ANGUILLA

REVISED REGULATIONS OF ANGUILLA

under

PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT R.S.A. c. P161

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

Regulation	Citation	Page
PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION REGULATIONS *Revises and Consolidates—* *R.A. 35/2016, in force 19 September 2016* *R.A. 107/2021, in force 17 September 2021*	R.R.A. P161-1 *(31/12/2022)*	3

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Revised Regulations of Anguilla: P161-1

PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT (R.S.A. c. P161)

PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION REGULATIONS

Note: These Regulations are enabled under section 55 of the Public Procurement and Contract Administration Act, R.S.A. c. P161.

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PART 1

PRELIMINARY PROVISIONS

Division 1

Submission of preliminary procurement documents

Submission of preliminary procurement documents to Procurement Office

1. Prior to the Chief Procurement Officer issuing any Procurement Notice, invitation for bids or request for proposals, the Procurement Committee shall submit to the Procurement Office the procurement documents containing—

(a) a description of what is to be procured and a justification of the need for the procurement;

(b) a description of the scope and quantity of work to be procured;

(c) financial information, including the type of funding to be used, the source of funds and the procurement budget;

(d) the method of procurement to be used;

(e) prequalification information, if necessary;

(f) the human resources needed, such as a project manager, Evaluation Committee, proposal manager, contract manager and approving authority;

(g) a draft of the contractual terms or the plan to have the contract prepared;

(h) an indication of whether a local preference policy would be applied;

(i) a draft of the proposed instructions to any bidder or offeror;

(j) a draft of bid or proposal documents; and

(k) any other information that the Chief Procurement Officer may require.

(R.A. 107/2021, s. 3)

Division 2

Bid Documents, Invitations for Bids, Bid Securities

Bid documents

2. (1) "Bid documents" includes—

(a) the invitation for bids or requests for proposals;

(b) instructions to bidders or offerors regarding the evaluation criteria, the method of procurement to be used and the form, procedure and timing for the submission of bids or requests for proposals;

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(c) the bid or proposal information sheet, which details the specifications for the particular procurement and may include the following—

(i) eligibility requirements,

(ii) procedure for clarification,

(iii) bid or proposal preparation forms,

(iv) number of copies to be submitted,

(v) language of bids or proposals,

(vi) pricing of bid or proposal documents,

(vii) currencies and the currency conversion mechanism,

(viii) instructions on modification and withdrawal of bids or proposals,

(ix) bid or proposal submission procedures,

(x) the closing date,

(xi) bid validity period,

(xii) opening procedures,

(xiii) evaluation and award of contract procedures,

(xiv) procedure for correction of mathematical discrepancies in bids or proposals,

(xv) the Government's right to accept any bid and reject any or all bids,

(xvi) award criteria,

(xvii) notification of award,

(xviii) the amount and form of a bid or proposal security,

(xix) procedures for contract signing, and

(xx) the source of funds;

(d) general conditions of contract;

(e) the schedule of supplies or works or the activity schedule, which specifies the quantities, delivery locations, scope and dates for the items, works or services required by the Procurement Committee;

(f) the technical specifications and drawings, which detail the characteristics of the technologies and technical services required;

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(g) forms, which may include—

(i) eligibility requirements,

(ii) the bid or proposal submission sheet and price schedules,

(iii) bid or proposal security forms,

(iv) contract forms,

(v) performance security forms,

(vi) bank guarantee forms for advanced payment,

(vii) manufacturer's authorization forms; and

(h) the requirements for a responsible bidder or offeror.

(2) The Chief Procurement Officer may, after consultation with the Procurement Committee, and based on the procurement method selected and the subject matter of the procurement, adjust the contents of the bid or proposal documents.

(3) Notwithstanding subsection (2), the Chief Procurement Officer shall include the invitation for bids or request for proposals in every invitation for bids or request for proposals.

Invitation for bids or requests for proposals

3. An invitation for bids or request for proposals shall contain the following information—

(a) the name of the project and the name of the Procurement Committee responsible for the particular procurement;

(b) items or works to be procured;

(c) contact information for obtaining bid or proposal documents;

(d) cost of the bid or proposal documents;

(e) place and deadline for bid or proposal delivery;

(f) required bid or proposal security amount and form, if any;

(g) the place, date and time of bid or proposal opening;

(h) for complex procurements - the minimum qualifications bidders or offerors shall meet;

(i) a statement that the government is not bound to accept the lowest of any bid or offer; and

(j) a statement that the invitation for bids or requests for proposals may be cancelled or rejected without any liability arising for government.

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Performance securities

4. (1) Subject to subsection (3), the procurement shall, in relation to the method of procurement selected, determine—

(a) if a bid or proposal security is required and, if so, the amount; and

(b) if a performance security is required and, if so, the amount of the performance security.

(2) A bid or proposal security and a performance security may be a bank letter of guarantee in the form approved by the Board or a bank draft or a certified cheque.

(3) An invitation for bids or request for proposals for works may have—

(a) a bid or proposal security in an amount of up to 3% of the bid or proposal or, if the bid or proposal permits more than one amount to be proposed, the highest of those amounts; or

(b) a performance security in an amount to be determined by the Chief Procurement Officer and the Procurement Committee.

(4) The Procurement Committee shall—

(a) in determining whether a bid or proposal security referred to in subsection (1) is required, consider the risk that a prospective bidder or offeror will neglect or refuse to—

(i) execute a formal contract, and

(ii) provide the required performance security within the time stipulated in the invitation for bids or request for proposals; and

(b) in determining whether a performance security referred to in subsection (1) is required, consider the risk of default by a successful bidder or offeror and the estimated cost of remedying the default.

Division 3

Publication of Procurements, Pre-Bid or Offer Clarification, Submission of Bids or Proposals, and Modifications to Bid or Proposal Documents

Publication of notice of procurement and invitation for bids or requests for proposals

5. (1) Subject to subsection (2), the Chief Procurement Officer shall publish all notices of procurement and invitations for bids or requests for proposals in the *Gazette* and by using at least one of the following methods of publication—

(a) the official website of the Government of Anguilla;

(b) the official websites of an entity;

(R.A. 107/2021, s. 4)

(c) a newspaper of local, regional or international circulation;

(d) the local, regional or international media; or

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(e) any other means of publication that the Chief Procurement Officer considers necessary.

(2) For public procurements that are confidential, the Chief Procurement Officer must determine the best means for communicating the notice of procurement and the invitations for bids or requests for proposals.

Pre-bid or offer clarification

6. (1) Subject to subsection (3), any bidder or offeror can seek clarifications from the Procurement Committee through the Procurement Office regarding any aspect of the bid or proposal documents, up to 14 days from the deadline for the submission of bids or proposals.

(2) The Procurement Committee, through the Procurement Office, shall respond to all requests for clarifications up to 7 days from the deadline for the submission of bids or proposals.

(3) The Chief Procurement Officer and the Procurement Committee may adjust the time mentioned in subsections (1) and (2) where both agree that it is necessary to do so.

(4) The Chief Procurement Officer shall publish all requests for clarification and responses thereto on the official website of the Government of Anguilla.

(5) The Procurement Committee, in conjunction with the Chief Procurement Officer, may hold a pre-bid or proposal conference to clarify doubts regarding the details of the subject matter of the procurement.

Submission of bids or proposals

7. (1) The Chief Procurement Officer and the Procurement Committee shall agree on the period for the making of submissions.

(2) In fixing the deadline for making submissions, sufficient time shall be allowed for bidders or offerors to be able to prepare and present their submissions, taking into account the reasonable needs of the Procurement Committee.

(3) The time to be provided for the submission of bids or proposals shall be the same for all bidders or offerors.

(4) All responses to an invitation for bids or request for proposals shall be submitted to the Procurement Office—

(a) electronically, if so stated within the bid document; or

(b) in a sealed envelope labelled "Modification of Bid".

(R.A. 107/2021, s. 5)

(5) A bid or proposal shall be submitted in the form and in accordance with the requirements specified in the bid or request for proposals document.

(6) The Chief Procurement Officer shall reject all bids or proposals not submitted in accordance with the requirements in the bid or request for proposals document.

(7) The Chief Procurement Officer shall not accept any late bid or proposal and shall return all late bids or proposals unopened to the bidder or offeror.

(8) The person who submits a bid or proposal to the Procurement Office shall sign a Bid Receipt Book in order for the bid or proposal to be properly lodged and accepted by the Procurement Office.

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(9) The Board may develop rules that set out a minimum time to be allowed for submission of bids or proposals in the case of each category or method of procurement.

Modification and clarification to bid or proposal documents by Procurement Committee

8. (1) A Procurement Committee may issue clarifications or modify bid or proposal documents at any time prior to the deadline for the submission of bids or proposals.

(2) The Chief Procurement Officer shall, where any clarifications or modifications are made to the bid or proposal documents by the Procurement Committee, publish these clarifications or modifications in the same manner as the publication of the initial bid or proposal documents.

(3) The Procurement Committee may, where clarifications or modifications are issued to the bid or proposal documents prior to the deadline for making the submission, extend the deadline in order to allow the bidders or offerors sufficient time to take into account the clarifications or modifications while making the submission.

(4) Where a bidder or offeror has submitted a bid or proposal and a clarification is issued or modifications made to the bid or proposal documents, that bidder or offeror shall have the opportunity to modify or re-submit his bid or offer, as the case may be, within the period of time originally allotted or any extended time as may be allowed for submission of bids or offers.

(5) A copy of any clarification or modification to the bid or proposal documents is sufficiently given to a person to whom the invitation for bids or requests for proposals was issued where it is—

(a) handed to the person or the representative of the person and the person or representative signs and dates an acknowledgement of receipt;

(b) sent by fax in a manner that an acknowledgement of transmission is produced;

(c) sent by email in such a manner that a receipt for delivery and an acknowledgement that the email has been opened is provided to the sender; or

(d) done by any other means of electronic communication or other manner that is agreed upon by the person to whom the invitation for bids or requests for proposals was issued and the Chief Procurement Officer.

(6) The Chief Procurement Officer shall, where an agreement referred to in paragraph (5)(d) has been agreed, make and file a record of the agreement.

Modification to bid or proposal

9. (1) A bidder or offeror may change or modify a bid or proposal by submitting a notice of modification to the Chief Procurement Officer which details the changes made, and this may be done at any time before the deadline for submission of bids or proposals.

(2) The notice of modification shall be submitted—

(a) electronically, if so stated within the bid document; or

(b) in a sealed envelope labelled “Modification of Bid”.

(R.A. 107/2021, s. 6)

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Division 4

Responsible Bidders or Offerors

Determination of responsible of bidders or offerors

10. (1) The following may be used to determine whether a bidder or offeror is responsible—

(a) evidence that he possesses, or will possess when required, the resource capability to perform the contract, which may include evidence that—

(i) he has the necessary experience and is reliable,

(ii) he has, or will have when required, sufficient financial resources, equipment, personnel and other resources,

(iii) he has the necessary managerial capability,

(iv) he has the necessary professional and technical qualifications and competence,

(v) subject to the right of the bidder or offeror to protect his intellectual property rights and trade secrets, he holds, or will possess when required, the necessary intellectual property rights or trade secrets,

(vi) legal proceedings have not been taken and are not anticipated to be taken that would materially affect his resource capability to perform the contract, and

(vii) he has a satisfactory record of performance of contracts;

(b) evidence of his legal capacity to perform the contract if it is awarded, which may include—

(i) in the case of a contract that requires the bidder or offeror to carry on business in Anguilla, that he has satisfied all the legal requirements to carry on business in Anguilla or, if the bidder or offeror has his headquarters outside Anguilla, of his intention to satisfy the requirements to carry on business in Anguilla, and

(ii) that he is not disentitled or incapacitated from entering into a contract for any reason such as insolvency, bankruptcy or being in receivership or under liquidation;

(c) evidence of his integrity to the effect that the bidder or offeror or any director, officer, manager or supervisor or partner of the bidder or offeror is not or will not be suspended or debarred under Part 5 of the Act;

(d) where the bidder or offeror carries on or has carried on business in Anguilla, evidence that the bidder or offeror is in good standing with the Government or has made arrangements satisfactory to the Minister of Finance to fulfil his obligations to pay taxes, levies, licence fees and other similar fees and national insurance contributions, as the case may be.

(2) No requirement as to responsibility shall be imposed on bidders or offerors in the bid or proposal documents, other than a requirement specified in subsection (1), unless directed by the Board.

(3) The criteria for qualifications set out in the bid or proposal documents shall be objectively verifiable and shall permit bids or proposals by nationals of other countries or territories when required by any international agreement to which Anguilla is a party.

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(4) A bidder or offeror may, after being given notice in writing and an opportunity to be heard, be found not responsible if the Procurement Committee finds that the information submitted in a bid or proposal concerning the bidder or offeror's responsibility is false or misleading or fails to disclose material information.

(5) The Chief Procurement Officer may, by notice in writing, require a bidder or offeror who has been found responsible initially to demonstrate again, within such time as is specified in the notice that he continues to be a responsible bidder or offeror in accordance with the criteria in the bid or proposal documents.

(6) A bidder or offeror who fails or neglects, within the time specified in the notice referred to in subsection (5), to demonstrate again that he is responsible may be found not responsible, and the Chief Procurement Officer shall, without delay, notify the bidder or offeror in writing if he has been found not responsible.

(7) The Chief Procurement Officer shall, without delay, notify in writing each bidder or offeror requested to demonstrate again his qualifications as to whether or not the bidder or offeror is responsible.

Division 5

Withdrawal of Bid or Proposal and Opening

Withdrawal of bid or proposal

11. A bidder or offeror may, prior to the deadline for submission of bids or proposals, withdraw his bid or proposal after it has been submitted, by sending a written notice of withdrawal to the Procurement Office.

Opening process

12. (1) Before the opening process commences, all representatives of bidders or offerors shall sign an attendance register.

(2) The Chief Procurement Officer shall ensure that the envelopes received are grouped into the following categories—

(a) bids received prior to the submission deadline;

(b) modifications received prior to the submission deadline; and

(c) withdrawals received prior to the submission deadline.

(3) Notices of withdrawals received prior to the submission deadline shall be opened, read aloud and recorded, and any bid or proposal subject to a notice of withdrawal shall be returned unopened to the respective representative.

Opening bids, proposals and applications to prequalify

13. (1) The Chief Procurement Officer shall publicly open the bids, proposals or applications to prequalify on the day and at the time and place specified in the procurement notice or invitation for bids or requests for proposals.

(2) A member of the Procurement Committee shall attend the public opening.

(3) Any person who submitted a bid, proposal or application to prequalify and any member of the public may attend the public opening.

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(4) For the opening of bids, the Chief Procurement Officer shall read aloud the name and address of each bidder and the amount of his bid.

(5) For the opening of proposals, the Chief Procurement Officer, shall read aloud the name and address of each offer and refrain from disclosing any other information contained in the proposal.

(6) For applications to prequalify for bids or proposals, the Chief Procurement Officer shall read aloud the name and address of each applicant and refrain from disclosing any other information contained in the application.

(7) In the case of a two-stage bidding or proposal process, the Chief Procurement Officer, shall—

(a) in the first stage of a two-stage bidding or proposal process—

(i) read aloud only the name and address of each bidder or offeror, and

(ii) refrain from disclosing any other information contained in the bid or proposal; and

(b) in the second stage of a two-stage bidding or proposal process read aloud—

(i) the name and address of each bidder or offeror, and

(ii) the amount of the bid or proposal.

Opening bids, proposals and applications to prequalify that are confidential

14. (1) Confidential bids, proposals or applications to prequalify shall be opened in private.

(2) A private opening shall be done in the presence of the Chief Procurement Officer, the Chairperson of the Board and the Chairperson of the Procurement Committee.

(3) If any of person named under subsection (2) is unable to attend the opening, the Permanent Secretary may designate in writing a person to act in their place.

Filing and submission of bid or proposal documents

15. The Chief Procurement Officer shall, after the opening process under section 13 or 14, immediately file original copies of the bids or proposals in the Procurement Office and immediately give the submitted copies of bids or proposals to the member of the Procurement Committee attending the opening.

PART 2

EVALUATION AND AWARD OF CONTRACT

Evaluation process

16. (1) The evaluation process shall be the same for all goods, works and services and consists of the following steps—

(a) a preliminary evaluation to determine whether the bid or proposal meets the minimum standards of acceptability as set out in the bid or proposal documents and to eliminate bids or proposals which are not substantially responsive;

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(b) a detailed examination of the bids or proposals which includes—

(i) correction of arithmetic errors,

(ii) conversion to a common currency, and

(iii) quantification of omissions and deviations;

(c) application of evaluation criteria;

(d) comparison of bids or proposals; and

(e) preparation of the Evaluation Report, which must contain in a clear and logical manner all of the information mentioned in paragraphs (a) to (d) and the recommendations of the Evaluation Committee.

(2) During the preliminary evaluation process, where discrepancies are identified, these may be rectified through clarification with the bidder or offeror, without giving any benefit to the bidder or offeror and without prejudice to the interest of other bidders or offerors.

(3) Any discrepancy and any request for clarification shall be recorded in the Evaluation Report.

(4) The Board may develop rules to guide the evaluation process for the Evaluation Committee.

Evaluation of bids or proposals and recommendations

17. The Evaluation Committee shall—

(a) review every bid or proposal that is opened to determine—

(i) if the bidder or offeror is responsible, and

(ii) if the bid or proposal is responsive;

(b) evaluate each bid or proposal of every responsible bidder or offeror that is responsive in accordance with the evaluation criteria set out in the invitation for bids or requests for proposals; and

(c) prepare a report setting out particulars of the results of the review and evaluation and its recommendations to the Procurement Committee and the Board.

Negotiations with lowest responsible bidder or offeror that is responsive

18. (1) The Board, after reviewing the Evaluation Report, must determine whether or not negotiations should take place between the Procurement Committee and the responsible bidder or offeror who submitted the lowest responsive evaluated bid or proposal.

(2) The negotiations may be conducted with the bidder or offeror referred to in subsection (1) only for the purpose of increasing or decreasing the scope or value of the proposed contract when the invitation for bids or requests for proposals contains a statement to that effect.

(3) The Procurement Committee shall prepare a report setting out particulars of the negotiations and its recommendation to the Board.

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(4) The Board may develop rules to guide the negotiation procedure with the bidder or offeror in subsection (1).

Extension of bid or proposal security

19. (1) The Procurement Committee may, where it appears to it that any bid security provided by a bidder or offeror may expire before a formal contract is executed by a successful bidder or offeror, request in writing that the bidder or offeror extend his bid security for a reasonable specified period.

(2) A bid or proposal may be determined to be unresponsive if a bidder or offeror, who is requested to extend a bid or proposal security under subsection (1), fails or refuses to do so before a formal contract is executed.

(3) The Evaluation Committee shall, where it determines that a bid or proposal is unresponsive under subsection (2), notify the Chief Procurement Officer that the bid or proposal has been determined to be unresponsive, and the Chief Procurement Officer shall notify the bidder or offeror of that fact.

(4) The Board may, where a bidder or offeror whose bid or proposal is accepted refuses to provide the security required by the bid or proposal documents—

(a) forfeit the bid or proposal security of the bidder or offeror whose bid or proposal is accepted; and

(b) accept the bid or proposal of and award a contract to the responsible bidder or offeror who submits the next lowest responsive evaluated bid or proposal.

Award of contract

20. (1) The Board may, after considering the Evaluation Report, award a contract in accordance with this section.

(2) The Board may only accept a bid or proposal, including a bid or proposal as modified by negotiations under section 18, when it is satisfied that sufficient funds are available and in the case of a multi-year contract, that sufficient funds are available for the first year.

(3) The Board may award the procurement to the responsible bidder or offeror who submits the lowest responsive evaluated bid or proposal, and this award shall—

(a) not be subject to any condition, other than the execution of a formal contract; and

(b) be communicated to the successful bidder or offeror in writing without delay.

(4) The Board may award more than one contract or increase or decrease the scope of work within a specified margin when the invitation for bids or requests for proposals contains a statement giving the Board the discretion to do so.

(5) When a bidder or offeror whose bid or proposal is accepted refuses or neglects to execute a contract required by the bid or proposal documents, the Board may—

(a) forfeit the bid security of the bidder or offeror whose bid or proposal is accepted; and

(b) accept the bid or proposal of and award a contract to the responsible bidder or offeror who submits the next lowest responsive evaluated bid or proposal.

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Notice to unsuccessful bidders or offerors

21. The Chief Procurement Officer may, after the successful bidder or offeror has complied with the requirements of the bid or proposal documents or provided any required performance security and has entered into a formal contract, communicate to the other bidders or offerors in writing that they were not successful.

Publication of award

22. The Chief Procurement Officer may, after notice is given under section 21, publish notice of an award of contract, other than an award that is confidential, by posting a notice setting out particulars of the award on the official website of the Government of Anguilla and by any other means as he considers appropriate.

Debriefing unsuccessful bidder or offeror

23. The Chief Procurement Officer may, on request by an unsuccessful bidder or offeror, conduct a debriefing of the bidder or offeror.

PART 3

ERRORS IN BID OR PROPOSAL DOCUMENTS AND REJECTION OR CANCELLATION OF BIDS OR PROPOSALS

Errors in bid or proposal documents

24. (1) The Procurement Committee shall, where it has reason to believe that there is a substantial error in a bid or proposal document, consult the Chief Procurement Officer and the Attorney General.

(2) The Procurement Committee may, where it believes that a substantial error may reasonably result in a court of competent jurisdiction granting relief against the government and there is clear and credible evidence of what was intended—

(a) correct the substantial error and request that the bidder or offeror confirm that he accepts the bid or proposal documents as corrected; or

(b) cancel the procurement pursuant to section 26.

Rejection of bids or proposals

25. (1) The Procurement Committee may advise the Board to reject a bid or proposal where—

(a) a bidder or offeror is not qualified according to section 10;

(b) it materially departs from the requirements specified in the bid or proposal documents;

(c) the bidder or offeror submitting the bid or proposal, or his agent, gave or agreed to give directly or indirectly, to any current or former officer of the Procurement Unit, other governmental department or any entity a gratuity in any form, an offer of employment or any other thing of value, so as to unduly influence the procurement process;
(R.A. 107/2021, s. 7)

(d) the bidder or offeror has an unfair competitive advantage;

(e) the bidder or offeror has a conflict of interest;

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(f) the price of the lowest responsive bid or proposal is greater or lesser than the allowable margin of 15 percent of the pre-procurement price or estimate of the amount of the contract award but if the price is outside of this range, it may still be accepted if it is validated by the successful bidder or offeror and the Procurement Committee is satisfied that it should be accepted;

(g) the bid or proposal received is not responsive to the requirements in the bid or proposal documents; or

(h) the award of a contract will not be in the best interest of the Government of Anguilla.

(2) The Board may, on its own volition, reject a bid or proposal if it considers that any of the reasons stated in subsection (1) have been met.

(3) The Procurement Committee or the Board shall disclose the reasons for rejecting a bid or proposal in writing and the Chief Procurement Officer shall inform the bidder or offeror concerned.

Cancellation of procurement

26. (1) The Procurement Committee may cancel a procurement at any time—

(a) prior to the acceptance of a successful bid or proposal; or

(b) after a successful bid or proposal was accepted, in accordance with subsections (5) and (6).

(2) When the Procurement Committee cancels a procurement, the Chief Procurement Officer shall not open any bids or proposals and shall promptly return any bids that remain unopened to the bidders or offerors who submitted them.

(3) The decision and reasons for the decision of the Procurement Committee to cancel a procurement shall be included in a report and promptly forwarded to the Chief Procurement Officer for immediate communication to all persons that participated in the procurement.

(4) Where the bidder or offeror whose bid or proposal has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the Procurement Committee may cancel the procurement process.

(5) The Procurement Committee shall, where a bidder or offeror is suspended or debarred from the procurement process—

(a) cancel the procurement process if the bid or proposal of the suspended or debarred person has been declared as successful but no Procurement Contract has been signed; or

(b) rescind the contract or forfeit the payment of all or a part of the contract value if the Procurement Contract has been signed between the Procurement Committee and the suspended or debarred bidder or offeror.

(6) The Procurement Committee may cancel a procurement where all the bids or proposals received are not responsive to the requirements in the bid or proposal documents.

(7) The Procurement Committee may cancel a procurement where the Procurement Committee, after receiving the bids or proposals, reasonably concludes that there is lack of competition.

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Non-liability of the Government of Anguilla

27. If a bid or proposal is—

(a) rejected under section 25; or

(b) cancelled under section 26;

the Government of Anguilla or an entity, shall not be responsible for any costs or loss associated with the procurement.

(R.A. 107/2021, s. 8)

Return of bid or proposal securities

28. The Chief Procurement Officer shall immediately return bid or proposal securities—

(a) to the successful bidder or offeror, after he has complied with the requirements of the bid or proposal documents for the execution of a formal contract and provision of a performance security;

(b) to the unsuccessful bidders or offerors after the successful bidder or offeror has complied with the requirements of the bid or proposal documents respecting the execution of a formal contract and provision of a performance security;

(c) to a bidder or offeror whose bid or proposal has been rejected; and

(d) to all bidders or offerors after the Procurement Committee's decision to cancel the procurement process.

PART 4

CONTRACT SERVICES

Term of contract that money be available

29. It is a term of every contract providing for the payment of any money by the Government that payment under that contract is subject to there being an appropriation for the particular service for the financial year in which any commitment is made.

Duties of contract manager

30. (1) The contract manager shall record and file all dealings with the contractor and in particular shall keep minutes of all meetings with the contractor detailing matters discussed and decisions made.

(2) The contract manager shall not agree to any substantial change to the terms of a contract without the prior approval of the Procurement Committee, Chief Procurement Officer and the Attorney General.

Procurement Committee responsible for work of contract manager

31. Where the contract manager is not the Procurement Committee, the Procurement Committee remains responsible to the Government for the performance of the work of the contract manager.

Performance of contract not to commence until contract executed

32. The contract administrator shall not permit any performance to commence under a contract before the contract has been executed or the purchase order has been issued.

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Renewal or extension of contract

33. The Procurement Committee may, after consultation with the Chief Procurement Officer, renew or extend a contract if—

(a) the condition of renewal or extension is included in the solicitation documents;

(b) funds are available for the renewal or extension;

(c) the contract is for more than one year and funds are available for the first year of the renewal or extension; and

(d) the permanent secretary approves the renewal or extension.

Contractor evaluation

34. (1) The contract administrator shall evaluate the performance of each contract as soon as the contract has ended and submit a performance report to the Procurement Committee and the Chief Procurement Officer.

(2) The Board may develop a policy guiding the format of the performance report.

Contract for consulting services

35. A consultant who enters into a contract for consulting services such as a feasibility study or design services in relation to an early phase of a project—

(a) is ineligible to make or participate in an invitation for bids, a request for proposals or an invitation to prequalify; and

(b) is barred from being awarded a contract for the execution of any of the works in respect of which the prior consulting services were rendered.

Bid or proposals by statutory bodies

36. A statutory body must get the written approval of the Procurement Committee and then the Board in order to respond to a competitive solicitation.

PART 5

MISCELLANEOUS

Confidentiality on the part of public officers and officers from an entity

37. (1) A public officer, or officer from an entity or a person or firm employed to conduct procurement services on behalf of the government shall not disclose any information to any other person unless—

(a) that person needs to know for the purpose of discharging his functions as a public officer or officer from an entity;

(b) the Governor who is responsible for national defence and national security gives prior approval; or

(c) a public officer or officer from an entity is ordered to do so by the court or a parliamentary committee.

(R.A. 107/2021, s. 9(b))

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(2) The information referred to in subsection (1)(b) shall be kept apart from other documents.

(3) All procurement records shall be stored in a safe, fireproof filing cabinet.

(4) When confidential information is required to be disclosed under subsection (1), the Procurement Committee or the Chief Procurement Officer shall give reasonable notice in writing to the party from whom the information originated.

(R.A. 107/2021, s. 9(a))

Fees payable for copies

38. (1) The Board shall determine the fees payable for a hard copy of an invitation for bids, request for proposals or invitation to prequalify, procurement manual and any Board policy.

(2) Any fee charged under subsection (1) is non-refundable.

Registration of bidders or offerors

39. (1) The Procurement Committee or the Chief Procurement Officer may invite prospective bidders or offerors to register as qualified bidders or offerors for participation in the procurement process pertaining to a subject matter of procurement or class of procurement.

(2) Potential bidders or offerors may apply in writing to the Chief Procurement Officer requesting to be registered as prospective, qualified bidders or offerors.

(3) The Board may make rules for the procedure and the conditions for registration of bidders and offerors.

Procurement files

40. The Chief Procurement Officer shall develop and maintain a procurement filing system and shall secure all procurement files.

Citation

41. These Regulations may be cited as the Public Procurement and Contract Administration Regulations, Revised Regulations of Anguilla, P161-1.

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