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NOTICE

The following document is circulated herewith and forms this issue of the Official Gazette:-

REGULATION:-

9. Resolution of the Procurement Board for Regulations to Govern Public Procurement

Gazette Dated: 27th February, 2014

RESOLUTION OF THE PROCUREMENT BOARD

FOR

REGULATIONS TO GOVERN PUBLIC PROCUREMENT

Resolution of the Procurement Board made pursuant to section 2 of the Public Procurement (Transitional) Regulations No. 48 of 2013 as provided for by section 51 of the Public Procurement and Contract Administration Act, No. 6 of 2012.

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PART 1

PRELIMINARY PROVISIONS

Interpretation

I. (1) In this Resolution—

“Act” means the Procurement and Contract Administration Act No. 6 of 2012;

“Administrative Officer” in relation to a solicitation, means an officer appointed under section 2 of this Resolution;

“Bid” includes a bid, requests for proposals and applications to prequalify;

“Bidder” includes a bidder, offeror and applicant for prequalification;

“Bid Documents” means the documents specified in section 4(1);

“Bid Receipt Book” is a book in which the name of the bidder, the date, time and number of bids received by the Procurement Unit and such other information as the Procurement Unit considers necessary is recorded;

“contract” means a formal agreement or an agreement evidenced by the issue of a purchase order;

“contractor” means a person having a procurement contract with the Government;

“Invitation for Bids” means the information specified in section 5 and includes invitations for proposals and invitations to prequalify;

“Methods of Procurement” means the conduct of procurement by means of—

- (a) solicitation by competitive sealed bids or invitation to prequalify for a solicitation by competitive sealed bids;
- (b) solicitation by competitive sealed proposals or invitation to prequalify for a solicitation by competitive sealed proposals;
- (c) solicitation by competitive quotations;
- (d) emergency solicitation;
- (e) large sole source solicitation;
- (f) small sole source solicitation; or
- (g) small procurement;

“prescribed amount” means 50,000 dollars for procuring vehicles and 40,000 dollars for procuring goods, works, and services;

“Procurement Notice” means a notice to the public to invite potential bidders to submit bids or requests for quotations and contains a brief description of the goods, services or works to be procured; and

“responsible”, in relation to an award of contract, means a person who has the—

- (a) capability to perform the contract in accordance with its requirements; and
- (b) integrity and reliability that will assure performance in good faith.

(2) A procurement authority shall comply with this Resolution and all policies of the Board made under section 34(1)(h) of the Act and this includes the policies contained in a procurement manual approved by the Board under section 34(1)(b) of the Act.

PART 2

PRELIMINARY PROCUREMENT MATTERS

Appointment of Administrative Officer

2. (1) When a decision is made to conduct procurement, the procurement authority shall appoint, in writing, a public officer as Administrative Officer for each method of procurement.

(2) An Administrative Officer is the contact person in relation to procurement and is responsible for—

- (a) ensuring that procurement is done in accordance with the procedures set out in the Act and this Resolution;
- (b) maintaining current information of the status of a procurement in relation to which he has been appointed Administrative Officer;
- (c) filing and securing all procurement documents; and
- (d) recording all deliberations and decisions by the procurement authority.

(3) When an Administrative Officer cannot perform his procurement functions and is replaced by another officer, the procurement authority shall immediately notify all persons with whom that Administrative Officer dealt, that a new Administrative Officer has been appointed.

Submission of preliminary procurement documents to Procurement Unit

3. The procurement authority shall, prior to the Procurement Unit issuing any Procurement Notice or Invitation for Bids, submit to the Procurement Unit the procurement documents containing—

- (a) a description of what is to be procured and a justification of the need for the procurement;
- (b) the information required to be provided pursuant to section 12 of the Act together with a description of the scope and quantity of work to be procured;
- (c) the source of funds;
- (d) the method of procurement to be used;
- (e) the need for prequalification, if any;
- (f) whether a local preference policy would be applied;

- (g) a draft of the proposed instructions to any bidder;
- (h) a draft of Bid Documents; and
- (i) any other information that the Procurement Unit may require.

PART 3

PROVISIONS GOVERNING THE PROCUREMENT PROCESS

Division 1

Bid Documents, Invitations for Bids, Bid Securities

Bid Documents

4. (1) Bid Documents includes—
- (a) the Invitation for Bids;
 - (b) instructions to bidders regarding the evaluation criteria, the method of procurement to be used and the form, procedure and timing for the submission of bids;
 - (c) the bid information sheet which details the specifications for the particular procurement, may include the following —
 - (i) eligibility requirements;
 - (ii) procedure for clarification;
 - (iii) bid preparation forms;
 - (iv) number of copies to be submitted;
 - (v) language of bids;
 - (vi) pricing of Bid Documents,
 - (vii) currencies and the currency conversion mechanism;
 - (viii) instructions on modification and withdrawal of bids;
 - (ix) bid 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;

- (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 authority;
 - (f) the technical specifications and drawings which details the characteristics of the technologies and technical services required;
 - (g) bid forms which may include: the bid submission sheet and price schedules; bid security forms; contract form; performance security form; bank guarantee form for advanced payment; and manufacturer's authorization form; and
 - (h) the requirements for a responsible bidder as stated in section 12.

(2) The Chief Procurement Officer may, after consultation with the procurement authority, and based on the procurement method selected and the subject matter of the procurement, adjust the contents of the Bid Documents.

(3) Notwithstanding subsection (2), the Chief Procurement Officer shall include the Invitation for Bids in every Bid Documents.

Invitation for Bids

5. An Invitation for Bids, shall contain the following information—

- (a) the name of the project and the name of the procurement authority responsible for the particular procurement;
- (b) items or works to be procured;
- (c) contact information for obtaining Bid Documents;
- (d) cost of the Bid Documents;
- (e) place and deadline for bid delivery;
- (f) required bid security amount and form, if any;
- (g) the place, date and time of bid opening;
- (h) for complex procurements - the minimum qualifications bidders shall meet;

- (i) a statement that the government is not bound to accept the lowest of any bid; and
- (j) a statement that the Invitation for Bids may be cancelled or rejected without any liability arising for government.

Bid and performance securities

6. (1) Subject to subsection (3), the procurement authority shall, in relation to the method of procurement selected, determine if a—

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

(2) A bid 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 for works may have a—

- (a) bid security in an amount up to 3% of the bid or, if the bid permits more than one amount to be proposed, the highest of those amounts; and
- (b) performance security in the amount of to be determined by the Chief Procurement Officer and the procurement authority.

(4) The procurement authority shall—

- (a) in determining whether a bid security referred to in subsection (1) is required, consider the risk that a prospective bidder will neglect or refuse to—
 - (i) execute a formal contract when required by this Resolution, and
 - (ii) provide the required performance security within the time stipulated in the Invitation for Bids;
- (b) in determining whether a performance security referred to in subsection (1) is required, consider the risk of default by a successful bidder and the estimated cost of remedying the default.

Division 2*Publication of Procurements, Pre-Bid Clarification, Submission of Bids, and Modifications to Bid Documents***Publication of Notice of Procurement and Invitation for Bids**

7. (1) Subject to subsection (2), the Procurement Unit shall publish all Notices of Procurement and Invitations for Bids in the Gazette and by using at least one of the following means of publication—

- (a) the official website of the Government of Anguilla;
- (b) a newspaper of local, regional or international circulation;
- (c) the local, regional or international media; or

(d) 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 that best means for communicating the Notice of Procurement and the Invitation for Bids.

Pre-bid clarification

8. (1) Subject to subsection (3), any bidder can seek clarifications from the procurement authority through the Procurement Unit regarding any aspect of the Bid Documents up to 14 days from the deadline for the submission of bids.

(2) The procurement authority, through the Procurement Unit, shall respond to all requests for clarifications up to 7 days from the deadline for the submission of bids using the procedure in section 10(5).

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

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

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

Submission of Bids

9. (1) The Chief Procurement Officer and the procurement authority 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, to be able to prepare and present their submissions, taking into account the reasonable needs of the procurement authority.

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

(4) All responses to Invitation for Bids shall be submitted to the Procurement Unit.

(5) A bid shall be submitted in the form and in accordance with the requirements specified in the Bid Documents.

(6) A bid, including a bid that requires a two-envelope process or a two stage bidding process, shall be submitted in a sealed envelope; and where a two-envelope process is used, one shall be labelled "technical" and one shall be labelled "financial" as appropriate.

(7) No late bids shall be accepted and all late bids shall be returned unopened by the Procurement Unit.

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

(9) All bids submitted within the time period specified in the Bid Documents shall be kept securely by the Procurement Unit and opened in accordance with sections 23 or 25 of the Act.

(10) The Procurement Unit may develop rules that set out a minimum time to be allowed for submission of bids in the case of each method of procurement.

Modification and clarification to Bid Documents by procurement authority

10. (1) A procurement authority may issue clarifications or modify Bid Documents at any time prior to the deadline for the submission of bids.

(2) The Chief Procurement Officer shall, where any clarifications or modifications are made to the Bid Documents by the procurement authority, publish these clarifications or modifications in the same manner as the publication of the initial Bid Documents.

(3) The procurement authority may, where clarifications or modifications are issued to the Bid Documents, prior to the deadline for making the submission, extend the deadline in order to allow the bidders sufficient time to take into account the clarifications or modifications while making the submission.

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

(5) A copy of any clarifications or modifications to the Bid Documents is sufficiently given to a person to whom the Invitation for Bids was issued if it is—

- (a) handed to the person or the representative of the person and the person or representative signs in a legible manner and dates an acknowledgement of receipt;
- (b) sent by fax in such 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 another means of electronic communication or other manner that is agreed upon by the person to whom the Invitation for Bids 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 a record of the agreement and shall give a copy to the person referred to in subsection (5)(d).

Modification to Bid Documents by bidder

11. (1) A bidder may change or modify a bid by submitting a Notice of Modification which details the changes made to the Chief Procurement Officer at any time before the deadline for submissions of bids.

(2) The Notice of Modification shall be submitted using the procedure mentioned in section 9(6) and, in addition, each envelope shall be labelled "Modification of Bid".

Division 3*Responsible Bidders and Prequalification of Bidders***Determination of responsible of bidders**

12. (1) The following may be used to determine whether a bidder 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 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 to carry on business in Anguilla that he has satisfied all the legal requirements to carry on business in Anguilla or, if the bidder has his headquarters outside Anguilla, of his intention to satisfy the requirements to carry on business in Anguilla, and
 - (ii) that he is not disqualified 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 any director, officer, manager or supervisor or partner of the bidder is not or will not be suspended or debarred under Part 5 of the Act;
- (d) if the bidder carries on or has carried on business in Anguilla, evidence that the bidder 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 in the Bid Documents other than a requirement specified in subsection (1) unless the Board agrees.

(3) The criteria for qualifications set out in the Bid 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.

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

(5) The Procurement Unit may, by notice in writing, require a bidder 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 in accordance with the criteria in the Bid Documents.

(6) A bidder 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 Procurement Unit shall without delay notify the bidder in writing if he has been found not responsible.

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

Prequalification of bidders

13. (1) A potential bidder may be required to be prequalified as a condition of submitting a bid in response to an Invitation for Bids.

(2) The procurement authority may engage in a pre-qualification process with a view to identifying, prior to inviting bids, the bidders that are qualified.

(3) The procurement authority shall decide who is prequalified in accordance with section 12 of this Resolution and the criteria set out in the Bid Documents and in any other prequalification documents.

(4) The Procurement Unit shall publish notification of successful and unsuccessful applicants on the official website for the Government of Anguilla.

(5) Wherever a prequalification process has been engaged in, only bidders who have prequalified shall be entitled to continue in the procurement proceedings.

(6) The Board may develop rules to further govern the prequalification process.

Division 4

Withdrawal of Bid and Opening

Withdrawal of Bid

14. A bidder may, prior to the deadline for submission of bids, withdraw his bid after it has been submitted by sending a written notice of the withdrawal to the Procurement Unit.

Opening process

15. (1) The Administrative Officer or a designate of the procurement authority shall be present at the opening process.

(2) Before the opening process commences, all representatives of bidders shall sign an attendance register.

(3) 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.

(4) Withdrawal notices received prior to the submission deadline shall be opened, read aloud and recorded and any bid subject to a withdrawal notice shall be returned unopened to the respective representative.

(5) The Chief Procurement Officer shall, after the opening process, immediately file original copies of bids in the Procurement Unit and give the submitted copies of bids to the Administrative Officer or a designate of the procurement authority.

PART 4

EVALUATION AND AWARD OF CONTRACT

Evaluation Committee

16. (1) Prior to the date for the submission of bids, the procurement authority shall constitute an Evaluation Committee consisting of at least 3 members and forward the names and titles of the members to the Procurement Unit.

(2) In a two-stage bidding process the procurement authority must determine whether a separate Evaluation Committee will be set up for each stage but the names and titles of each Evaluation Committee member must be sent to the Procurement Unit prior to the date for the submission of bids.

Criteria for evaluation

17. (1) The criteria for determining the responsive and successful bid including the relative weight to be attached to each criterion shall be contained in the Bid Documents.

(2) The Evaluation Committee shall be responsible for the evaluation of the bids using the criteria in the Bid Documents and no other criteria may be used.

Evaluation Process

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

- (a) a preliminary evaluation to determine whether the bids meet the minimum standards of acceptability as set out in the Bid Documents and to eliminate bids which are not substantially responsive;
- (b) a detailed examination of the bids which includes—
 - (i) correction of arithmetic errors,
 - (ii) conversion to a common currency,
 - (iii) quantification of omissions and deviations;
- (c) application of evaluation criteria;
- (d) comparison of bids; 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, if discrepancies are identified, these may be rectified through clarification with the bidder without giving any benefit to the said bidder and without prejudice to the interest of other bidders.

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

(4) The Board may develop rules to guide the procedure of the Evaluation Committee.

Evaluation of bids and recommendations

19. The Evaluation Committee shall—

- (a) review every bid that is opened to determine if—
 - (i) the bidder is responsible, and
 - (ii) the bid is responsive;
- (b) evaluate each bid of a responsible bidder that is responsive in accordance with the evaluation criteria set out in the Invitation for Bids; and
- (c) prepare a report setting out particulars of the results of the review and evaluation and its recommendations to the procurement authority and the Board.

Negotiations with lowest responsible bidder that is responsive

20. (1) The Board, after reviewing the Evaluation Report, must determine whether or not negotiations should take place between the procurement authority and the responsible bidder who submitted the lowest responsive evaluated bid.

(2) The negotiations may be conducted with the bidder 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 contains a statement to that effect.

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

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

Extension of bid security

21. (1) The procurement authority may, where it appears to the procurement authority that any bid security provided by a bidder may expire before a formal contract is executed by a successful bidder, request in writing that the bidder extends his bid security for a reasonable period as is specified.

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

(3) The procurement authority (if it is other than the Chief Procurement Officer) shall, where it determines that a bid is unresponsive under subsection (2), notify the Chief Procurement Officer that the bid has been determined to be unresponsive and the Chief Procurement Officer shall notify the bidder of that fact.

(4) The Board may, where a bidder whose bid is accepted refuses to provide the bid security required by the Bid Documents—

- (a) forfeit the bid security of the bidder whose bid is accepted; and
- (b) accept the bid of and award a contract to the responsible bidder who submits the next lowest responsive evaluated bid.

Award of contract

22. (1) The Board may, after considering the Evaluation Report, make a decision in accordance with this section.

(2) The Board may, when it is satisfied that sufficient funds are available or, in the case of a multi-year contract, that sufficient funds are available for the first year, accept a bid, including a bid as modified by negotiations under section 20, and award the procurement to the responsible bidder who submits the lowest responsive evaluated bid and, if it does so, its acceptance shall—

- (a) not be subject to any condition, other than the execution of a formal contract; and
- (b) be communicated to the successful bidder in writing without delay.

(3) The Board may make more than one award of contract in respect of an Invitation for Bids if the Invitation for Bids so provides and may award a contract that increases or decreases the scope or value of the proposed contract when the Invitation for Bids contains a statement to that effect.

(4) The Board may, when a bidder whose bid is accepted refuses or neglects to execute a contract required by the Bid Documents—

- (a) forfeit the bid security of the bidder whose bid is accepted; and
- (b) accept the bid of and award a contract to the responsible bidder who submits the next lowest responsive evaluated bid.

Notice to unsuccessful bidders

23. The Board shall, after the successful bidder has complied with the requirements of the Bid Documents or provided any required performance security and has entered into a formal contract, immediately communicate to the other bidders in writing that they were not successful

Publication of award

24. The Chief Procurement Officer shall, after notice is given under section 23, publish notice of an award of contract, other than an award that is confidential under section 3 of the Act, by posting a notice setting out particulars of the award on the official website of the Government of Anguilla and by such other means as he considers appropriate.

Debriefing unsuccessful bidder

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

PART 5**ERRORS IN BID DOCUMENTS, REJECTION OF BIDS, CANCELLATION OF BIDS****Errors in Bid Documents**

26. (1) The procurement authority shall, where it has reason to believe that there is a substantial error in a Bid Document, consult the Board and the Attorney General.

(2) The procurement authority 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 confirms that he accepts the Bid Document as corrected; or
- (b) cancel the procurement pursuant to section 28.

Rejection of bids

27. (1) The procurement authority may advise the Board to reject a bid where—
- (a) a bidder is not qualified according to section 12 of this Resolution;
 - (b) it materially departs from the requirements specified in the Bid Documents;
 - (c) the bidder submitting the bid or his agent gave or agreed to give directly or indirectly, to any current or former officer or employee of the Procurement Unit or other governmental department a gratuity in any form, an offer of employment or any other thing of value, so as to unduly influence the procurement process;
 - (d) the bidder has an unfair competitive advantage;
 - (e) the bidder has a conflict of interest;
 - (f) the price of the lowest responsive bid 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 and the procurement authority is satisfied;
 - (g) all the bids received are not responsive to the requirements in the Bid Documents;
 - (h) where the procurement authority after receiving the bids, reasonably concludes that there is lack of competition; or
 - (i) the award of a contract will not be in the best interest of the procurement authority or the Government of Anguilla.

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

(3) The procurement authority or the Board shall disclose the reasons for excluding a bid in writing and the Chief Procurement Officer shall inform the bidder concerned.

(4) All decisions to reject bids shall be published on the official website for the Government of Anguilla.

(5) If a bid is rejected under this section, the Government of Anguilla shall not be responsible for any costs or loss associated with the procurement.

Cancellation of procurement

28. (1) The procurement authority may cancel the procurement at any time—
- (a) prior to the acceptance of the successful bid; or
 - (b) after the successful bid was accepted in accordance with subsections (5) and (6).

(2) The Procurement Unit shall not, where the procurement authority cancels a procurement, open any bids.

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

(4) The Procurement Unit shall promptly return any bids that remain unopened to the bidders that submitted them.

(5) If the bidder whose bid 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 authority may cancel the procurement process.

(6) The procurement authority shall, where a bidder is suspended or debarred from the procurement process in accordance with Part 5 of the Act,—

- (a) cancel the procurement process if the bid 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 authority and the suspended or debarred bidder.

(7) If the procurement process is cancelled under this section, the Government of Anguilla shall not be responsible for any costs or loss associated with the procurement process.

Return of bid securities

29. The Chief Procurement Officer shall immediately return bid securities to—

- (a) the successful bidder after he has complied with the requirements of the Bid Documents for the execution of a formal contract and provision of a performance security;
- (b) the unsuccessful bidders after the successful bidder has complied with the requirements of the Bid Documents respecting the execution of a formal contract and provision of a performance security;
- (c) a bidder whose bid has been rejected under section 27; and
- (d) all bidders after the procurement authority's decision to cancel the procurement process under section 28.

PART 6

PROCUREMENT METHODS

Division 1

Large and Small Sole Source Solicitations

Sole source solicitations

30. (1) A procurement authority may use a sole source solicitation when it is the public's interest to do so and—

- (a) the subject matter of the procurement is available only from a particular supplier and no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;
- (b) the procurement is of a confidential nature;
- (c) a particular contractor has exclusive or proprietary rights in respect of goods, services or works;
- (d) standardizing equipment is available only from a specific source, and the procurement authority has purchased goods, equipment or technology from a contractor, and additional supply is required for reasons of uniformity;
- (e) the procurement is for the purposes of research, experiment, study or development;
- (f) there is follow-on procurement, where a contractor has already provided goods, services or work and additional goods, services or works of a similar nature are required to complete the procurement requirements;
- (g) for reasons of urgency brought about by events unforeseen by the procurement authority, the products or services could not be obtained in time by means of the open competitive bid process;
- (h) the procurement authority and the Board agree that given the context of the subject of the procurement that this is the best method; or
- (i) international or regional agreements specify that goods or services must be procured from a specific source.

(2) A procurement authority that wishes to procure from a sole source provider must receive the written approval of the Board to do so and must provide the Board with—

- (a) a recent (less than 30 days) quotation from the sole source provider;
- (b) a justification for using this type of solicitation;
- (c) a statement of capability from the sole source provider that meets the Government's procurement needs; and
- (d) written approval to procure from a single source by the Permanent Secretary responsible for Finance.

Large sole source solicitation

31. (1) Large sole source solicitation means that the estimate of the amount of the contract is equal to or exceeds the prescribed amount.

(2) The procurement authority must negotiate the best contractual terms with the selected sole source provider and prepare an Evaluation Report for the Board.

(3) Part 4 applies, with the necessary changes, to an award of contract for large sole source solicitations.

Small sole source solicitations

32. (1) A small sole source solicitation means that the estimate of the amount of the contract is less than the prescribed amount.
- (2) The procurement authority must negotiate the best contractual terms with the small sole source provider and award the contract.

Division 2*Small Procurements***Written requests for quotations**

33. (1) The procurement authority shall, when the estimate of the amount of the contract award for a small procurement is less than the prescribed amount, issue a written request for quotations.
- (2) A written request for quotations shall be made to no fewer than 3 persons, if it is possible to do so.
- (3) A request for quotations may be selective and this occurs when the only persons who are entitled to submit quotations are selected by the procurement authority.

Contents of a written request for quotations

34. A written request for quotations shall include—
- (a) a quotation form;
 - (b) a description of what is to be procured;
 - (c) if the solicitation is for a small procurement of works or services, the contractual terms and conditions applicable to the procurement;
 - (d) if the solicitation is for a small procurement of goods, any necessary contractual terms and conditions not implied by law;
 - (e) instructions, which shall include—
 - (i) where, to whom and how the quotation is to be submitted,
 - (ii) the day and time when quotations will close,
 - (iii) a statement that the basis of award of contract will be an award to the responsible person who submits the lowest responsive evaluated quotation,
 - (iv) a statement that the procurement authority is not bound to accept the lowest or any quotation submitted, and
 - (v) the name, telephone and fax number and email address of the Administrative Officer who can be contacted in relation to the solicitation;
 - (f) any other information that the procurement authority considers necessary.

Notice of written request for quotations

35. The Chief Procurement Officer shall ensure that reasonable notice of a written request for quotations is given before the day and time for the close of quotations specified in the written request for quotations.

Record of persons to whom requests for quotations are issued

36. (1) The procurement authority shall make a record of the name, postal address, and telephone number of all persons from whom a request for quotations is solicited and shall, without delay after the close of quotations, place a copy of the list in the procurement file.

(2) The procurement authority shall give a copy of the record to the Administrative Officer, who shall, without delay after the close of quotations, place a copy of the list in the procurement file.

Opening of quotations for small procurement

37. The Chief Procurement Officer, when opening quotations for a small procurement, shall—

- (a) ensure that at least one Board member and at least one representative from the procurement authority are present;
- (b) make a list that contains—
 - (i) the name and address of each person submitting a quotation, and
 - (ii) the amount of his quotation or, when there is more than one amount in the quotation, each amount quoted;
- (c) give a copy of the list to the Administrative Officer, who shall place the copy in the procurement file.

Review, evaluation and award or rejection of quotations

38. (1) The procurement authority shall, without delay, after the day and time for the close of quotations specified in the request for quotations—

- (a) review each of the quotations in accordance with the statement of the basis of award;
- (b) verify that the person who submitted the quotation is responsible or continues to be responsible, as the case may be; and
- (c) make a summary of his review and verification and place it in the procurement file.

(2) In accordance with section 30 of the Act, the procurement authority may award a contract to the responsible person who submits the lowest responsive evaluated quotation.

(3) The acceptance of a quotation shall be unconditional, except that it may be subject to the execution of a formal contract.

(4) When a quotation is accepted subject to the execution of a formal contract, the contract comes into existence when the formal contract is executed by both parties.

(5) When a quotation is accepted that is not subject to the execution of a formal contract, the issuance of a purchase order to the person submitting the quotation constitutes an award of contract.

(6) The procurement authority may reject all quotations.

(7) The procurement authority shall, once it has made a decision, notify all persons who submitted quotations in response to a request for quotations of that decision.

(8) The Administrative Officer shall obtain a copy of each formal contract that is executed and each purchase order and place it in the procurement file.

PART 7

CONTRACTS AND CONTRACT ADMINISTRATION

Form and execution of contracts

39. (1) This section applies in relation to an award of contract arising from a—
- (a) solicitation by competitive sealed bids or competitive sealed proposals;
 - (b) large emergency solicitation or a large sole source solicitation;
 - (c) small procurement arising from a solicitation by competitive quotations, a small emergency solicitation or a small sole source solicitation for which the value of the contract is from 5,000 dollars to the prescribed amount.
- (2) An award of contract whose value is from 5,000 dollars to the prescribed amount shall be formalized by a simple agreement.
- (3) An award of contract whose value is the prescribed amount or more shall be formalized by a formal agreement.
- (4) The form of the simple agreement or formal agreement, as the case may be, shall be approved by the Attorney General.
- (5) The procurement authority shall execute a formal agreement on behalf of the Government and this formal agreement must be witnessed by the chairperson or deputy chairperson of the Board.
- (6) The accounting officer for the procurement authority shall execute a simple agreement on behalf of the Government.

Standards to be met by specifications

40. (1) A procurement authority shall, in any specification it uses—
- (a) seek to obtain the best value for the purposes for which the procurement is intended and to encourage the maximum practicable competition in making the procurement; and
 - (b) shall ensure that the specification is not any more restrictive than is necessary to meet the objectives referred to in paragraph (a).

(2) In subsection (1), “specification” means any description of the physical or functional characteristics, or of the nature of works, goods or services and includes a description of any requirement for inspecting, testing or preparing works, goods or services for delivery.

Award of contract after previous consulting contract

41. 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 is ineligible to make or participate in an invitation to

prequalify or submission or be awarded a contract for the execution of any of the works in respect of which the prior consulting services were rendered.

Contracts for legal services

42. The Board shall not award a contract for legal services except with the approval of the Attorney General.

Renewal or extension of contract

43. The procurement authority may 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; or
- (c) the Permanent Secretary with responsibility for Finance approves the renewal or extension.

Term of contract that money be available

44. 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 under that contract would come in the course of payment.

Bid by statutory bodies

45. A statutory body must get the written approval of the procurement authority and then the Board in order to respond to a competitive solicitation.

Appointment of contract administrator

46. (1) The procurement authority shall be the contract administrator.

(2) If the procurement authority believes that it does not have the capacity to administer a contract, the procurement authority must consult with the Board about the—

- (a) reasons why there is a need for a contract administrator; and
- (b) possible options for a contract administrator.

(3) The procurement authority shall, subject to Executive Council approval, appoint a contract administrator.

(4) A contract administrator appointed under subsection (3) shall be remunerated.

(5) The procurement authority is responsible to the Government for the performance of the work of a contract administrator who was appointed under subsection (3).

Duties of contract administrator

47. (1) The contract administrator 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 administrator shall not agree to any substantial change to the terms of a contract without the prior approval of the Board and the Attorney General.

(3) Where the contract administrator is not the procurement authority then the contract administrator must not agree to any change to the purchase order without the prior approval of the procurement authority.

Performance of contract not to commence until contract executed

48. 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.

Contractor evaluation

49. The contract administrator shall evaluate the performance of each contract as soon as the contract has ended in accordance with the policy of the Board.

PART 8

MISCELLANEOUS

Confidentiality on the part of public officers

50. (1) A public officer shall not disclose any information to any person unless—
- (a) that person needs to know for the purpose of discharging his functions as a public officer;
 - (b) the Governor who is responsible for national defence and national security gives prior approval; or
 - (c) the public officer is ordered to do so by the court.

(2) The information referred to in subsection (1) shall be kept apart from other documents and all records shall be stored in a safe, fireproof filing cabinet.

Fees payable for copies

51. (1) The Board shall determine the fees payable for a hard copy of an Invitation for Bids, request for proposals or invitation to prequalify.

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

Registration of bidders

52. (1) The Procurement Unit or the procurement authority may invite offers from prospective bidders for their registration as qualified bidders for participation in the bid process pertaining to a subject matter of procurement or class of procurement.

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

(3) If the number of registered bidders for a particular class of procurement is fewer than 3, the procurement authority may invite offers to seek registration.

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

Procurement files

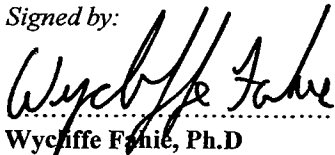
53. The Chief Procurement Officer shall develop and maintain a procurement filing system and shall secure all procurement files.

Availability of procurement manual and policies of the Board

54. The Chief Procurement Officer shall make up-to-date copies of the procurement manual and policies of the Board available to procurement authorities and to the public and, if the copies are printed, may charge for the reasonable cost of reproduction.

Resolution made by the Procurement Board this **26** day of **FEBRUARY**, 2014.

Signed by:



Wychffe Fanie, Ph.D
Chairman of the Procurement Board

In the presence of:



Sonia Brooks
Secretary of the Procurement Board