

MINISTRY OF FINANCE

GUIDE TO THE TENDER BOARD PROCEDURES



Ministry of Finance

Fiji Procurement Office
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Preface

The Fiji Government has adopted a revised procurement policy framework that focuses on five key procurement principles:-

- Value for money;
- Maximising economy, efficiency and the ethical use of Government resources;
- Promoting open and fair competition amongst suppliers and contractors;
- Promoting the integrity of, fairness, and public confidence in the procurement process; and
- Achieving accountability and transparency in the public sector.

This Guide is part of a series of Guides prepared to assist government agencies in understanding the new procurement policies and processes brought about by the Procurement Regulations 2010. This Guide focuses on the legislative and policy framework governing procurement in the Fiji Government.

Acknowledgement

This Guide has been prepared after wide research on other countries best practices and experiences. We would like to acknowledge that some information has been adapted from the Australian Government (both federal and various states) Guides on Procurement as well from the UNICTRAL Guidelines and best practices.

Assistance

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PART 1 DEFINITIONS

1.1 Wherever they appear in this guide, the following words and phrases shall have the meanings given below:

“Chair” means the Permanent Secretary for Works and Transport.

“Board Secretariat” means the office appointed to look after the administrative tasks of the Government Tender Board.

“Permanent Secretary” means a person having authority pursuant to the Financial Management Act 2004 to enter into a contract (*up to \$50,000 in value*) for goods, services or works.

“Acceptance of tender” means the award of a contract to a tenderer in response to his tender or price.

“Regulation” means the Fiji Procurement Regulations 2010.

“Board” means the Government Tender Board.

“Closing time” means the date and hour specified in the tender documents for the receipt of tenders.

“Contract” means an agreement entered into voluntarily by two parties or more with the intention of creating a legal obligation, which may have elements in writing.

“Contractor/Supplier” means any natural or legal entity that has submitted a tender, which has been accepted by the State.

“Formal contract” means a written contract, all the terms of which are embodied in a single or composite document signed by all the parties and duly witnessed.

“Tender” means a written offer on official tender documents forming part of an invitation to tender.

“Bidder” means any company or person submitting a tender or a price quotation.

“Project Officer” means the officer appointed by the procuring agency to be responsible for the preparation of tender specifications and selection criteria.

“Tender Cluster Officer” means the officer appointed by the Board Secretariat to be responsible for the preparation of tender documentation and evaluation of tenders.

PART 2 INTRODUCTION

2.1 Introduction

2.1 This Policy is developed as a procedural guide to the Government Tender Board and specifically tailored to suit how they operate as a board.

2.2 Scope

2.2.1 This policy applies to all procurement of goods, services and works that exceed \$50,000 in costs. This includes the waiver of tender submission and emergency approval with the exception of natural disaster.

2.3 Purpose

2.3.1 The purpose of this policy is for the Government Tender Board to ensure:

- (i) all procurement of goods, services and works in excess of \$50,001 shall comply with the requirement under Procurement Regulation 2010;
- (ii) fair and equal opportunity to suppliers of goods and services;
- (iii) government financial accountability based on procurement procedures and processes are adhered; and
- (iv) the functions of GTB are not breached in the process of approving and awarding tenders.

2.4 Legislative Requirement under the Fiji Procurement Regulations 2010

2.4.1 The Government Tender Board has the authority to approve all procurement of goods, services and works valued at \$50,001 and more [Regulation 9(2)].

PART 3 TENDER BOARD PROCEEDINGS

3.1 Powers of the Board

3.1.1 The Board shall consider tenders or quotes for the supply of goods, services or work and may:

- (i) Award tenders or quotes; or
- (ii) Reject tenders and quotes; or
- (iii) Ask for additional information from procuring agencies with regards to that particular procurement in order to make a decision.

3.1.2 Where the Board has approved the initial contract, it shall approve any variation to the value of the initial contract.

3.1.3 A signatory to any contract on behalf of Government shall not terminate or suspend such contract unless the Board approves such termination or suspension.

3.1.4 The Board may appoint a sub-committee comprising of at least two (2) members of the Board and one co-opted specialist to consider and recommend:

- (i) Specialized or technical tenders for civil or capital works; and
- (ii) Any tenders for the supply of goods and services required exclusively for a Department, Ministry or a Division.

3.1.5 The sub-committee shall be subject to the direction of the Board.

3.2 Board Membership

3.2.1 Membership of the Board shall include:

- (i) The Permanent Secretary for Works & Transport as Chair;
- (ii) The Deputy Secretary, Strategic Planning, National Development & Statistics;
- (iii) The Deputy Secretary for Agriculture;
- (iv) The Deputy Secretary for Health;
- (v) Deputy Commissioner, FICAC

3.2.2 If the member is unable to attend meetings, an apology for absence will suffice.

3.3 Appointment of Temporary Chair

3.3.1 If the Chair is not able to attend a scheduled meeting, the members present may appoint a Chair to preside over that meeting.

3.4 Voting Right

3.4.1 Each member of the Board shall have one vote.

3.5 Meetings

3.5.1 All board submissions are forwarded to the Secretary of the Tender Board who will prepare the agenda and despatch board papers to the GTB members on Friday the week before the Government Tender Board meeting takes place. This is done to provide the board members with ample time to read through the board papers before the board meeting the following Wednesday.

3.5.2 The Government Tender Board meeting takes place fortnightly every second Wednesday of the month. Special meetings of the Board may take place at the discretion of the Chair.

3.5.3 The Board deliberates on the board paper (*including attachments*) and may seek further clarification with the Secretary for any information that is not clear to them.

3.5.4 After deliberating on the board paper, the Board approves, defers or rejects the tender. The Board will defer or reject a board paper based on the lack of information supplied by the respective agencies.

3.5.5 The Secretary to the Board writes to each Ministry, for which submissions were presented to the Board, advising of the outcome of the Board's decision. The decision made is either approved/rejected or may need further clarification. This must take place within five (5) working days after the board meeting.

3.6 Members' Pecuniary Interests

3.6.1 The Board shall require any member, who has a pecuniary interest in a tender being considered or about to be considered by the Board, immediately after the relevant facts have come to their knowledge, to declare the nature of their interest at a meeting of the Board and at the same time abstain from taking part in the deliberation on that tender.

3.6.2 For the purpose of carrying out their functions, the Board members whilst evaluating tenders for their own agencies would not be deemed as being in conflict-of-interest.

3.7 Consideration by the Government Tenders Board

3.7.1 Submissions shall be presented in five (5) copies to the Tenders Board and the Project Officer and Manager Tenders shall be available, if required, to answer any matters in relation to the submission. Advance notice shall be given to the relevant Project Officer.

3.8 Co-opting Members to the Board

3.8.1 The Board may co-opt experts from within and outside the public service to provide advice on technical and complex tenders.

3.8.2 If a member is co-opted from the private sector, that member is entitled to a sitting allowance that may be determined by the Public Service Commission.

3.8.3 A co-opted member has no vote in the Board decisions but may be a part of the quorum in the meeting.

3.9 Quorum

3.9.1 Any quorum for a meeting of the Board is three (3).

3.10 Waiver of Tender Process

3.10.1 The Board may approve that tenders be waived where -

- (i) there is only one supplier or contractor capable of supplying the works, goods or services; and
- (ii) a supplier has been nominated by an aid agency which is fully funding the procurement.

3.10.2 In respect of (i) above, the supplier shall furnish the budget sector agency as well as the Board with a letter stating that it is recognised as the sole or only supplier of that particular works, goods or services.

3.10.3 In respect of (ii) above, the Board shall give approval for any contract that is established with a budget sector agency on an annual basis.

3.11 Approval through Flying Minutes

3.11.1 The Government Tender Board may use flying-minutes as a means to approve procurement of goods, services, or work in excess of \$50,001. The use of flying-minutes shall be considered only in urgent situations such as life and death circumstances where human life is at risk.

3.11.2 Quorum for approval by flying minutes shall be the same as a regular Board meeting.

3.11.3 Flying-minutes shall be ratified by the Board in the next meeting after the flying-minutes have been approved.

3.12 Project Site Visit by the GTB members

3.12.1 Where the Government Tender Board members have agreed to visit project sites, they may do so to verify and assess timelines and quality of work carried out by contractors. This will give the members a fair idea of what is happening on the ground.

PART 4 TENDER OPENING

4.1 Tender Opening

- 4.1.1 The Board Secretary and Board Secretariat have a key to the tender box.
- 4.1.2 On the day tenders are opened, the Board Secretary opens the tender box in the presence of one voting member and bidders.
- 4.1.3 When tenders are opened, the Board Secretary records all the bids received in a Tender Register.
- 4.1.4 Bids are stamped and initialed by the Board Secretary. The Board member present during the opening shall initial only the first page of each bid. Every page of the bids received are stamped and initialed by the Board Secretary and Administrative Assistant(s) and dispatched to the procuring agency for evaluation.
- 4.1.5 Where tenders are funded by donor agencies, the tender opening procedures for these agencies will apply.

4.2 Announcement of Bids

- 4.2.1 The tender number and title and the bidders are announced by the Board Secretary. Prices shall not be announced.

4.3 Late Tenders

- 4.3.1 Late tenders will not be accepted.

4.4 Opening of Bids – Two-Envelope Bids

- 4.4.1 Where there is a two-envelope bid, financial bids shall be opened by the Board Secretary in the presence of the Technical Evaluation Committee. Financial bids shall be stamped and initialed by the Board Secretary and the Chair of the Evaluation Committee.
- 4.4.2 Where there is a two-envelope bid and donor agencies are funding the tender, financial bids shall be opened by the Board Secretary in the presence of representatives from the donor agency, a member of the Board, the procuring ministry and stakeholders. Financial bids shall be stamped and initialed by the Board Secretary and the member of the Board present during the opening.

4.5 Electronic Copies of Bids

- 4.5.1 Where applicable, electronic copies of bids are to be submitted. Electronic bids shall only be accepted in PDF format and if submitted by a writeable CD or DVD. Electronic bids shall accompany the hard copy submissions.
- 4.5.2 Electronic copies of bids if submitted without the hard copy submissions shall not be accepted. Electronic copies of bids saved on USB or Flash drives shall not be accepted.

PART 5 FORM OF COMMUNICATION

5.1 Information to Bidders

- 5.1.1 Once tenders are publicly advertised and the documents are available for distribution to prospective Bidders, the Board Secretariat shall observe strict formality in all dealings with the public.

- 5.1.2 Any enquiry concerning contracts and tender documents should be directed to the relevant officer nominated to liaise with respondents.
- 5.1.3 If a Bidder draws attention to any deficiency, ambiguity, error or discrepancy in any of the tender documents, the relevant Project Officer is to be notified immediately so that they can decide whether to:
- (i) Withdraw the documents and re-advertise the contract after making any necessary amendment; or
 - (ii) Advise the Board Secretariat to notify all Bidders of necessary-amendments/revision.
- 5.1.4 Should it be necessary to amend the tender documents before tenders close, the Board Secretariat shall send notices of such amendments either by hand or registered mail, or E-mail to all Bidders that were issued with tender documents. The Board Secretariat shall amend all unissued tender documents including specifications and drawings.

5.2 Communication with Bidders

- 5.2.1 Between the closing date and the date of acceptance of a tender, there is to be no communication with a Bidder about their tender except with the written authority of the Technical Evaluation Committee. Notes on any discussions are to be made, and where considered necessary, to be confirmed in writing with the Bidder.
- 5.2.2 Copies of any letters and the original of any reply are to be regarded as part of the contract and included with the signed contract documents.

5.3 Information Regarding Tenders – Post Award

- 5.3.1 This information shall be restricted to the number of bids, the value of the successful Bidder and the result of unsuccessful tender bids.
- 5.3.2 All requests for information are to be referred to the Board Secretariat of the Tender Board.
- 5.3.4 Tender bids and supporting documentation may contain information that is commercially sensitive and highly confidential. This information must not be passed on to any person outside the tender evaluation process.
- 5.3.5 As tender bids and tender files are confidential documents, they must be passed by hand between those officers who need to have access to them for evaluation purposes. Tender documents shall not be left unattended within the Secretariat Office and must be kept in a secure environment when not in use.

PART 6 TENDER AWARDS AND ACCEPTANCE OF TENDERS

6.1 Value for Money

- 6.1.1 The Board reserves the right to make an award to the Bidder that is considered to have offered the most advantageous tender to the budget sector agency or executing agency seeking the works, goods or services.

6.2 Acceptance of Tender

- 6.2.1 The Government Tender Board is not obliged to accept either the lowest priced or any tender.

The Board may accept:

- (i) separate tenders for each one or more than one, or any portion or portions, of the works, goods or services; and
- (ii) tenders for the supply of goods which in the opinion of the government are equal or similar in quality quoted in the specification.

6.3 Allocating Tender Awards

- 6.3.1 The Government Tender Board reserves the right to split the award amongst Bidders to cater for orders on the basis of specified areas or instructions or to make a collective award to a single Bidder.

6.4 Approval of State Contracts

- 6.4.1 Once the Government Tender Board endorses a recommendation, the Board in accordance with Regulation 44 of the Fiji Procurement Regulations may approve the award of any contract required for works, goods or services.

6.5 Performance Bonds

- 6.5.1 Successful Bidders are required to submit a performance-bond to Government within two (2) weeks after a tender has been awarded and before contract signing occurs as security for the due and faithful performance of the contract. The performance bond shall be in the form of a guarantee arranged through a local financial institution.

6.6 Disclosing Contract Prices

- 6.6.1 When the lowest priced tender is not accepted, reasons may be given on request by the Board Secretariat to any Bidder that has submitted a lower priced tender than that accepted.

- 6.6.2 Enquiries or any information sought from non-Bidders about a (*closed*) tender shall not be entertained, as such is Confidential.

6.7 Retrospective Approvals

- 6.7.1 The Government Tender Board shall not give approval retrospectively for any works, goods or services which have already been delivered-to/conducted-for an agency. Instead, the Board Secretariat shall submit the request together with all supporting documents to the Minister of Finance, for consideration.

PART 7 REPORTS

7.1 Company Search Report

- 7.1.1 Prior to assessment of all Bidders, the Board Secretariat shall undertake a company search to ascertain the ownership structure of potential contractors for each tender, whenever necessary. A company search report is to be prepared to document ownership information obtained for each Bidder.

7.2 Quarterly Reports

7.2.1 The Board Secretariat shall prepare a report within two (2) weeks of the end of each quarter.

PART 8 CONCLUSION

8.1 Policy Review

8.1.1 This policy will be reviewed as and when changes are made to the requirements of the Government Tender Board, which shall be in line with any amendments to the Fiji Procurement Regulations 2010.