

MINISTRY OF FINANCE & ECONOMIC DEVELOPMENT
PROCUREMENT POLICY OFFICE

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From: Director, Procurement Policy Office

To : Heads of Public Bodies

Special Circumstances for Negotiation

Public bodies are hereby informed that the Regulation 8 of the Public Procurement Regulations 2008 has been revoked and replaced by the following regulation:

“8. Special circumstances for negotiation

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”.

The procedures to be followed for negotiation are herewith annexed.

Procurement Policy Office
01 September 2008

Procedures for negotiations under Regulation 8 of the Public Procurement Regulations 2008

1. Negotiations with a bidder shall be resorted to only in the following circumstances:
 - 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.

2. For non-major contracts, the Chief Executive Officer of the Public Body shall appoint a Negotiator or a Negotiating Team, depending on the value and complexity of the procurement contract, from among officers who are knowledgeable in all aspects of the procurement.

3. For major contracts related to para 1 (a) and 1(b), the appointment of the negotiator or negotiating team shall be made by the Central Procurement Board in the following manner:
 - (i) where negotiation is required following an evaluation of bids the Negotiating Team shall consist of members of the Bid Evaluation Team and employees of the Public Body concerned who are well conversant with the requirements in the bid document and are specialized in the specific procurement.
 - (ii) Where negotiations are to be carried out with respect to para 1(b), independent negotiators shall be appointed to form a team with the employees of the Public Body.

4. The Chief Executive Officer or the Central Procurement Board, as the case may be, shall oversee the negotiations process in the following manner:
 - a. Carrying out a pre-negotiation review and approving the agenda
 - b. Requiring the team to seek approval at a given stage before finalizing the terms of the agreement.

5. The review is conducted so that the Chief Executive or the Central Procurement Board can be assured that the Team leader is well prepared and that the other members of the team are agreeable with the strategy of negotiations in order to achieve the expectations of Management or the Central Procurement Board.
6. From the Negotiator(s)'s point of view, the advantage of the review is the opportunity to understand the expectation of management and to obtain the authority to handle particular problems.

The review can be a quick run-down of the facts and the objective in five minutes or less if it is a small deal. It can be a formal presentation by the negotiating team to an assemblage of top procurement management. It can be a written justification and request for clearance to proceed.

7. The Public Body concerned shall provide a member of its staff as secretary to attend the negotiation sessions and to maintain record of the proceedings. Such record shall be part of the procurement records.
8. The outcome of a negotiation shall only be executed after approval of the Central Procurement Board/Chief Executive of the Public Body depending on whether the procurement is for a major or minor contract.
9. Exceptionally, in case of emergency referred to in para 1(c) for major contract, when the situation warrants for immediate start of negotiation, the Public Body shall initiate procurement procedures for immediate action after negotiation with Contractors/Service Providers based on its own past experience of costs and resources, ascertaining due diligence to obtain value for money.

The decision of having recourse to emergency procurement and defining the scope of the emergency shall rest upon the Public Body.

The Public Body shall as far as possible arrange with the Contractor/ Service Provider that the scope of the works are subject to variations and approval of Central Procurement Board.

10. For procurement under emergency as mentioned in para 9, the Public Body shall, as soon as possible, report the situation of emergency to the Central Procurement Board giving details of actions initiated. The Central Procurement Board may thereafter discuss with the Public Body for any fine tuning in respect of the scope of works and any other relevant detail to render the procurement more effective.
