

# **POLICY ON PERFORMANCE BONDS**



## **Ministry of Economy**

**Fiji Procurement Office  
Ministry of Economy  
Ro Lalabalavu House  
Suva**

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## Glossary

**Agency/Agencies** mean Ministries and Departments

**Annual service contract or services level agreement** means a contract or agreement where the supplier of particular equipment agrees to continue to provide servicing and back up Services for a specified period at a pre-determined price.

**Bank guarantee** means a guarantee from a lending institution ensuring that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it.

**Bidders** means interested suppliers that have offered Goods, Services and Works for a specific price.

**Contractor** means a supplier that has been awarded a contract to facilitate the required project or supply of Goods or Services.

**Eligibility** means qualities that meet certain requirements.

**Enterprise** means any going concern that trades in Goods or Services for profit.

**Event of Emergency** means a natural disaster such as cyclone, flood earthquake, tsunami, whirlwind, landslide, forest fire or drought.

**Event of an Emergency Works Contract** mean a Works Contract related to the rehabilitation and relief efforts following the occurrence of an Event of Emergency which the permanent secretary responsible for economy, with the approval of the Minister responsible for economy, has approved as a Works Contract or category of Works Contract to which the variation of the performance bond payable under this Guide as set out in clause 5.3.5 applies.

**FPO** means the Fiji Procurement Office.

**Goods** means object of any kind and includes raw materials and inventory, products, equipment and plant.

**GTB** means the Government Tender Board.

**LC** means letter of credit.

**Medium enterprise** means any Enterprise that has a Turnover or Total Assets between \$100,000 and \$500,000 and employs less than 50 employees.

**Procurement** means the overall process of acquiring Goods, Works or Services which include all functions from the identification of needs, selection and solicitation of sources, preparation and awards of contract and all phases of contract administration management through to the end of Services contract or the disposal of the asset.

**Regulation** means the Procurement Regulation 2010.

**SME** means Small Enterprise or Medium Enterprise

**Services** mean the rendering of a Contractor, supplier or consultant of their time and effort and includes any object of procurement other than Goods or Works.

**Small enterprise** means any enterprise that has a Turnover or Total Assets between \$30,000 and \$100,000 and employs less than 20 employees.

**Standing Offer Contracts** means a contract for the supply of Goods or Services where the Contractor has agreed to supply specified Goods or Services to Government for a specified period at a pre-determined price.

**Total assets** mean any assets between \$100,000 and \$500,000 for a Medium Enterprise and between \$30,000 and \$100,000 for a Small Enterprise.

**Turnover** means annual sales of Goods and Services between \$30,000 and \$100,000 for a Small Enterprise and between \$100,000 and \$500,000 for a Medium Enterprise.

**Works** means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works including but not limited to, site preparation, excavation, erection, building, installation of equipment or materials, decorating and finishing, as well as Services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar Services provided pursuant to the procurement of a contract, where the value of those Services does not exceed that of the construction itself.

## **1.0 Introduction**

1.1 A Performance Bond is a form of security that must be paid or submitted to the procuring department by the Contractor as a means of security for the due and faithful performance of the contract.

## **2.0 Scope**

2.1 This Policy applies to all tenders for the supply and purchase of Goods, Works and Services, particularly for contracts that are above FJD50, 000.00. However the policy can also be used by Agencies for contracts below FJD50, 000.00 which are approved by permanent secretaries.

## **3.0 Purpose**

3.1 The purpose of this Policy is to:

- i) ensure when a Contractor is awarded a contract, Agencies may require the Contractor to pay a performance bond in order for the contract to be completed as scheduled, as well as to compensate for any monetary for at least the amount of the performance bond;
- ii) ensure that all Agency staff particularly procurement staff are familiar with the determination of performance bond rates; and
- iii) assure Agencies that if a Contractor does not complete the job or cause delay, Agencies will be paid at least the amount of the performance bond to compensate for losses. This requires a clause on liquidated damage in the contract.

#### **4.0 Requirements of the Procurement Regulations 2010**

4.1 Regulation 30 of the Regulations state that:

- i) a tender must be called for the procurement of Goods, Services or Works valued at FJD50,001 and more; and
- ii) open tendering shall be the preferred tender method used unless the nature of the tender or its complexity justifies that the procuring agency use any of other procurement methods outlined in regulation 31.

#### **5.0 Performance bond terms and conditions**

Performance Bond terms and conditions for the supply and purchase of Goods, Services and Works shall be reflected in the contract document as per the following conditions:

##### 5.1 Eligibility

All bidders whether local or overseas, shall be required to pay a performance bond if their contract is valued at more than FJD50,000.00.

##### 5.2 Performance Bond Rates

5.2.1 A flat rate of 10% is to be levied for all Works and Goods contracts.

##### 5.2.2 Standing Offer Contracts

5.2.2.1 Any supply of goods under standing offer contracts will attract a performance bond of 2%. The percentage and amount of performance bond is calculated according to the estimated contract value per year, which will be collated by FPO.

##### 5.2.3 SMEs

5.2.3.1 If a Contractor whether an individual or a business, is a 100 % locally owned SME then the performance bond percentage will be fixed at the rate of 1% of the Contract Value.

##### 5.3 Exemption of Performance Bond

###### 5.3.1 Services Procurement

Services providers in the area of security, consultancy, and annual service and contracts for specialized equipment **MAY** be exempted from paying performance bonds if they meet the following criteria:

- i) service providers are paid after such Services are rendered (post-payment);
- ii) service providers that have annual service contracts or service level agreements which are an extension of the initial contract between a procuring Agency and Contractor;
- iii) service providers that have maintenance contracts for specialized equipment where the equipment was procured from one company but maintenance is provided by a separate (overseas or local company) under a separate contract, thereby eliminating the need for a bond under the maintenance contract; and

- iv) some consultancy Services which have mode and terms of payment outlined in the deliverables that are in-built in the contract.

#### 5.3.2 Other Criteria for Exemption

- i) Procurement of goods that are one-off purchases and are paid after receipt of the Goods. The payment terms should provide sufficient time for procuring Agency to ascertain the dependability of the goods procured for example “60 days after delivery”;
- ii) Payment of Goods procured from overseas suppliers via a LC;
- iii) Sole supplier.
- iv) Where a supplier of goods has paid a performance bond on one contract with a procuring Agency in one year, it can be exempted from paying performance bond from other consecutive awards in the same year, if contracting with the same Agency. However, if the initial performance bond sum was less than what is required in the consecutive contracts, then the difference has to be met. The validity period of the performance bond will be extended as per the duration of the new tender contract(s).

5.3.3 Agencies must ensure that the contracts have the appropriate clause such as warranty, liquidated damages etc to safe guard government resources utilized in the procurement of Goods or Works that fall under the above exemption lists.

#### 5.3.4 Events of Emergency and Rehabilitation

- i) Notwithstanding any other term and condition of this Policy, following an Event of Emergency, the permanent secretary responsible for economy, with the approval of the Minister responsible for economy, may approve the application of this clause 5.3.4 to a Works Contract or a category of Works Contract to vary the performance bond payable under this Policy.
- ii) If the permanent secretary responsible for economy has approved the application of this clause 5.3.4 to an Event of Emergency Works Contract or a category of Event of Emergency Works Contract, the performance bond payable under the relevant Event of Emergency Works Contract is:
  - a) 10% of the value of the Event of Emergency Works Contract with the highest value that is awarded to the Contactor;
  - b) If applicable, 5% of the value of the Event of Emergency Works Contract with the second highest value that is awarded to the Contractor; and
  - c) If applicable, 2% of the value of the Event of Emergency Works Contract with the second highest value that is awarded to the Contractor.
- iii) Where the initial performance bond sum paid was less than the sum required for the subsequent Event of Emergency Works Contract, then the permanent secretary responsible for economy must ensure that the total amount of

performance bond held by the Government from the Contractor in relation to the Event of Emergency Works Contract related to the same event of Emergency meets the requirement of this Policy as set out in this clause 5.3.4 and that the validity period of the relevant performance bond is extended until the end of the term of the Event of Emergency Works Contract that terminates or expires last.

- iv) This clause 5.3.4 does not affect any other conditions of Event of Emergency Works Contract or the application of any other Government policy and all Event of Emergency Works Contract must require the final progress claim to be withheld after the date of the practical completion certificate.

## **6.0 Payments of performance bond**

- 6.1 The Contractor must pay the full percentage of the performance bond within 14 days of receiving the letter of notification from FPO and failure to do so, may lead to withdrawal of GTB award.
- 6.2 The performance bond is to be paid in an acceptable form, such as cash basis or a guarantee by a bank, insurance company or the parent company of the Contractor and must be valid for the required duration.
- 6.3 All performance bonds are to be deposited in the procuring Agency's trust fund account. In the absence of trust fund account, Agencies can utilize the FPO trust fund account.
- 6.4 Within 30 days of receiving the performance bond, the contract should be signed by both parties and thereafter, work shall commence.
- 6.5 A copy of the signed contract together with the evidence of the payment of performance bond must be submitted to the Director FPO no later than 5 working days from the signing of the contract.

## **7.0 Monitoring and refunding of performance bond**

- 7.1 Agencies must ensure that all contracts are properly monitored for the purpose refunding the performance bond(s). In order to do this, a thorough report must be compiled with all relevant documentations especially to highlight incidents of any poor performance
- 7.2 Agencies must breakdown and detail the terms and condition of the refund percentage in the contract documents.
- 7.3 If the performance of the Contractor is satisfactory, the Agency shall refund the full performance bond according to the terms and conditions given in the contract. However, if the contract does not specify the refund clauses, then the responsible officer in charge of procurement must submit a performance report to the authority responsible for endorsing the release/refund of performance bond.

- 7.4 Agencies must use Appendix 1 for certification of the release or refund of a performance bond.
- 7.5 Agencies must forward a copy of the performance bond refund certificate to the Director of FPO for record purposes. This will also be the basis of refunding those performance bonds held in the FPO trust account.

The respective Authority to release or refund of performance bond from the Trust Accounts are:

<b>Trust Account</b>	<b>Release/Refund Authority</b>
Procuring Agency	Permanent Secretary /Head of Agency.
Fiji Procurement Office Trust Account.	Director Fiji Procurement Office upon satisfactory documentation submitted by the procuring agency.

**8.0 Policy review**

- 8.1 This Policy will be reviewed as and when required.

APPENDIX 1

Performance Bond Refund Certification

I certify that the contract awarded to \_\_\_\_\_, Tender number \_\_\_\_\_ TenderDescription \_\_\_\_\_ was/was not completed as per the contract requirements.

**Certifying Officer:**

Name: \_\_\_\_\_ Designation: \_\_\_\_\_

Date: \_\_\_\_\_

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I hereby upon the advice of the certifying officer approve/ not approve the release of \_\_\_\_\_% performance bond with a value of FJ\$ \_\_\_\_\_ as per the performance appraisal.

\_\_\_\_\_

\_\_\_\_\_  
**Permanent Secretary/ Head of Department** (signed and stamped)

Name: \_\_\_\_\_

Date: \_\_\_\_\_