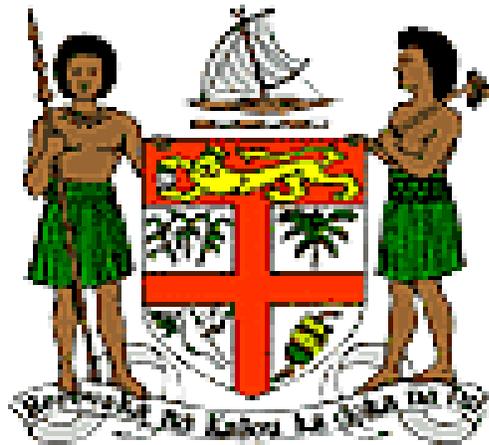


# **MINISTRY OF FINANCE**

## **SPLITTING OF CONTRACTS**



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

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## **Preface**

The Fiji Government has adopted a new procurement policy framework that is established by the Fiji Procurement Regulations 2010.

Violation of the procurement authorities through splitting of cost has been noted by various audit and compliance unit of the Government.

This policy paper guides the various agencies on the scenarios that can be noted as a situation that is in violation to the section 28(3) of the Procurement Regulations stipulating split of contracts.

## **Assistance**

If you require assistance or any further explanations on this Guide, please contact:

Fiji Procurement Office  
Level 4, Ro Lalabalavu House  
Suva  
Phone: (679) 3221233  
Fax: (679) 3313135  
Website: [www.fpo.gov.fj](http://www.fpo.gov.fj)

## TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	SCOPE.....	1
3.0	PURPOSE .....	1
4.0	LEGISLATIVE REQUIREMENTS .....	1
5.0	DEFINITIONS .....	1
6.0	CRITERIA .....	2
7.0	SCENARIOS .....	2
8.0	BUNDLING.....	5
9.0	LEGALITY .....	5
10.0	REVIEW OF THE POLICY .....	5

## **1.0 Introduction**

- 1.1 This policy has been developed to *assist government agencies in identifying* what constitutes contract or cost splitting.
- 1.2 Contract or cost splitting is a method of dividing the total procurement for a particular item or from a single supplier resulting in the reduction of the total sum of procurement to below the limits of legislated approval procurement authorities stipulated in the *Procurement Regulations 2010 and Financial Manuals*.
- 1.3 Poor planning or “calculated” abuse of Government funds often give rise to splitting of contracts or costs whereby Ministries and Departments that practice contract-splitting are compromising the principles of procurement.

## **2.0 Scope**

- 2.1 This policy applies to all officers who are involved with any process of the procurement functions within government agencies.

## **3.0 Purpose**

- 3.1 This policy serves to identify and clarify scenarios under which the process carried out constitutes splitting of procurement requirements.
- 3.2 This policy serves to assist and deter government agencies from contract-splitting.

## **4.0 Legislative Requirements**

- 4.1 Regulation 28(3) of the Procurement Regulations 2010 sets out the legislative requirements that prohibits the splitting of procurement requirements.
- 4.2 The policy must be read in conjunction with the *Policy on Procurement Framework* and the *Guide to Preparation of the Annual Procurement Plan*.

## **5.0 Definitions**

- 5.1 Splitting of contracts - means dividing contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making it fall below the threshold requiring legislated procurement approval or circumvent the requirement of public bidding for procurements over \$50,000 VIP.

- 5.2 Contracted Projects – for the purpose of this policy, contracted projects are works that are outsourced to private contractors. Materials in this instance are not purchased by the procuring agency
- 5.3 Projects – can be defined as goods or work procured for an individual beneficiary or a construction work to be carried out on a specific location or building.

## **6.0 Criteria**

- 6.1 In order to differentiate and identify a split, the procurement would be classed under one of the following criteria.
- (i) A procurement of the same product, services or works on the basis of different contracts with the same supplier (successive contracts);
  - (ii) A procurement of the same product, services or works from different suppliers (successive or simultaneous contracts);
  - (iii) A procurement of different products on the basis of several smaller contracts, whilst these products could normally have been provided by the same supplier on the basis of a single contract.
  - (iv) Where there is a reasonable knowledge that the same product or services will be additionally required within the same budgetary term, there are funds available for that purchase, and the sole purpose is to knowingly avoid requesting for tender.
  - (v) Dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of the regulations.

## **7.0 Scenarios**

### **7.1 Construction Projects – Contracted**

A contract is awarded to a single contractor to work on multiple quarters where the total cost is above \$50,000 threshold.

Instead of awarding the contract through the tender process, contracts have been approved by the Agency Permanent Secretary on a per project basis as the amount per quarters is less than the \$50,001. This is splitting because the nature of work is the same and there is only one contractor utilized for the job.

Criteria:

- A procurement of the same product, services or works on the basis of different contracts with the same supplier (successive contracts);

## **7.2 Construction Projects – Purchase of Materials**

Agencies that purchase building material must treat the total cost of materials purchased during the year as the approval threshold.

The agency is responsible for planning and purchasing their materials for all ongoing projects.

However in cases where the materials are already on standing offer contracts than the agency must first use that contract. If the remaining cost is above \$50,000 then a tender must be called for the procurement of the remaining materials.

Criteria:

- A procurement of the same product, services or works on the basis of different contracts with the same supplier (successive contracts);
- A purchase of the same product, services or works from different suppliers (successive or simultaneous contracts);
- Where there is a reasonable knowledge that the same product or services will be additionally required within the same budgetary term, there are funds available for that purchase, and the sole purpose is to knowingly avoid requesting for tender.

## **7.3 Projects with Multiple Items**

In scenarios where an agency has to work on a project that is made up of multiple items, only those items that are over the limit, or are related and can be bundled to call a tender, must be procured via the tender process. If products are interrelated and can be bundled to call a tender, then the agency must do so, otherwise splitting of contracts or costs is inevitable.

Agencies are requested to submit their project list to the respective cluster officers for further analysis of their project procurement.

Criteria:

- A purchase of different products on the basis of several smaller contracts, whilst these products could normally have been provided by the same supplier on the basis of a single contract.

#### **7.4 Interval Purchasing**

At the beginning of the year, agencies are aware of the goods, services or works, the quantity and volume as well as the procurement costs required. Interval purchasing is when an agency, for example, needs to procure 30 computer sets at a cost of \$2,000 each, total sum of \$60,000, VAT inclusive price. The agency in this case must call a tender, and if not required to install all in one delivery, can opt for “as and when” required terms.

It is prudent to note that agencies must not raise separate Local Purchase Orders (“LPO’s”) or indents for the same supplier during the year at separate intervals to circumvent the tender process.

- Where there is a reasonable knowledge that the same product or services will be additionally required within the same budgetary term, there are funds available for that purchase, and the sole purpose is to knowingly avoid requesting for tender.

#### **7.5 Multiple invoices for comparable product /works from various suppliers**

If an agency purchases similar product from the same supplier or various different suppliers at different occasions for which the aggregated amount is over \$50,000, then those purchases will be regarded as a split.

- Dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of the regulations.

#### **7.6 Unforeseen Split**

Scenarios may arise due to poor or no planning for procurement during the budgetary period. However, in cases where procurement was planned but due to unforeseen circumstance appears to be a split, the agency must have documentary evidence and may have to prepare a submission for Waiver of Tender procedures that will require approval of the Minister of Finance.

## **8.0 Bundling**

- 8.1 Bundling is a process of grouping many aspects of the project as one in order to procure based on the analysis of cost, contract duration, supplier capabilities, risk management considerations and contract administration elements associated with the component of the project.

Bundling is the antonym of splitting. Bundling occurs where agencies bundle the requirement of the project for greater operational and financial sense or to achieve a better value.

The aimed advantages for the agency are to increase efficiency and add value for their money.

## **9.0 Legality**

- 9.1 Scenarios may arise during the operational processes of the agencies that may not be documented in this policy. Accordingly, procurement officers are advised to liaise closely with the FPO. Questionable scenarios may be submitted to the Solicitor General's Office for a legal view via FPO.

## **10.0 Review of the Policy**

- 10.1 This policy will be reviewed every 6 months. In addition, if at any time legislative or policy changes occur rendering the policy or sections inapplicable, it shall be reviewed and amended accordingly.