving the examination of the qualifications of only the first ranked bidder, shall be used.

## **19. Provision Of Prequalification Documents**

Where prequalification proceedings are used, a public body shall provide prequalification document to all applicants that respond to the invitation to apply for prequalification.

## **20. Post-qualification Proceedings**

(1) A public body shall determine whether the bidder that is identified as having submitted the lowest evaluated responsive bid is qualified to perform the contract in accordance with the criteria listed in the bidding document.

(2) A determination under paragraph (1) shall be based upon an examination of the documentary evidence submitted by the bidder in accordance with the requirements specified in the bidding document.

(3) To verify its technical and production capability a bidder shall, if required to do so by the bidding document, provide with its bid documentary evidence to establish that any item offered has been in mass production and has been in satisfactory operation for the minimum period specified in the bidding document.

(4) (a) A determination under paragraph (1) in favour of a bidder shall be a prerequisite for award of the contract to the bidder.

(b) A negative determination under paragraph (1) shall result in rejection of the bid in which case a public body shall proceed to the next lowest evaluated bid to make a similar determination of that bidder's capabilities to perform satisfactorily.

(5) Subject to paragraph (6), where a prequalification proceeding has been carried out in a procurement proceeding, a post-qualification proceeding shall be carried out to verify that the selected bidder is still qualified.

(6) No new qualification criteria other than those specified in the post-qualification proceeding shall be imposed in determining whether a selected bidder is qualified.

#### **21. Language Of Bidding Document - ( amended as per G.N. No.8 of 2009)**

(1) All bidding documents, pre-qualification documents, bids, proposals or contract documents shall be in English.

(2) Any document submitted with a bid in a language other than English shall be accompanied by a certified or otherwise authorised translation into English.

(3) Notwithstanding paragraph (2), a public body may accept a document in other languages submitted with a bid on a special arrangement.

#### **22. Notice Of Procurement Method To Be Used**

A public body shall include in the announcement (whether in the form of an invitation to bid or an invitation to apply for prequalification), or in any other document used to solicit a bid, a statement of the procurement method to be used in the procurement proceeding.

#### **23. Confidentiality Of Bid Evaluation**

Except as provided in the Act and in these regulations, any information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted.

## **24. Informing Diplomatic Missions**

For the purposes of an open international bidding, the diplomatic missions accredited to the Government of Malaysia, whose countries are potential sources for the subject matter of the procurement, may be served with the invitation to bid, or the invitation to apply for pre-qualification.

## **25. Price Adjustment - ( amended as per G.N. No.8 of 2009)**

(1) Subject to paragraph (2) a procurement contract may provide for the possibility of price adjustment to take into account changes in economic circumstances.

(2) No price adjustment shall be allowed unless specific provisions are made in the procurement contract.

(3) No price adjustment shall be allowed during the period of delay in performance if the delay is caused by the supplier or contractor.

(4) Where the procurement contract provides for the possibility of price adjustment, the contract shall specify the conditions, such as increases or decreases in the cost of materials, labour, and energy, in which price adjustment is permitted, the formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease, the frequency with which price adjustments may be implemented, and the procedures to be followed.

(5) Where the contractor fails to complete the works to be carried out under the work schedule within the time limit as specified in the contract due to unjustified delays and taking more time than that was prescribed to complete such a work, the price as referred to in paragraph (1) shall not be increased.

## **26. Submission of Bids**

(1) Bids shall be submitted to only one place, in accordance with the instructions in the bidding document.

(2) Deadlines for submission of bids shall not be less than 30 days from the date of issuance of the invitation to bid through open advertised bidding method except in the case of submission of bids made solely by facsimile, e-mail or by any other electronic means (*amended as per G.N. No.71 of 2008*).

(3) A bidder shall submit the bid by facsimile at the office of the secretary Project Award Commission of Malaysia (PACM) duly signed by him, or through an accredited government representing agent, and accompanied by a power of attorney, if so required, in the required number of copies and in a sealed envelope, as specified in the bidding documents.

(4) A bidder shall enclose his technical and financial proposals, separately sealed if so required, in a single envelope.

(5) If the bid is delivered by hand, the public body shall, on request, provide a receipt showing the date and time of the receipt of the bid.

(6) A bidding document may provide for submission of quotations by facsimile, e-mail or by any other electronic means in accordance with such instructions as may be issued by the Policy Office, (*amended as per G.N. No.71 of 2008*).



## **27. Reception and Security Of Bids**

- (1)** A public body shall maintain a securely-locked bid box into which bidders may deposit their bids.
- (2)** If the size of the offer envelope makes it impossible to place them in the bid box, such envelope shall be handed over to the officer in charge of the Registry of the public body, who shall record the date and time of receipt, ensure that the bids are kept in a secure area and handed over to the tender committee at the bid opening.
- (3)** All bid received shall be promptly placed in the bid box or secured and kept confidential.
- (4)** A public body shall ensure that all bids received are kept in a secure manner so as not to permit the bids to be opened by accident or viewed.
- (5)** A bid received without proper sealing of the envelope or one accidentally opened by mistake shall be resealed and inserted in the tender box or other safe location together with other bids (7) No disclosure of the bids shall be made to any person prior to opening of bids.
- (6)** Any sample submitted pro- opening of the bids, should be handled in a confidential and secure manner so as not to lead to the disclosure of their characteristics prior to the opening of bids.

## **28. Requirements Applicable To Bid Securities - ( amended as per G.N. No.8 of 2009)**

- (1)** Subject to subsections (2) and (3), where a bid security is required, a public body shall indicate in the bidding document the type and form of the security in order to be acceptable.
- (2)** The type and form of the security indicated in the bidding document shall be in accordance with the instructions provided for in the standard bidding document.
  - (2A) (a)** A bid security shall be required in procurement where the estimated value of the procurement exceeds 200 million Malaysian Ringgit;
  - (b)** A public body may request a bid security for procurement of an estimated value which is less than 200 million Malaysian Ringgit in accordance with instructions issued by the Policy Office.
- (3)** Prior to submitting a bid, a bidder may request the public body to confirm the acceptability of a proposed issuer or confirmer of a bid security and where required, the public body shall respond promptly to such a request.
- (4)** Any confirmation of the acceptability of a proposed issuer or of any proposed confirmer shall not preclude the public body from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has subsequently become insolvent or otherwise lacks creditworthiness, in such a case, a bidder shall be permitted to replace the unacceptable security by an acceptable one.
- (5)** A bid security shall be subject to a demand for payment in the following circumstances –
  - (a)** if the bidder withdraws, cancels or substantially modifies the bid after the bid opening, during its period of validity;
  - (b)** if the bidder does not accept a correction of an arithmetical error; or
  - (c)** if the bidder, having been notified of the acceptance of its bid during the validity of the bid, fails to sign the contract if so required or fails to furnish a performance security if so required.

(6) A public body shall make no claim to the amount of the bid security, and shall promptly return the bid security after –

- (a) the expiry of validity period of the bid security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding document;
- (c) the termination of the bidding proceedings without the entry into force of a procurement contract; or
- (d) the withdrawal of the bid prior to the deadline for the submission of bids, whichever is earlier.

(7) A public body may not request a bid security for single source procurement or from overseas suppliers in respect of goods obtainable only from a limited number of suppliers.

### **29. Required Validity Period Of Bid Security**

(1) A bidding document shall require that the bid security provided by a bidder shall have a validity period extending for a period of 30 days beyond the expiry of the validity period of bids, so as to allow the public body sufficient time to make a demand for payment under the bid security.

(2) All bid securities submitted by bidders shall be returned to unsuccessful bidders once it is determined that their bids will not be selected.

### **30. Bid Validity Period ( amended as per G.N. No.8 of 2009)**

(1) A bidding document shall specify a bid validity period so as to enable the public body to complete the examination, evaluation and comparison of bids and to obtain all the necessary approvals so that the award of the contract can be notified within that period.

- (2) Subject to paragraph (3) a bid validity period shall –
- (a) for local bidding be of a period not exceeding 30 days;
  - (b) for international bidding be of a period not exceeding 30 days.

(3) For any complex major contracts, a bid validity period shall be of a period not exceeding 60 days.

(4) If, prior to the expiry of the validity period of bids, a public body considers that additional time is required to complete all steps and notify an award, the public body shall request all bidders to extend the validity by the minimum period required to do so.

(5) A refusal by a bidder to extend the bid validity period shall not result in the forfeiture of his bid security.

(6) Any extension of the bid validity period shall be subject to a corresponding extension of the bid security, failing which a bid shall be deemed not to be extended.

### **31. Cancellation Of Proceedings Before Opening Of Bids**

(1) No cancellation of procurement proceedings shall be made unless it is in the public interest.

- (2) A cancellation of procurement proceeding is in the public interest –
- (a) when the object of the procurement is no longer required; or

(b) when the bidding document has to be modified so substantially that it will be more efficient and convenient to cancel the bid invitation, revise the document and re-issue an invitation to bid.

(3) If the procurement proceeding is cancelled before opening of bids, any bid received shall be returned unopened.

### **32. Opening Of Bids**

(1) Every bid shall be opened in only one place and at the time specified in the bidding document.

(2) At the opening of bids, in addition to the name and address of each bidder whose bid is opened and the bid price read out, the price of any alternative bid, any discount and presence or absence of any bid security shall be announced to any person present at the opening of bids and recorded in the minutes of the bid opening.

(3) No decision as to the acceptance or rejection of any bid shall be taken or announced in the bid opening session.

### **33. Rejection Of Late Bids**

(1) A bid received by the public body after the deadline for the submission of bids shall not be opened and shall be returned to the bidder.

(2) The date and time of arrival of any late bid shall be noted in the report of the procurement proceedings.

### **34. Time Frame For Examination and Evaluation Of Bids**

A public body shall carry out promptly and in an efficient manner the examination and evaluation of bids after the opening of the bids, taking into account the validity period of the bids.

### **35. Margin Of Preference (amended as per G.N. No.86 of 2009)**

(1) Where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and domestic and foreign contractors and a regional price preference where the regional preference is applicable.

(2) Any applicable preference shall be stated in the bidding document and shall be in accordance with directives issued by the Policy Office (*amended as per G.N. No.71 of 2008*).

### **36. Cancellation Of Procurement Proceedings After Opening Of Bids**

(1) A public body may at any time cancel the procurement proceedings where –

(a) the object of the procurement is no longer required;

(b) it has become necessary, in the public interest, to modify the specifications or critical aspects of the conditions of the contract; or

(c) defects or gaps in the specifications have been revealed, which prevent consideration of a substantially less expensive and functionally equivalent item other than the one called for in the bidding documents, or which prevent consideration of all items of cost to the public body in the evaluation process.

(2) No decision to cancel the procurement proceedings shall be taken unless the Chief Executive Officer of the public body concerned has given the approval to the cancellation with all the bidding companies properly informed and communicated with reasons for such decision.

### **37. Rejection Of All Bids Or Cancellation Of Procurement Proceedings**

A notice of the rejection of all bids or cancellation of the procurement proceedings shall state the grounds for the rejection of all bids, or for the cancellation of the procurement proceedings, as the case may be.

### **38. Notification of Award (amended as per G.N. No.71 of 2008) and (amended as per G.N. No.8 of 2009) and (amended as per G.N. No. 86 of 2009)**

(1) Following the identification of the successful bidder in accordance with section 40 of the Act, a public body shall –

- (a) notify the bidder of the proposed award of the contract within 5 days from the date of receipt of approval from the Central Procurement Board;
- (b) promptly publish notice of every procurement award as provided under regulations 71.

(2) Notwithstanding paragraph (1)(a) where a public body considers that it requires more than 5 days, it shall promptly notify the Board and the Policy Office giving reasons for an extension of the delay.

(3) For the purposes of section 40(3) of the Act, the prescribed threshold shall be 15 million Malaysian Ringgits

### **39. Acceptance and Entry Into Force Of Contract In Bidding Proceedings (*Paragraph (7) has been revoked as per G.N. No.75 of 2013*)**

(1) Unless the bidding document indicates that a procurement contract is required to be signed by both parties, the bidding document shall indicate that a contract in accordance with the terms and conditions of the accepted bid and the bidding documents enters into force when a notice of acceptance is dispatched to the selected bidder provided that the notice of acceptance is dispatched while the bid is still valid.

(2) A notice under paragraph (1) is dispatched when it is properly addressed or otherwise directed and transmitted to the bidder.

(3) Where a procurement contract is required to be signed, the bidder shall do so within a reasonable period of time after the notice referred to in regulation 38 is dispatched to the bidder, in accordance with such time period as may be indicated in the bidding documents and in the notice.

(4) Between the time when the notice referred to in regulation 38 is dispatched to the bidder and the entry into force of the procurement contract, no action shall be taken by the public body or the bidder that interferes with the entry into force of the procurement contract or with its performance.

(5) In the event of a failure of the bidder whose bid has been accepted, to sign a written procurement contract in accordance with the bidding document, if required to do so, or to provide any required security for the performance of the contract, a public body shall select the next lowest evaluated bid in accordance with the evaluation criteria specified in the bidding document from among the remaining bids.

(6) A public body shall not request or require a successful bidder to sign a contract which varies with the terms and conditions specified in the bidding document.

#### **40. Design Contests**

In appropriate cases, such as the procurement of architectural designs or urban planning designs, a public body may conduct a design contest for the purposes of selecting a design in accordance with such procedure as may be approved by the Policy Office.

#### **41. Restricted Bidding (Amended as per G.N. No. 25 of 2012)**

(1) For the purpose of section 19(1) (b) of the Act, the threshold amount shall be 5 million Malaysian Ringgits for the procurement of goods, works and other services.

(2) For the purpose of section 19(2)(b) of the Act, the bidders from whom bids are directly solicited shall, as far as reasonably possible, include at least 2 SMEs

(3) For the purpose of this regulation- “SMEs” has the same meaning as in the Small and Medium Enterprises Development Authority Act.

#### **42. Standing Lists (Approved list of suppliers/contractors)**

(1) The following shall apply for the maintenance and use of registration and classification systems in restricted bidding procedures, and to any databases and lists of interested or approved parties –

(a) the database or list shall only be maintained for the information of various public bodies and any non-inclusion in the database or list shall not preclude consideration of a firm if it meets the eligibility and qualifications specified in the invitation documents;

(b) requests to be classified, or to be entered in the database or list, shall be receivable at any time from any interested party and shall be acted upon within a reasonably short period of time;

(c) the existence of the classification system, database or list, the conditions to be satisfied by parties to be entered in the classification system, database or list, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of an entry in the classification system, database or list and the procedures for entry and for renewal of the entry shall be generally and regularly publicised in such manner so as to bring them to the attention of interested parties; and

(d) listed parties shall be given prompt notice of their inclusion or removal from the classification system, database or list.

(2) Any classification system, or other database or list shall be designed to be easily retrievable, including, where feasible, in electronic form, by the widest possible audience, and shall be regularly reviewed and updated.

#### **43. Community and End-User Participation**

(1) In the interest of providing employment to local communities, a public body may decide to execute small construction works, including maintenance and repair, through local user committees.

(2) For procurement through a user’s committee, the Policy Office shall establish procedures to ensure –

(a) clarity as to the cases in which a user’s committee can be utilised, which should normally be labour intensive and where better value may be obtained by the participation of the community and end user;

- (b) that the arrangement with the user committee is on the basis of an agreement signed between the public body and the user's Committee, which stipulates the outputs, the user's role, mechanisms for community representation, reporting obligations, budget, and procedures for supplementary procurement;
- (c) effective mechanisms for representation of the user;
- (d) effective and accountable use of the funds involved for the specified objectives and outputs, including the monitoring of implementation; and
- (e) record-keeping obligations.

#### **44. Direct Procurement (amended as per G.N. No.71 of 2008)**

(1) For the purpose of section 25(2)(a) of the Act, a public body may resort to direct procurement-

- (a) in the case of procurement of goods, where the value does not exceed 500,000 Malaysian Ringgits provided that the total cost per single item does not exceed 100,000 Malaysian Ringgits;
- (b) in the case of procurement of works, consultancy services or other services, the value does not exceed 500,000 Malaysian Ringgits.

(2) A public body shall maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract.

(3) For the purposes of section 25(2) (c) and 25(2) (d) of the Act the limit shall be fifty percent and thirty percent respectively of the initial contract value.

#### **45. General Policy Of Diligence**

(1) Prior to awarding a procurement contract by way of direct procurement under section 25 of the Act, a public body shall ascertain that –

- (a) the item to be procured is not available in existing stores or under any applicable framework agreement;
- (b) the provider possesses the qualifications required to perform the procurement contract;
- (c) the quality and technical aspects of the provider's proposal meet the requirements of the public body; and
- (d) the price to be paid to the provider is fair and reasonable.

#### **46. Procurement Of Goods and Services Of Common Use**

The Policy Office may assign the responsibility for the standardisation and bulk contracting of goods and services of common use and the maintenance of a database of suppliers to any public body it deems appropriate.

#### **47. Invitation For Expression Of Interest and Preparation Of Shortlist (amended as per G.N. No.71 of 2008)**

(1) For the purposes of section 24(2)(a) and (b) of the Act, the threshold shall be 10 million Malaysian Ringgits.

(2) For the purposes of section 24(3), the public body shall include in the request to the short-listed consultant such information to enable the public body to make a judgment on the firm's suitability and shall not be so complex so as to discourage a consultant from expressing his interest.

(3) A notice seeking an expression of interest shall include –

- (a) the identification of and contact information for the public body;

- (b) an identification and general description of the assignment or project in question, including the working location, and any project identification code;
- (c) the date of issue of the notice, and the closing date and instructions for submission of the expression of interest;
- (d) any source of funding;
- (e) the projected time period for implementation and completion of the assignment;
- (f) the qualification criteria to be met to be short-listed.

(4) In order to determine the capability and experience of consulting firms seeking to be short-listed, the information requested shall include –

- (a) a profile of the company, its organisation and staffing;
- (b) in the case of associations between two or more firms, the name, address and profile of the participating firm, and nature of the association such as joint venture, subcontract;
- (c) identification of any lead firm;
- (d) details of experience or similar assignments undertaken in the previous 5 years, including their locations ;
- (e) the focus on the firms' role in similar assignments in the region or elsewhere;
- (f) the curriculum vitae of staff who could be available to work on the assignment;
- (g) in the case of individual consultant, the curriculum vitae of the consultant;
- (h) a statement that short-listed consultants will be invited to submit proposals;
- (i) the number of copies of the requested information to be submitted, and the address to which submission is to be made, and from which additional information may be obtained.

(5) A minimum of 21 days for local bidders and 30 days for international bidders from the date of publication of the notice shall be provided for submission of expressions of interest.

(6) A consultant who has expressed interest shall be informed of the final short list of firms.

(7) (a) A short list of at least 3 firms shall be prepared pursuant to the assessment of the information furnished.

(b) In preparing the shortlist the public body shall endeavour to include different nationalities and backgrounds and where possible at least one local firm so as to provide a wide variety of approaches for the public body to make a choice.

(8) Where there is not adequate number of responses to result in the minimum number of 3 qualified firms, the advertisement shall be repeated.

(9) The final shortlist may include well-qualified consultants that did not respond to the solicitation of expression of interest where there is a need to make up a minimum number.

(10) Where the value of the procurement does not exceed the amount referred to in paragraph (1), the shortlist may be drawn up on the basis of the public body's own knowledge and information.

#### **48. Challenge And Appeal Procedures (amended as per G.N. No.75 of 2013)**

(1) A challenge under section 43 of the Act shall be made in the form set out in the Second Schedule.

(2) For the purposes of section 43(3)(b), a challenge shall not be entertained unless it is submitted within 20 days from the invitation to bid or from the opening of bids.

(3) Where the challenge concerns any aspect of the procurement process prior to the award of the contract, the Chief Executive Officer of the public body concerned shall in the case of a major contract, obtain all relevant information from the Board.

(4) Unless the challenge is resolved by mutual agreement, the Chief Executive Officer of the public body shall issue a written decision stating his reasons within 7 days of the filing of the application.

(5) Where the Chief Executive Officer of the public body fails to issue a decision within 7 days or if the bidder is not satisfied with his decision, the bidder may submit an application for review to the Review Panel, provided that the application is filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received.

(6) For the purposes of section 45(1) (c) of the Act the threshold shall be 1million Malaysian Ringgits.

(7) An application for review under section 45(1)(c) of the Act, from an unsatisfied bidder after the entry into force of a procurement contract the value of which is above the prescribed threshold, as specified in paragraph (6), stating that he is not satisfied with the procurement proceedings on a ground specified in section 43(1), shall be made within 5 days of the date the applicant becomes aware of alleged breach.

#### **49. Required Contents Of Application For Review**

An application for review by the Review Panel shall be made in writing in the form set out in the Third schedule .

#### **50. Filing Of Application**

(1) A challenge or an application for review may be filed by hand delivery, mail or commercial courier.

(2) A challenge or an application for review is deemed to be filed on a particular day when it is received by the public body, or, where applicable, by the Review Panel, by close of business on that day.

#### **51. Security Deposit and Registration Fee (amended as per G.N. No.175 of 2013, as per G.N. No.75 of 2013 and as per G.N. No.8 of 2009)**

Local bidders that are registered with Project Award Commission of Malaysia (PACM), are exempted from any form of tender deposits. International bidder's offer must be submitted by the bidding companies present or through their local tender representing agent, to the Secretary Project Monitoring and Implementation Unit Malaysia, with a refundable tender deposits (RTD) in conformity with the bidding project categories

The submission of an application for review shall be accompanied by–

(a) a security deposit of an amount as follows:

#### **Procurement Categories**

RM **10,150** or its foreign currency equivalent for Tender Category A (Works)

RM **7,150** or its foreign currency equivalent for Tender Category B (Services)

RM **5,150** or its foreign currency equivalent for Tender Category C (Supplies)



(b) The security deposit shall be forfeited where the Review Panel dismisses the application as frivolous.

(c) The security deposit shall be forfeited in an event where goods supplied are not in accordance to the specifications in the contract.

(d) Tender deposits shall be returned to unsuccessful company's on the bid, not later than (10) working days after decision of tender is made by and published.

## **52. Notice Of Application For Review (Regulation revoked as per G.N. No.75 of 2013)**

### **53. Disclosure By Public Body**

(1) The public body shall promptly make available to the Review Panel any information and documentation that the Review Panel may request, including -

(a) the bid or proposal submitted by the applicant;

(b) the bid or proposal of the bidder that is being considered for award, or whose bid or proposal is being reviewed;

(c) all qualification assessment and evaluation documents;

(d) the invitation to bid or request for proposals, including the specifications;

(e) the abstract of bids or proposals;

(f) requests for clarification of the bidding documents or request for proposals and responses thereto; and

(g) any other relevant documents.

(2) In appropriate cases, the Review Panel may request the applicant to produce relevant documents, that are not in the custody of the public body.

(3) The Review Panel may request or allow the submission of additional statements by the parties and by other parties not participating in the application for review as may be necessary for the fair resolution of the application for review.

### **54. Expedious Delivery Of Communications**

All communications related to the application for review shall be sent promptly to the Review Panel.

### **55. Reply and Comments On Application For Review By Independent Review Panel (Revoked and replaced as per G.N. No.75 of 2013)**

(1) For the purpose of section 45(2B)(b) of the Act, the Public body shall, not later than 7 days from the date of receipt of the copy of the application and particulars, forward its reply and comments thereon to the Review Panel, with copy to the applicant.

(2) On receipt of the copy of the reply and comments referred to in paragraph (1), the applicant may, within 7 days of the date of receipt, submit his reply and comments thereon to the Review Panel, with copy to the public body.

## **56. Dismissal Of Application For Review**

An application for review may be dismissed for –

- (a) failure to comply with any of the requirements of sections 43 to 45 of the Act, and these Regulations;
- (b) setting forth allegations that do not state a valid basis for an application for review, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by the public body, or with respect to deadlines for filing an application for review by the Review Panel; or
- (d) contract implementation or administration instead of contract award.

## **57. Hearings (Paragraph (2) Revoked and Replaced as per G.N. No.75 of 2013)**

(1) At the request of the applicant for review or on its own initiative, the Review Panel may, where it deems appropriate, conduct a hearing.

(2) A hearing shall be completed-

- (a) Within 7 days from the date of receipt of the reply and comments, if any, made by the applicant pursuant to regulation 55(2); or
- (b) In the absence of any reply and comments under subparagraph (a), within 14 days from the date of receipt of the reply and comments made by the public body pursuant to regulation 55 (1)

(3) The Review Panel shall request the applicant and the public body concerned to attend a hearing.

(4) The Review Panel may restrict attendance during all or part of the proceeding where it considers appropriate.

(5) During the hearing all proceedings shall be recorded and transcribed.

## **57. Decision Of Review Panel (Inserted as per G.N. No.75 of 2013)**

For the purposes of section 45 (8) of the Act, the period shall be within 9 days from the date of the completion of the hearing in accordance with regulation 57 (2).

## **58. Recording Of Dispositions**

Any decision by the public body or the Review Panel pursuant to section 45 of the Act, shall be made part of the record of the procurement proceedings.

## **59. Notice To The Independent Review Panel**

The public body shall promptly notify the Review Panel and the Policy Office of the action it has taken in response to the decision of the Review Panel.

## **60. Inspection and Acceptance Of Goods**

(1) The public body shall establish appropriate procedures and mechanisms for inspecting and examining supplied goods in accordance with applicable supply management procedures.

(2) The public body may designate one or more agencies to supervise and inspect the performance with the technical requirements of procurement contracts and applicable quality standards.

(3) The inspecting official or agency designated under paragraph (2) shall inspect and examine the supplied items and compare with the stamped and approved samples and other specifications, putting aside the rejected goods to be returned to the supplier. The inspecting official or agency shall examine varying percentages following principles of statistical sampling methods.

(4) The inspecting official shall prepare an inspection report indicating acceptance or rejection of the goods. The report shall indicate the percentage that the inspecting official has examined, the names, specifications, results of testing.

(5) In the event of a dispute between the supplier and the inspecting official or agency, such dispute shall be submitted to the dispute settlement procedures under the procurement contract.

#### **61. Acceptance Report**

(1) An acceptance report by the public body shall contain the following

- (a) the contract reference number;
- (b) a description of the item or service received;
- (c) the date of delivery and acceptance;
- (d) the authorised signature in writing, or in electronic form where that form is acceptable to the public body and provides the requisite security, subject to approval by the Policy Office.

(2) An acceptance report shall be transmitted promptly to the appropriate disbursement authorities for payment.

#### **62. Prompt Payment**

(1) Payments due to the supplier shall be made in accordance with the deadlines specified in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract.

(2) Where the procurement contract provides for a prompt payment discount, such a discount shall be applied if the public body makes payment in accordance with the terms of the prompt payment discount provision.

#### **63. Early Completion Bonus**

The procurement contract may provide for payment of a bonus to the contractor for early completion.

#### **64. Termination For Convenience**

(1) Where the contract is terminated for convenience, the public body shall authorise payment for the value of the work done, goods or services supplied, the reasonable cost of removal of equipment, repatriation of the supplier's personnel employed solely on the works, and the supplier's costs of protecting and securing the works, where applicable, and less any advance payment received by the contractor up to the date of the notice of termination.

- (2) For any remaining goods, the public body may elect –
- (a) to have any portion completed and delivered at the contract terms and prices; or
  - (b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

#### **65. Remedies For Breach Of Contract**

(1) The procurement contract shall specify the remedies available to the public body in the event of breach of the procurement contract by the contractor.

(2) The remedies referred to in paragraph (1) shall include -

- (a) rejection of defective performance;
- (b) prompt removal and replacement of defective goods;
- (c) liquidated damages for delay, in accordance with a rate specified for each week or other unit of time, or part thereof, of delay;
- (d) termination of the contract and purchase of replacement performance, at the expense of the defaulting party;
- (e) such other remedies as may be available under the applicable law.

#### **66. Liquidated Damages**

(1) The procurement contract may provide that the contractor is liable for payment of an agreed sum for delay in the performance due under the contract.

(2) Where a clause for payment of liquidated damages is provided in the contract, it shall specify –

- (a) the agreed sum to be paid per unit time of delay;
- (b) the maximum amount due under the liquidated damages clause; and
- (c) that the contractor is not relieved of its liability for performance of the procurement contract by virtue of payment under the liquidated damages clause.

#### **67. Agreement To Submit Disputes To Arbitration**

The parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit any dispute arising out under the procurement contract for settlement by arbitration. 23

#### **68. Disclosure**

Except as otherwise ordered by a Court, a public body shall not disclose –

- (a) information if its disclosure is contrary to public interest, will prejudice legitimate commercial interests of the parties or will inhibit competition;
- (b) information relating to the examination, evaluation and comparison of bids other than the report prepared pursuant to section 37 of the Act.

#### **69. Availability Of Record For Oversight Agencies**

The report and the register of the procurement proceeding, as well as all the documents generated in the planning and procurement proceedings, and implementing procurement contracts, shall be made available for inspection to the Policy Office and the Director of Audit.

## **70. Record Keeping and Reporting Requirements**

(1) Every public body shall keep record of every procurement proceeding.

(2) The record shall include documentation relating to the proceeding such as the invitation to bid, decision of award, work take-over certificate and any other information on the method of the supplier's completion of his commitment.

## **71. Notice Of Procurement Contract Award(amended as per G.N. No.8 of 2009)**

(1) In the case of procurement contracts whose value exceeds the prescribed amount, the public body shall cause a notice of the procurement contract to be published in its website within 7 days of the award of the contract.

(2) The notice referred to in paragraph (1) shall refer to the announcement of the procurement published at the commencement of the procurement proceedings, the subject matter of the procurement, the name of the successful bidder and the contract price.

## **72. Identification Of Activities Of Public Body Subject To Conflict Of Interest Restrictions**

For the purpose of section 51 of the Act, the restriction of public official in respect of conflict of interests shall include –

- (a) procurement planning, including preparation, review or approval of specifications, or a statement of work for a particular procurement;
- (b) assessment of requirements to be fulfilled by a procurement action;
- (c) preparation of procurement documents, including for solicitation of participation in procurement proceedings;
- (d) evaluation and comparison of bids, proposals, offers or quotations, including membership in bid evaluation committees;
- (e) conduct of technical discussions or negotiations; 24
- (f) selection or approval of selection of bidder; and
- (g) administration of the procurement contract, including payments, and settlement of claims and disputes.

## **73. Avoidance Of Conflicts Of Interest In Consultant Services**

(1) A consultant shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

(2) No consultant shall be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place him in a position of not being able to carry out the assignment in the best interest of the public body.

(3) Without limitation on the generality as provided for in paragraphs (1) and (2), a consultant shall not be hired under the following circumstances –

- (a) a firm which has been engaged by the public body to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;

(b) a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.

(4) Paragraph (3) shall not apply to firms (consultants, contractors, or suppliers) that together are performing the supplier's obligations under a turnkey or design-and-build contract.

#### **74. Restrictions Outside Employment and Interests**

A public official involved in public procurement proceedings shall not directly or indirectly accept any type of employment from a bidder, or from a party to a procurement contract with the government.

#### **75. Undue Influence**

(1) If any bidder tries or causes to try to exert undue influence or pressure of any kind in relation to his or anyone else's tender, the bid of such a bidder shall be rejected.

(2) Where a bid is rejected pursuant to paragraph (1), the public body shall keep a record of any rejected bid.

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#### **76. Conspicuous Notice Of Prohibitions**

The bidding and contract documents shall specify that a bidder is not permitted to –

(a) enter into contingent fee or commission arrangements;

(b) directly or indirectly offer, give or agree to give inducements as referred to in section 51 of the Act.

#### **77. Disclosure Of Offer Of Inducement Or Other Corrupt, Fraudulent Or Coercive Practices**

(1) Any public official who is involved in corrupt, fraudulent or coercive practice in connection with procurement, shall report such offer, or other corrupt or fraudulent practice, to the Chief Executive Officer of that public body or to the Policy Office.

(2) Paragraph (1) shall be in addition to and not in derogation with the provisions of the Prevention of Corruption Act 2002.

#### **78. Confidentiality Of Procurement Information**

(1) Except for the purposes of auditing or upon an order of a Court, no public official is permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of his involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement.

(2) No information relating to the examination, evaluation and comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided for in section 37 of the Act.

## **79. Confidentiality Obligations Of Third Parties**

The requirement of confidentiality imposed on public officials by virtue of section 51 of the Act extends to any other person acting on behalf of a public body in procurement proceedings.

## **80. Oath**

Every member or officer shall, on assumption of duty, take the oath as specified in the Fourth Schedule.

## **81. Declaration Of Assets**

Every member or officer shall file with the Secretary to the Cabinet, within 30 days of his appointment and upon termination of his appointment, a declaration of his assets and liabilities as specified in the Fifth Schedule. 26

## **82. Commencement**

These regulations shall come into operation on 17 January 2008.

*Made by Minister on 14 January 2008 on the recommendation of the Policy Office.*

# **PUBLIC PROCUREMENT (FRAMEWORK AGREEMENT) REGULATIONS 2013**

23 JULY 2013

*Government Notice No. 177 of 2013*

## **THE PUBLIC PROCUREMENT ACT**

**Regulations made by the Minister, on the recommendation of the Policy Office, under sections 29A and 61 of the Public Procurement Act.**

1. These regulations may be cited as the Public Procurement (Framework Agreement) Regulations 2013.

### **2. In These Regulations –**

“closed framework agreement without second-stage competition” means a framework agreement where the terms and conditions of the procurement are set out at the time the agreement is entered into;

“closed framework agreement with second-stage competition” means a framework agreement with more than one supplier where the terms and conditions of the procurement that could not be established with sufficient precision at the time the agreement was made are to be established or refined through a second-stage competition;

“open framework agreement” means a framework agreement which provides that a supplier other than the initial supplier(s) may subsequently be a party to the agreement.

3. The choice of framework agreement available to a public body or lead organisation shall be the –

- (a) open framework agreement;
- (b) closed framework agreement without second-stage competition; or
- (c) closed framework agreement with second-stage competition.

4. For an open framework agreement, the public body or lead organisation shall—

- (a) upon a request made by a potential supplier, communicate the terms and conditions of the framework agreement and any other relevant information;
- (b) during the entire duration of the agreement, regularly request for expression of interest from potential suppliers to be party to the agreement.

5. The choice of procurement method available to a public body or a lead organisation for the procurement of works, goods, consultancy services or other services under a framework agreement shall be by open advertised bidding or restricted bidding.

6. A public body or a lead organisation shall specify in the bidding document –

- (a) that the procurement is carried out under a framework agreement;
- (b) that the framework agreement is concluded with one or more suppliers;
- (c) the minimum or maximum limit of the number of suppliers that are parties to the agreement;
- (d) the choice of the framework agreement in accordance with regulation 3;
- (e) the terms and conditions of the framework agreement; and
- (f) the process for short listing of suppliers where applicable, for the framework agreement.

7. The duration of a framework agreement shall not exceed 1 year, but can be subject to renewal annually.

8. A framework agreement shall, as far as reasonably practicable, be entered into with at least 3 suppliers.

9. A public body or a lead organisation shall prepare and maintain all necessary documents in respect of a framework agreement falling under its responsibility.

10. A public body shall provide to the lead organisation such information as may be necessary to enable the organisation –

- (a) to carry out procurement proceedings under a framework agreement; and
- (b) to monitor and manage a framework agreement.

11. The Policy Office may issue such instructions or guidelines in relation to procurement proceedings for a framework agreement.

*Made by the Minister, on the recommendation of the Policy Office, on 9 July 2013.*

**PUBLIC PROCUREMENT (DIPLOMATIC MISSIONS OF MALAYSIA) REGULATIONS 2014**  
25 MARCH 2014

*Government Notice No. 36 of 2014*

**THE PUBLIC PROCUREMENT ACT**



**Regulations made by the Minister, on the recommendation of the Policy Office, under sections 3(1A)(b) and 61 of the Public Procurement Act**

1. These regulations may be cited as the Public Procurement (Diplomatic Missions of Malaysia) Regulations 2014.

**2. In These Regulations –**

“Act” means the Public Procurement Act;

“extreme urgency” means a situation where –

(a) life or the quality of life or the environment may be seriously compromised; or

(b) the condition or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate, unless urgent and necessary action is taken to maintain them in their actual value or usefulness;

“mission” means a diplomatic mission of Malaysia situated in another State;

“supervising officer” means the supervising officer of the Ministry responsible for the subject of foreign affairs.

**3. Application Of Regulations and Code Of Conduct**

(1) For the purposes of section 3(1A)(b) of the Act, these regulations shall apply to every procurement undertaken by a mission.

(2) Every public officer involved in planning or conducting procurement referred to in paragraph (1) shall comply with any model code of conduct issued pursuant to section 20(1)(k) of the Prevention of Corruption Act.

**4. Principles and Objectives Of Procurement**

(1) Every mission undertaking procurement shall aim at achieving –

(a) value for money

(b) efficiency; and

(c) integrity and accountability.

(2) The aims specified in paragraph (1) shall be achieved through –

(a) transparency

(b) non-discrimination

(c) proportionality; and

(d) competition.

**5. Open Advertised Bidding**

(1) (a) Every mission shall, subject to subparagraph (b), use open advertised bidding for procurement of a value exceeding 5 million Malaysian Ringgit.

(b) Every mission may make use of a procurement method specified in regulation 6(2) where –

(i) there is no response to an open advertised bidding; or

(ii) the mission is of opinion that open advertised bidding is not warranted on the ground that –

(A) the value of the procurement is not proportionate to the time and effort required to invite and evaluate a large number of bids;

(B) there is a limited number of suppliers available; or

(C) there is a list, of suppliers for specialised goods, works or services, which has been approved by the supervising officer.

(2) Where an open advertised bidding is used, the mission shall –

(a) prepare the bidding document and submit it, together with the procurement notice, to the supervising officer for his concurrence; and

(b) publish the procurement notice in not less than 2 of the host country's newspapers with a wide circulation and post a copy thereof on its website.

## **6. Choice Of Procurement Methods**

(1) Where any procurement does not –

(a) require open advertised bidding pursuant to regulation 5(1)(b); or

(b) exceed 5 million Malaysian Ringgit in value,

the choice of procurement methods available to a mission shall be the methods specified in paragraph (2).

(2) The procurement methods from which a choice may be made shall be –

(a) restricted bidding;

(b) competitive negotiations;

(c) shopping; or

(d) single source procurement,

in accordance with regulation 7, 8, 9 or 10, respectively.

## **7. Restricted Bidding**

Where restricted bidding is used –

(a) the mission shall –

(i) conduct a market survey;

(ii) as far as reasonably possible, invite bids from at least 5 potential bidders; and

(b) the bidding documents and the short listing shall be made with the concurrence of the supervising officer.

## **8. Competitive Negotiations**

(1) Competitive negotiations may be used where –

(a) no response is received following restricted bidding;

or

(b) the matter needs urgent attention.

(2) Where competitive negotiations are used –

(a) the mission shall provide adequate justification to the supervising officer;

(b) the supervising officer shall –

(i) ensure that the negotiating team is adequately prepared with well defined objectives, variables, exit point and other relevant issues; and

(ii) approve the use of competitive negotiations.

## **9. Shopping**

(1) A mission may, where the value of the procurement does not exceed 100,000 Malaysian Ringgit, resort to shopping.

(2) Where the shopping method is used – 4

(a) and it would not be practical to proceed with a call for quotations, readily available goods may be purchased; and

(b) the mission shall, in other circumstances –

(i) obtain a reasonable number of quotations; and

(ii) after an evaluation of the quotations by a Bid Evaluation Committee composed of the staff of the mission, proceed with the acquisition.

## **10. Single Source Procurement**

(1) Single source procurement may be used –

(a) in cases of extreme urgency;

(b) when the goods, works or services are available from a single source and no suitable alternative is available;

(c) by a supplier, for additional deliveries which are intended as partial replacement or extension for existing goods, works or services, where a change of supplier would compel the mission to procure supplies which do not meet requirements of inter-changeability with existing supplies;

(d) where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons;

(e) where the nature of any consultancy services requires that a particular consultant be selected, having regard to the experience and specific qualifications of the consultant;

(f) where the mission determines that the continuity of consultancy services is essential to meet the objectives of the consultancy assignment; or

(g) where the value of the procurement does not exceed 100,000 Malaysian Ringgit and there is no response from suppliers to a request for priced quotations pursuant to regulation 9(2)(b) or the lowest price quoted is, in the opinion of the mission, substantially higher than the market price.

(2) Where single source procurement is used, the mission may, subject to the approval of the supervising officer, conduct negotiations with the supplier.

## **11. Bidding and Contract Documents**

(1) Every mission shall, subject to paragraph (2), customize bidding documents in use by public bodies in the host country and submit the documents to the supervising officer for finalization, with the collaboration of the Policy Office.

(2) A mission may, in appropriate cases, make use of a bidding document other than that of the host country, subject to the approval of the supervising officer.

## 12. Bidding Process

(1) Where open advertised bidding or restricted bidding is used, bids shall be –

- (a) received in sealed envelopes at the mission by the deadline for submission; and
- (b) opened on the fixed date, time and place mentioned in the bidding documents.

(2) Bids received after the fixed date referred in paragraph (1) shall be returned unopened to the bidder concerned.

(3) The bids shall be opened by the mission and forwarded to the Bid Evaluation Committee which shall submit its recommendations for the approval of the award to the Departmental Tender Committee of the Ministry responsible for the subject of foreign affairs.

## 13. Award Of Contract

(1) The award of a contract shall be made to the substantially responsive bidder whose proposal is most advantageous to the mission, considering price and other factors included in the bidding documents.

(2) Where a contract is awarded following open advertised bidding, the mission shall notify every unsuccessful bidder of the name of the selected bidder and the value of the contract.

## 14. Debriefing

The mission shall promptly respond to a request for debriefing made by an unsuccessful bidder within 30 days from the date of notification of the award.

## 15. Reporting and Record Keeping

(1) Every mission shall –

- (a) keep a proper record of all procurement activities; and
- (b) on the request of the supervising officer, make the record available to him.

(2) Every mission shall, not later than 15 days after the end of every quarter, submit to the Minister to whom responsibility for the subject of foreign affairs is assigned, a return of its procurement activities in respect of that quarter.

*Made by the Minister, on the recommendation of the Policy Office, on 4 March 2014.*



## **MALAYSIA PROJECT PROCUREMENT COMMITTEE**

**(Directorate-General For Development)**

Block D1 & D2, Complex D, Administrative Center, Federal Territory  
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