

PART VI-SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

TWO STAGE TENDERING

- 36.** (1) A procuring entity shall engage in procurement by two-stage tendering:
- (a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works or, in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) Where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs, where the procuring entity, applies this Law to procurement concerned with state security and determines that the selected method is the most appropriate method of procurement; or
 - (c) Where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a procurement contract.
- (3) The provisions of this Law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.
- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
 - (b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualifications of the suppliers or contractors.
- (4) The invitation documents:
- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tender which contain their proposals without a tender price; an

- (b) May solicit proposals that relate to technical, quality or characteristics of the goods, works or service as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualifications of the suppliers or contractors
- (5) The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.
- (6) In the second stage of the two tender proceedings the procuring entity:
 - (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
 - (b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tender;
 - (c) may add new characteristics or criteria that conform with this Law;
 - (d) shall communicate to suppliers or contractors in the invitation to quotation from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.
- (2) Generally, quotations shall be obtained from at least 3 unrelated contractors or suppliers.
- (3) Each Contractor or supplier from whom a quotation is requested shall:
 - (a) be informed whether any factors other than the charges for the goods, works, or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price; and
 - (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.

- (6) Where the total value of the procurement is not more than a sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.

RESTRICTED TENDERING

- 37.** (1) Subject to regulations made by the Bureau, a procuring entity may for reason of economy and efficiency, or legitimate affirmative action backed by an official government policy, engage in procurement by means of restricted tendering if:
- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
 - (c) The procedure is used as an exception rather than norm; or
 - (d) in the overriding public interest in pursuance of a legitimate affirmative action backed by an official government policy.
- (2) Where a procuring entity engages in restricted tendering on the basis that:
- (a) the good works and services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of goods, works or services, it shall select in a non-discriminatory manner the number of suppliers or contractors to ensure effective competition.
- (3) For the purposes of subsection (2), of this section, the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.
- (4) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.
- 38.** (1) A procuring entity may carry out procurements by requesting for quotation from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.

- (2) Quotations shall be obtained from at least 3 unrelated contractors or suppliers.
- (3) A contractor or suppliers from whom a quotation is requested shall:
 - (a) be informed whether any factors other than the charges for the goods, works, or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price; and
 - (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive" quotation.
- (6) Procurements by request for quotation shall be conducted in accordance with the regulations made by the Bureau.

DIRECT PROCUREMENT

- 39.** (1) A procuring entity may carry out a direct procurement where:
- (a) goods, works or services are only available from a particular supplier of contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
 - (b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;
 - (c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
 - (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor when it determines that:
 - (i) additional supplies need to be procured from that supplier or contractor because of standardization;
 - (ii) there is a need for compatibility with eXisting goods, equipment,

technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;

(iii) the limited size of the proposed procurement in relation to the original procurement provides justification;

(iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;

(e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, . except where the contract includes . the production of goods in quantities to establish commercial viability or recover research and development costs; or

(f) the procuring entity applies this Law for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.

(2) The procuring entity:

(a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;

(b) shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

EMERGENCY PROCUREMENT

40. (1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where:

(a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;

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

(c) a public project may be seriously delayed for want of an item of a minor value.

(2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.

- (3) All procurements made under emergencies shall be handled with expedition but along principles of accountability, due' consideration being given to the gravity **of** each emergency.