

VIRGIN ISLANDS
PUBLIC PROCUREMENT REGULATIONS, 2022
ARRANGEMENT OF REGULATIONS

REGULATIONS

PART I
PRELIMINARY

1. Citation
2. Interpretation
3. Application
4. Green procurement
5. Occupational rights and freedoms

PART II
ORGANISATION OF PROCUREMENT

6. Procurement Coordinator
7. Procurement Unit
8. Procurement Committee
9. Thresholds values

PART III
PROCUREMENT PLANNING

10. Procurement preparation
11. Procurement plans

PART IV
METHODS OF PROCUREMENT

12. Two stage open tendering
13. Classified Procurement
14. Procedure for the award of framework agreements
15. Requirements for framework agreements
16. Procedure for the award of contracts under a framework agreement

PART V
METHODS OF PROCUREMENT FOR CONSULTING SERVICES

17. Pre-selection
18. Solicitation documents

19. Requests for proposals without negotiation
20. Requests for proposals with consecutive negotiations
21. Single-source selection
22. Individual consultants

PART VI

PROCUREMENT PROCEDURES

23. Advertising of tenders
24. Period for submission of tenders
25. Solicitation documents
26. Solicitation in restricted tendering
27. Solicitation in requests for quotations and single source procurement

PART VII

CHALLENGE PROCEEDINGS

28. Periods for challenge and outcome

PART VIII

GENERAL PROVISIONS

29. Qualification criteria
30. Prequalification documents
31. Exclusion based on conflict of interest
32. Local preference
33. Contractors' Registration and Classification System
34. Effect of registration
35. CRCS registration process
36. Registration and classification
37. Notification of intention to award a contract
38. Notification of contract award
39. Procurement records

SCHEDULE

VIRGIN ISLANDS
STATUTORY INSTRUMENT 2022 NO.
PUBLIC PROCUREMENT ACT, 2021
(NO. 39 OF 2021)

Public Procurement Regulations, 2022

[Gazetted _____, 2022]

The Cabinet, on the advice of the Minister of Finance and in exercise of the powers conferred by section 5 of the Public Procurement Act, 2021 (No.39 of 2021), makes the following Regulations:

PART I
PRELIMINARY

Citation

1. These Regulations may be cited as the Public Procurement Regulations, 2022.

Interpretation

2. In these Regulations, unless the context otherwise requires,
- “accepted contract amount” means the amount of the contract price at the signing of the contract;
- “Accounting Officer” means any person designated as such by the Minister pursuant to section 21(1) of the Public Finance Management Act, 2004, No. 2 of 2004 and charged with the duty of accounting for expenditure on any service in respect of which monies have been appropriated under the Appropriation Act or under any other enactment;
- “Accountable Officer” means any public officer including an accounting officer concerned in or responsible for the collection, receipt, custody, issue, or payment of public monies or other public property;
- “Act” means the Public Procurement Act, 2021, No. 39 of 2021;
- “affiliate” means, in respect of tenderer, a legal person that it directly or indirectly controls, is controlled by, or is under common control with that legal person;
- “Central Tenders Board” means the entity established under section 5 of the Act;
- “classified information” means any information or material, regardless of the form, nature or mode of transmission thereof, to which a certain level of security classification or protection has been attributed, and which, in the interests of national security and in accordance with the laws or regulations in force, requires protection against any misappropriation, destruction, removal, disclosure, loss or access by any unauthorised individual;

- “consultant” means a natural or legal person, providing consulting services;
- “consulting services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills, study, design and organise specific projects, advise clients, conduct training or transfer knowledge;
- “contractor” means the provider of construction of works;
- “currency” includes the monetary unit of account;
- “days” means calendar days;
- “electronic means” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- “framework agreement” means an agreement or other arrangement between one or more procuring entities and one or more tenderer which established the terms and conditions under which the tenderer enters into a contract with the procuring entity in the period during which the agreement or arrangement applies;
- “goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form and electricity as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;
- “local preference” means a margin of preference for the benefit of goods produced in Virgin Islands or labour provided by belongers in accordance with section 40(2);
- “Minister” means the Minister of Finance;
- “Ministry” means the Ministry of Finance;
- “pre-qualification” means the procedure set out in section 46 to identify, prior to solicitation, tenderer that are qualified;
- “pre-qualification documents” means documents issued by the procuring entity under section 46 that set out the terms and conditions of the pre-qualification proceedings;
- “pre-selection” means a procedure to identify, prior to solicitation, a limited number of providers of consulting services that best meet the qualification criteria for the procurement concerned;
- “pre-selection documents” means documents issued by the procuring entity that set out the terms and conditions of the pre-selection proceedings;
- “procurement” or “public procurement” means the acquisition of goods, construction works or services by a procuring entity;
- “procurement contract” means a contract concluded between the procuring entity and a supplier or a contractor at the end of the procurement proceedings;
- “Procurement Coordinator” means the head of the Procurement Unit and secretary to the Central Tenders Board;

- “Procurement Appeals Board” means the entity established under section 27;
- “procuring entity” means any Government Ministry Department, Unit or Agency, or any subdivision or multiplicity thereof, that engages in procurement;
- “Procurement Unit” means the Procurement Unit of the Ministry;
- “Procurement Unit” means the Procurement Unit of the Ministry of Finance existing prior to the commencement of this Act;
- “publish” includes to publish by electronic means;
- “services” means supply of physical services, or other labour, time or effort which may include a tangible end-product produced or supplied as an incident of that labour, time or effort; it may include “consulting services” where the context permits;
- “solicitation” means an invitation to tender, present submissions or participate in request for proposals proceedings;
- “solicitation document” means a document issued by the procuring entity, including any amendments thereto, that sets out the terms and conditions of the given procurement;
- “State-owned Enterprise” means any legal or corporate entity over which the State exercises a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it. Such dominant influence shall be deemed to exist where the State holds the majority of the entity's subscribed capital, controls the majority of the votes attaching to shares issued by the entity, or can appoint more than half of the entity's administrative, management or supervisory body;
- “submission” means a tender, a proposal, an offer, a quotation and a bid referred to collectively or generically;
- “supplier” means the provider for the supply of goods or services;
- “tender security” means a security required from tenderer by the procuring entity and provided to the procuring entity to secure the fulfilment of any obligation referred to in and includes such arrangements as bank guarantees, surety bonds, standby letters of credit, cheques for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange and for the avoidance of doubt, the term excludes any security for the performance of the contract;
- “tenderer” means, according to the context, any potential party or any party to the procurement proceedings with the procuring entity;
- “works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works and includes site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;
- “written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

Application

3. (1) In accordance with section 3(2) of the Act, state-owned enterprises seeking to rely on their own procurement rules or regulations consistent with the Act shall

- (a) forward to the Financial Secretary any such rules or regulations that they have adopted within six months of the entry into force of the Act; or
- (b) in the event of rules or regulations that they intend to adopt following the entry into force of the Act, immediately upon the adoption of the said rules or regulations; and
- (c) the Financial Secretary shall rule on their consistency with the Act within two months of receipt.

(2) In the case of the rules or regulations under subregulation (1)(a), they shall remain in force until such time as the Financial Secretary concludes that they are inconsistent with the Act.

(3) In the case of the rules or regulations under subregulation (1)(b), they shall not enter into force until such time as the Financial Secretary has concluded that they are consistent with the Act.

(4) Where state-owned enterprises do not adopt or have not adopted their own rules or regulations which are consistent with the Act, they shall be subject to the Act and these Regulations at the end of the twelve months following their entry into force.

Green procurement

4. (1) Procuring entities shall take environmental issues into account when tendering for goods or services with the aim of reducing the impact of the procurement on human health and the environment.

(2) Procuring entities shall, as far as is practicable, pursue green procurement by selecting products and services that minimise environmental impacts and which

- (a) use fewer natural resources in their production or use;
- (b) contain fewer hazardous or toxic materials;
- (c) have a longer life span;
- (d) consume less energy or water in production or use; and
- (e) can be reused, recycled or can be disposed of easily and safely.

Occupational rights and freedoms

5. Procuring entities shall require that, in the execution of a government contract, a contractor must:

- (a) pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the area where the work is carried out;

- (b) in respect of all persons employed by him or her (whether in execution of the contract or otherwise) in every workshop or place occupied or used by him or her for the execution of the contract, comply with the general conditions required by the Labour Code, 2010, No. 4 of 2010;
- (c) be responsible for the observance of these conditions by sub-contractors employed in the execution of the contract, and must notify the procuring entity of the names and addresses of all such sub-contractors;
- (d) recognise the freedom of his or her employees to be members of trade unions and must at all times during the continuance of the contract display for the information of his or her workers in every factory, or workshop or place occupied or used by him or her for the execution of this contract, a copy of this condition; and
- (e) pay all wages earned by workers directly to them and not to a supervisor or any other person supervising or taking part in the operations upon which the workers are engaged.

PART II

ORGANISATION OF PROCUREMENT

Procurement Coordinator

6. (1) In addition to overseeing procurement carried out by the Procurement Unit in accordance with regulation 7, the functions of the Procurement Coordinator includes,

- (a) the day to day management of the affairs of the Unit;
- (b) the administration, organisation and control of the officers of the Unit;
- (c) the management of funds, budget and other property of the Unit;
- (d) acting as Secretary to the Central Tenders Board;
- (e) providing advice to procuring entities or the Central Tenders Board and any other relevant stakeholder on public procurement policies and practices;
- (f) overseeing and assisting in the work of Procurement Committees;
- (g) receiving and reviewing the annual procurement plans of the procuring entities;
- (h) publishing summaries of these procurement plans on the procurement website;
- (i) monitoring the operation of the Act and reporting thereon to the Central Tenders Board;
- (j) developing and periodically updating a procurement manual for use by all persons involved in procurement;

- (k) performing any other duties and exercise any other powers in relation to procurement as are assigned to him or her by the Central Tenders Board.

Procurement Unit

7. (1) Acting on behalf of the procuring entity under section 5(9) of the Act, the functions of the Procurement Unit shall include

- (a) based on the procurement proposals provided by the Procurement Committee of the procuring entity, preparing all invitations to tender, invitations to pre-qualify or for pre-selection, requests for proposals and solicitation documents in accordance with the standard solicitation documents;
- (b) publishing and dispatch of invitations to tender, invitations to pre-qualify or for pre-selection and requests for proposals;
- (c) receiving and safeguarding, tenders, proposals and applications for pre-qualification or for pre-selection, where appropriate;
- (d) responding to requests for clarification from tenderers, seeking the assistance of the procurement committee of the procuring entity where appropriate;
- (e) organising and recording pre-tender meetings or site visits, if any, and seeking the assistance of the procurement committee of the procuring entity where appropriate;
- (f) conducting the opening of tenders or proposals;
- (g) organising an appropriate evaluation committee consisting of relevant technical, financial or legal expertise and including experts from the procuring entity;
- (h) for contracts exceeding the prescribed threshold amount, sending the evaluation report to the Central Tenders Board for review and recommendation to the Cabinet;
- (i) publishing the contract award notices;
- (j) maintaining complete records.

(2) Where the Financial Secretary has mandated centralised procurement of common use items, the functions of the Procurement Unit shall also include:

- (a) identifying the annual aggregated requirements for goods, works, services or consulting services that may be suitable for procurement by the Procurement Unit on behalf of all procuring entities by way of framework agreements; and, in doing so, consider all relevant factors, including:
 - (i) when it is appropriate to aggregate in order to achieve economies of scale;
 - (ii) which items are of a similar nature and likely to attract the same potential tenderers;
 - (iii) when items will be ready for tendering and when delivery, implementation or completion is required;

- (iv) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;
 - (v) which items could be subject to the same tender requirements and conditions of contract;
 - (vi) the potential to realise savings in time or transaction costs or to facilitate contract administration by the procuring entity; and
 - (vii) any other special factors related to the specific item.
- (b) finalising a procurement plan for the centralised procurement of goods, works, services or consulting services and informing all procuring entities of the goods, works, services or consulting services that will be purchased centrally;
 - (c) conducting centralised procurement for such aggregated requirements by way of framework agreements;
 - (d) informing all procuring entities of the contact details of the providers with whom framework agreements have been concluded and a list of all the goods, works, services or consulting services available for purchase from the providers together with details of how purchases (call-offs) are to be made from the Framework Agreement.

Procurement Committee

8. (1) Each procuring entity shall establish a Procurement Committee consisting of not less than three persons appropriate to the needs of the entity as follows:

- (a) Chairperson (Accounting Officer/Permanent Secretary);
- (b) Finance & Planning Officer;
- (c) Secretary (Non-voting member).

(2) Technical personnel or subject matter experts may be co-opted as necessary, pursuant to the nature of the procurement.

(3) In respect of all procurement, the Procurement Committee shall be responsible for

- (a) submitting the annual procurement plan to the Procurement Unit in accordance with the template issued by the Procurement Unit;
- (b) preparing, in cooperation with the end-user department(s), procurement proposals of the procuring entity, containing the detailed procurement and technical requirements, estimated budget, proposed qualification and award criteria, proposed procurement method and any other criteria consistent with the Act and Regulations.

(4) In respect of procurements not exceeding the threshold set out in regulation 9(2), the Procurement Committee shall be responsible for

- (a) preparing the solicitation documents, requests for quotation or requests for proposals in respect of each procurement in accordance with the templates issued by the Procurement Unit;
- (b) seeking advice and guidance from the Procurement Unit where appropriate;
- (c) publishing or dispatching notices, requests for quotation or requests for proposals;
- (d) receiving and safeguarding tenders, quotations and proposals;
- (e) responding to requests for clarification from tenderers;
- (f) conducting the opening of tenders or proposals;
- (g) organising and recording site visits, if any;
- (h) effecting the objective evaluation of the tenders, quotations or proposals for approval by the accounting officer or accountable officer, as the case may be, and preparing an evaluation report;
- (i) administering and implementing purchase orders and, in doing so, seeking the assistance and advice of the Procurement Unit where appropriate;
- (j) maintaining the procurement file with complete records for each procurement; and
- (k) keeping a full record of all procurement carried out to be submitted in a summary report to the Procurement Unit at mandated intervals.

(5) In respect of procurements exceeding the threshold set out in regulation 9(2), the Procurement Committee shall be responsible for

- (a) sending the procurement proposals to the Procurement Unit for processing and responding in a timely manner to any clarifications or assistance requested;
- (b) providing technical and, as appropriate, financial or legal experts for the evaluation committee;
- (c) assisting the Procurement Unit in responding to requests for clarification from tenderers and organising and recording site visits, if any.

(6) In respect of procurement carried out centrally by the Procurement Unit under regulation 7(2) of these Regulations,

- (a) placing purchase orders for the required goods, works, services or consulting services directly from the providers with whom framework agreements have been concluded in accordance with the terms and conditions communicated by the Procurement Unit;
- (b) making payment directly to the framework providers;
- (c) recording and reporting on the purchases made to the Procurement Unit at mandated intervals.

(7) Procuring entities which directly purchase works, goods or services through the framework agreements established by the Procurement Unit in

accordance with regulation 7(2)) shall be deemed to have complied with the Act and these Regulations insofar as the Procurement Unit has complied with them.

Thresholds values

9. (1) Requests for quotation under section 8(2) of the Act may be employed for contracts with an estimated value not exceeding \$10,000 and the award of the contract shall be approved by the Accountable Officer.

(2) Subject to section 8(3) of the Act, open tendering and restricted tendering must be employed for all contracts with an estimated value exceeding \$10,000 and

- (a) may be conducted by the Procurement Committee of a procuring entity when the estimated value of the contract does not exceed \$100,000 and approved by the Accounting Officer;
- (b) shall be conducted by the Procurement Unit of the Ministry when the estimated value of the contract exceeds \$100,000 and approved by the Cabinet.

(3) Requests for quotations and tendering procedures may be restricted to domestic tenderers when the estimated value of the contract does not exceed \$100,000 and provided that the goods, works, services or consulting services sought

- (a) are readily available within the country; and
- (b) meet the quality levels required by the solicitation documents.

PART III

PROCUREMENT PLANNING

Procurement preparation

10. (1) Procuring entities shall ensure that adequate funds are budgeted and appropriated in the current or forward years prior to initiating procurement proceedings including, but not limited to, any funds required for publication of notices.

(2) Procuring entities shall plan procurement with a view to achieving maximum value for public expenditure so that it is carried out within available financial resources and other applicable limitations and at the most favourable time.

(3) Where appropriate, procuring entities shall aggregate procurement requirements in order to achieve economies of scale.

- (4) Before commencing a procurement process, a procuring entity shall
 - (a) inquire as to whether or not its requirements can be met by the transfer of goods from another department or procuring entity;
 - (b) ensure that an accurate estimate of the cost of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and

- (c) commit the amount of the estimate in accordance with the provisions of the Appropriation Act for the relevant year.

Procurement plans

11. (1) Procuring entities shall prepare

- (a) an annual plan; and
- (b) a summary of the annual plan,

in accordance with the templates provided by the Procurement Unit and shall forward the completed templates to the Procurement Unit which may publish the summary of the annual plan on its website.

(2) Procuring entities shall prepare a procurement plan for each fiscal year, containing at least the following information:

- (a) a detailed breakdown of the goods, works and services required;
- (b) a requirements proposal providing a comprehensive description of the requirements prepared in accordance with section 38 of the Act;
- (c) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (d) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-use items;
- (e) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding;
- (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
- (g) a statement of whether the goods, works, services or consulting services will be procured by the Procurement Unit;
- (h) an indication of the appropriate tender, request for quotation or request for proposal documents and the timing for their preparation;
- (i) an indication of whether any pre-tender conferences or site visits are required and if so, their timing;
- (j) a statement as to whether any participation will be limited to domestic tenderers; and
- (k) other details as may be relevant to any item in the plan.

(3) Procuring entities shall prepare a summary procurement plan for each fiscal year, containing at least the following information:

- (a) a general breakdown of the goods, works and services required by category;
- (b) the estimated overall value of each category;

- (c) an indication of the proposed schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (d) an indication of the anticipated procurement method for each procurement requirement; and
- (e) any other details as may be relevant to any item in the plan.

PART IV

METHODS OF PROCUREMENT

Two stage open tendering

12. (1) In the first stage of the two stage open tendering method, the procuring entity may engage in discussions with any or all tenderers whose proposals satisfy the conditions set forth in the solicitation documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the tenderer's willingness to make such changes, and minutes of these discussions shall form part of the procurement records.

(2) At the end of the first stage, the procuring entity may

- (a) reject those tenders which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the tender substantially nonresponsive to the solicitation documents; or
- (b) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximise competition and articulate appropriate evaluation methodology.

(3) In the second stage, the procuring entity shall invite tenderers whose tenders have not been rejected to submit final tenders with prices responsive to the revised solicitation documents.

(4) A tenderer, not wishing to submit a final tender, may withdraw from the procurement without forfeiting any tender security that the tenderer may have been required to provide, and the final tenders shall be evaluated and compared in accordance with the criteria and methodology included in the revised documents.

(5) The procedures for open tendering apply to the two-stage open tendering method, except to the extent they are modified by this regulation.

Classified Procurement

13. (1) In the case of procurement involving, entailing or containing classified information, a procuring entity may award the contract by way of restricted tendering in accordance with section 22 of the Act.

(2) Whenever a procuring entity intends to carry out procurement involving classified information,

- (a) it may impose on tenderers requirements aimed at protecting the classified information they communicate throughout the tendering and contracting procedure; and

- (b) require the tenderers to ensure that their subcontractors comply with such requirements.
- (3) The procuring entity shall specify in the solicitation documents and contract the measures and requirements necessary to ensure the security of such information at the requisite level, including
- (a) a commitment from the tenderer and the subcontractors already identified to appropriately safeguard the confidentiality of all classified information in their possession or coming to their notice throughout the duration of the contract and after termination or conclusion of the contract, in accordance with relevant laws and regulations;
 - (b) a commitment from the tenderer to obtain the commitment provided in paragraph (a) from other subcontractors to which it will subcontract during the execution of the contract;
 - (c) contact details of subcontractors already identified to enable the procuring entity to determine that each of them possesses the capabilities required to appropriately safeguard the confidentiality of the classified information to which they have access or which they are required to produce when carrying out their subcontracting activities;
 - (d) a commitment from the tenderer to provide the information required under paragraph (c) on any new subcontractor before awarding a subcontract;
 - (e) evidence of the ability of the tenderer and its subcontractors to process, store and transmit such information at the level of protection required by the procuring entity.

Procedure for the award of framework agreements

- 14.** (1) A procuring entity may engage in open tendering to conclude a framework agreement where it determines that
- (a) there is a recurrent need for the same or similar requirements, or set of specifications but the nature and timing of specific requirements are not known until the time an order is placed;
 - (b) different procuring entities procure the same goods, works, consulting services or general services and aggregating the demand could lead to volume discounts; or
 - (c) as part of planning for emergency situations.
- (2) The invitation to tender and the solicitation documents shall specify
- (a) that the procurement will lead to the conclusion of a framework agreement;
 - (b) whether the framework agreement is to be concluded with one or more than one tenderer;
 - (c) if the framework agreement will be concluded with more than one tenderer, any minimum or maximum limit on the number of tenderers that will be parties thereto;

- (d) the form, terms and conditions of the framework agreement.

Requirements for framework agreements

15. A framework agreement shall be concluded in writing and shall set out

- (a) the duration of the framework agreement, which shall not exceed 2 years;
- (b) the description of the goods, works or services and all other terms and conditions of the procurement established when the framework agreement is concluded;
- (c) to the extent that they are known, estimates of the terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded;
- (d) whether, when the framework agreement is concluded with more than one tenderer, there will be a competition to award a procurement contract under the framework agreement and, if so
 - (i) a statement of the terms and conditions of the procurement that are to be established or refined through the competition;
 - (ii) the procedures for and the anticipated frequency of any competition, and envisaged deadlines for presenting submissions for the competition;
- (e) whether the award of a procurement contract under the framework agreement will be to the lowest-priced or to the most advantageous tender in accordance with section 39 of the Act; and
- (f) the manner in which the procurement contract will be awarded.

Procedure for the award of contracts under a framework agreement

16. (1) A procurement contract under a framework agreement may be awarded only to a tenderer that is a party to the framework agreement.

(2) A procurement contract shall be awarded either

- (a) in accordance with the terms and conditions established under the framework agreement; or
- (b) by way of competition.

(3) Where a procurement contract under a framework agreement is awarded following a competition:

- (a) the procuring entity shall issue a written invitation to present submissions, simultaneously to
 - (i) each tenderer who is party to the framework agreement; or
 - (ii) depending on the nature of the goods, works or services to be procured, only to those tenderers who are parties to the framework agreement then capable of meeting the needs of that procuring entity in respect of the identified goods, works or services;

- (b) the invitation to present submissions shall include the following information:
 - (i) a restatement of the procedures and criteria for the award of the anticipated procurement contract, including their relative weight and the manner of their application;
 - (ii) instructions for preparing submissions;
 - (iii) the manner, place and deadline for presenting submissions;
 - (iv) the name and contact details of one or more officers or employees of the procuring entity authorised to communicate directly with and to receive communications directly from tenderers in connection with the competition;
 - (v) any formalities that will be required once a successful submission has been accepted for a procurement contract to enter into force;
 - (vi) any other requirements established by the procuring entity in conformity with the Act and these regulations relating to the preparation and presentation of submissions and to other aspects of the competition;
- (c) the procuring entity shall evaluate all submissions received and determine the successful submission in accordance with the evaluation criteria and the procedures set out in the invitation to present submissions;
- (d) the procuring entity shall accept the successful submission in accordance with section 51 of the Act.

PART V

METHODS OF PROCUREMENT FOR CONSULTING SERVICES

Pre-selection

17. (1) Except in the case of regulations 19(6) and 20, the procuring entity shall engage in pre-selection proceedings with a view to identifying and shortlisting, prior to solicitation, consultants or consulting firms that are qualified.

(2) When the procuring entity engages in pre-selection proceedings, it shall cause an invitation for pre-selection to be published in the publication identified in regulation 22 and except in the circumstances referred to in section 10(4) of the Act, the invitation for pre-selection shall also be published internationally, so as to be widely accessible to international consultants.

(3) The invitation for pre-selection shall include the following information:

- (a) the name and address of the procuring entity;
- (b) the nature of the consulting services and the location where they are to be provided, as well as the desired or required time for the provision of the consulting services;

- (c) the qualification requirements and the documentation required to satisfy those requirements which will require the consultant to show that it possesses the necessary professional and technical qualifications and experience and personnel to perform the contract;
- (d) the selection method chosen and the evaluation criteria to be applied for the selection of consultants;
- (e) the manner, place and deadline for presenting applications for pre-selection.

(6) The procuring entity shall take a decision with respect to the qualifications of each consultant presenting an application for pre-selection and shall identify the chosen number of consultants that best meet the qualification criteria for the procurement concerned. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation for the pre-selection.

(7) Only consultants that have been pre-selected are entitled to participate further in the procurement proceedings.

(8) The procuring entity shall promptly notify each consultant presenting an application for pre-selection whether or not it has been pre-selected and the reasons therefor. It shall also make available to any person, upon request, the names of all consultants that have been pre-selected.

Solicitation documents

18. (1) Solicitation documents shall be sent only to all pre-selected consultants in accordance with Part V of the Act.

(2) Solicitation documents shall include

- (a) a letter of invitation;
- (b) instructions to consultants;
- (c) the detailed terms of reference;
- (d) the location and time for the provision of the consulting services;
- (e) the terms and conditions of the contract; and
- (f) other relevant information depending on the nature of the services to be provided.

Requests for proposals without negotiation

19. (1) This procurement method shall be applied when the selection is based on

- (a) a fixed budget; or
- (b) least cost.

(2) A fixed budget selection method is appropriate where

- (a) the budget is fixed and cannot be exceeded and the budget is included in the solicitation documents);
- (b) the Terms of Reference (TOR) are precisely defined; and

- (c) the time and staff-month effort required from the consultants can be assessed with precision.
- (3) Under fixed budget selection,
- (a) the consultants are requested to submit their technical and financial proposals in separate envelopes;
 - (b) technical proposals are opened in public and evaluated first, using the evaluation criteria and methodology set out in the solicitation documents;
 - (c) the financial envelopes of all proposals meeting the minimum technical score are opened in public;
 - (d) financial proposals that exceed the indicated budget after adjustments and corrections are discarded;
 - (e) the consultant who has submitted the highest ranked technical proposal among the remaining proposals is selected.
- (4) Least cost selection is appropriate
- (a) for small assignments of a standard or routine nature;
 - (b) where well-established practices and standards exist; and
 - (c) when a specific and well-defined outcome is expected which can be executed at different costs.
- (5) Under least cost selection
- (a) the consultants are requested to submit their technical and financial proposals in separate envelopes;
 - (b) a minimum qualifying mark is established for the technical proposals;
 - (c) technical proposals are opened in public and evaluated first, using the evaluation criteria and methodology set out in the solicitation documents;
 - (d) the proposals securing less than the minimum qualifying mark are rejected;
 - (e) the financial envelopes of consultants which secure the minimum qualifying mark are opened in public;
 - (f) the consultant with the lowest price will be selected.

Requests for proposals with consecutive negotiations

20. (1) This procurement method shall be applied when the selection is based on
- (a) quality and cost;
 - (b) quality only;
 - (c) the consultant's qualifications.

(2) Quality and cost based selection is a method based both on the quality of the proposals and the cost of the services to be provided and it is appropriate when

- (a) the scope of services of the assignment can be precisely defined and the TOR are well specified and clear; and
- (b) the procuring entity and the consultants can estimate with reasonable precision the staff time, as well as, the other inputs and costs required of the consultants.

(3) Under the quality and cost based method

- (a) the consultants are requested to submit their technical and financial proposals in separate envelopes;
- (b) a minimum technical score is established for the technical proposals based on the nature and complexity of the specific assignment;
- (c) technical proposals are opened in public and scored first, using the evaluation criteria and weighting methodology set out in the solicitation documents;
- (d) the proposals securing less than the minimum technical are rejected;
- (g) the financial envelopes of consultants which secure the minimum technical score are opened in public and scored according to the methodology set out in the solicitation documents;
- (e) once the financial proposals are evaluated, a combined evaluation of the technical and financial proposals is carried out by weighting and adding the quality and the cost scores;
- (f) the consultant obtaining the highest combined score is invited for negotiations;
- (g) negotiations may include discussions of the Terms of Reference (TOR), the methodology, procuring entity inputs and special conditions of the contract but shall not substantially alter the original scope of services under the TOR or the terms of the contract.

(4) Quality based selection is a method based on an evaluation of the quality of the proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. It is appropriate when

- (a) the downstream impact of the assignment is so significant that the quality of the services becomes of overriding importance for the outcome of the project;
- (b) the scope of services of the assignment and TOR are difficult to define because of the novelty or complexity of the assignment, or the need to select among innovative solutions, or due to particular physical, social, or political conditions; or

- (c) the assignment can be carried out in substantially different ways such that cost proposals may not easily be comparable.
- (5) Under the quality based method
- (a) the consultants are requested to submit their technical proposals only;
 - (b) the technical proposals are opened in public and evaluated using the evaluation criteria and methodology set out in the solicitation documents;
 - (c) the consultant with the highest-ranking technical proposal is invited to present its financial proposal;
 - (d) the procuring entity and the consultant shall then negotiate the financial proposal and the contract;
 - (e) the financial negotiations may include negotiations of all the consultant's remuneration and other expenses.
- (6) Selection based on consultant's qualifications is appropriate for assignments not exceeding \$15,000 for which the cost of a fully-fledged selection process is not justified.
- (7) Under selection based on consultant's qualifications
- (a) the procuring entity selects the consultant with the best qualifications and references from the shortlist;
 - (b) the selected consultant is asked to submit a combined technical and financial proposal;
 - (c) if the technical proposal is acceptable, the selected consultant is invited to negotiate the contract;
 - (d) the negotiations may cover both the technical and financial aspects of the proposal.

Single-source selection

21. (1) Single-source selection of consultants shall be used only in exceptional and is appropriate only in the following cases, and only if it presents a clear advantage over competition:

- (a) for tasks that represent a natural continuation of previous work carried out by the consultant;
 - (b) in response to a situation of extreme urgency as referred to in section 8(3)(a) of the Act;
 - (c) for assignments with an estimated value not exceeding \$15,000; or
 - (d) when only one firm is qualified or has experience of exceptional worth for the assignment.
- (2) Under the single-source method,
- (a) the procuring entity prepares a Terms of Reference (TOR) for the consultant assignment, including the scope of services and its estimated budget;

- (b) the suitability of the candidate is evaluated on the basis of its qualifications, experience and ability to perform the contract in accordance with the TOR;
- (c) the procuring entity negotiates a contract with the selected consultant after reaching agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.

Individual consultants

22. (1) Individual consultants are employed on assignments for which
- (a) a team of experts is not required;
 - (b) no additional outside (home office) professional support is required; and
 - (c) the experience and qualifications of the individual are the paramount requirement.
- (2) Subject to the circumstances set out in subsection (3), under normal conditions
- (a) the procuring entity prepares a Terms of Reference for the consultant assignment, including the scope of services and its estimated budget;
 - (b) the procuring entity may then either
 - (i) seek expressions of interest by advertising the opportunity in accordance with section 16(2); or
 - (ii) create a shortlist from consultants that are already known to them;
 - (c) the procuring entity selects at least three individual consultants, if available, from among those who have expressed interest in the assignment or have been approached directly by the procuring entity;
 - (d) the identified consultants do not submit proposals but are compared and assessed on the basis of their relevant experience, qualifications, and capability to carry out the assignment;
 - (e) the procuring entity selects the most experienced and best qualified who is fully capable of carrying out the assignment;
 - (f) the procuring entity negotiates a contract with the selected individual consultant after reaching agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.
- (3) Individual consultants may be selected on a single-source basis in exceptional cases such as where
- (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
 - (b) assignments lasting less than six months;

- (c) situations of extreme urgency as referred to in section 8(3)(a) of the Act; or
- (d) when the individual is the only consultant qualified for the assignment.

PART VI

PROCUREMENT PROCEDURES

Advertising of tenders

23. (1) All procurement opportunities invited by way of open tendering must be advertised

- (a) on the Public Procurement website established in accordance with section 7(1)(k);
- (b) in a newspaper of wide circulation in the Virgin Islands; and
- (c) subject to regulation 9(2), in at least one international publication or website.

(2) The invitation to tender to be published shall include the following information:

- (a) name and address of the procuring entity;
- (b) an indication of how to obtain solicitation documents;
- (c) brief description of the required goods, works or services;
- (d) place of performance;
- (e) where relevant, a summary of the principal required terms and conditions of the procurement contract;
- (f) whether limited to domestic tenderers;
- (g) whether a local preference is applied in accordance with section 32;
- (h) closing date, time and place of submission of tenders;
- (i) name, telephone number and email address of contact person in the procuring entity for providing clarifications;
- (j) whether a tender security is required; and
- (k) statutory requirements that must be submitted with the tender.

Period for submission of tenders

24. (1) The tendering period shall start on the date of the first publication of the announcement or the direct invitation to tender, as the case may be, and shall finish on the date of the tender submission deadline.

(2) In determining the appropriate tendering period the procuring entity shall take into account, in addition to the minimum period established in subregulation

(3)

- (a) the time required for preparation of tenders, taking into account the level of detail required and the complexity of tenders;
- (b) any need for tenderers to submit authenticated legal documents or similar documents as part of their tenders and the time required to obtain such documents;
- (c) the location of potential tenderers and the time required to obtain the solicitation documents and for the delivery and submission of tenders to the procuring entity; and
- (d) any restrictions relating to the time the goods, works or services are required.

(3) The minimum tendering period shall be

- (a) 28 days for open tendering when participation is restricted to domestic tenderers;
- (b) 35 days for open tendering in all other cases;
- (c) 14 days for restricted tendering when participation is restricted to domestic tenderers;
- (d) 21 days for restricted tendering in all other cases.

(4) In the case of pre-qualification restricted to domestic tenderers, tenderers shall be given a minimum of 14 days following a notice to pre-qualify to submit their pre-qualification applications. In all other cases, the minimum period shall be 30 days, unless the procurement is being conducted under section 8(3)(a) or (e) of the Act.

(5) The minimum periods for the submission of tenders may be amended by any specific procedures established by the Central Tenders Board in the exercise of the functions foreseen in regulation 5(5)(f) for the electronic submission of tenders.

Solicitation documents

25. (1) Solicitation documents shall be ready for distribution prior to the publication of the invitation to tender or direct invitation, as the case may be.

(2) Procuring Entities shall use GOVI's Standard Solicitation Documents (SSDs) issued by the Central Tenders Board with minimum changes (approved by the Procurement Coordinator) as necessary to address contract-specific conditions and any such changes shall be introduced only through the tender data or the contract data sheets, or through Special Conditions of Contract.

(3) Where no relevant SSDs have been issued, procuring entities shall use internationally recognised standard conditions of contract and contract forms which are acceptable to the Procurement Coordinator.

(4) The solicitation documents shall contain the following information:

- (a) invitation to Tender which describes the procuring entity and indicates the goods, works or services to be procured;
- (b) instructions to Tenderers which provide information to tenderers regarding the form, procedure and timing of tendering, including:

- (i) selection requirements;
 - (ii) procedure for clarification;
 - (iii) tender preparation form;
 - (iv) number of copies to be submitted;
 - (v) whether alternative tenders are permitted and, if so, on what conditions;
 - (vi) language of the tenders;
 - (vii) pricing and currencies and currency conversion mechanism;
 - (viii) instructions on modification and withdrawal of tenders;
 - (ix) tender submission procedures;
 - (x) closing date;
 - (xi) tender validity period;
 - (xii) tender opening;
 - (xiii) evaluation and award of contract procedures;
 - (xiv) procedure for correction of mathematical discrepancies in tenders;
 - (xv) procuring entity's right to accept any tender and reject any or all tenders;
 - (xvi) award criteria;
 - (xvii) notification of award; and
 - (xviii) procedures for signing of contract.
- (c) evaluation and qualification criteria specifying the criteria that the procuring entity will use to select qualified tenderers and evaluate the tenders;
 - (d) the General Conditions of Contract setting out the general provisions of the contract between the procuring entity and the contractor or supplier awarded the contract;
 - (e) Special Conditions of Contract which modify the General Conditions of Contract for the particular procurement;
 - (f) Schedule of Supply which specifies the quantities, delivery locations and dates for the items required by the procuring entity; for works contracts, this is the unpriced Bill of Quantities or schedule of requirements for lump sum type contracts;
 - (g) the technical specifications and drawings which detail the characteristics of the technologies and technical services required (as well as specify the common format which tenderers must present their materials, including a technical responsiveness cross – reference form);
 - (h) tendering forms which include the Form of Tender and Price Schedules, the Tender Security Forms, the Performance Security Form, and the Advanced Payment Security Form;

- (i) the Contract Form.

Solicitation in restricted tendering

26. (1) The procuring entity shall provide the solicitation documents to each tenderer to whom it sends a direct invitation to tender.

(2) The invitation to tender must include the information indicated in regulation 22(2).

(3) Regulations 22 to 24 apply to solicitation in restricted tendering.

Solicitation in requests for quotations and single source procurement

27. In addition to seeking maximum effective competition by approaching known tenderers active in the market, the procuring entity may also select such contractors from among those registered under the Contractors' Registration and Classification System.

PART VII

CHALLENGE PROCEEDINGS

Periods for challenge and outcome

28. (1) A tenderer must bring an application for reconsideration within 10 days of the date on which the proposed award is notified to the bidders in accordance with section 52(2) of the Act.

(2) The procuring entity shall within 10 days, in writing, notify the challenger of its reasoned decision setting out, where the application is dismissed, the grounds for dismissal or, where the application is upheld, the corrective measures to be taken by the procuring entity.

(3) The challenger shall have the right to seek review by the Procurement Appeals Board if

- (a) its application has been dismissed by the procuring entity, or
- (b) the procuring has failed to provide a decision in accordance with subregulation (2).

(4) An application for review by the Procurement Appeals Board shall be filed within 7 days of the date on which the procuring entity made or should have made its decision in accordance with subregulation (2).

(5) The Procurement Appeals Board shall reach its decision within 28 days of the date on which the application for review was referred to it and, where an application for review is determined in the favour of the applicant, may

- (a) prohibit the procuring entity from acting or making a decision in an unauthorised manner or from following an incorrect procedure;
- (b) annul in whole or in part any unauthorised act or decision of the procuring entity, including the rectification of any documents;
- (c) order a new tendering procedure to be carried out by the procuring entity; or

- (d) award the successful applicant compensation limited to the recovery of the costs of bid preparation and participation in the bidding proceedings.

(6) The suspensive effect of the challenge pursuant to section 28(1) of the Act shall lapse

- (a) within 3 days of the communication referred to in section 28(2), or
- (b) on the application of the procuring entity, it has been removed by the Procurement Appeals Board for reasons of public interest.

PART VIII

GENERAL PROVISIONS

Qualification criteria

29. (1) Depending on the nature, quantity and purposes of the goods, services or works being procured, evidence of technical ability may be furnished by means of

- (a) the professional and educational qualifications of the tenderer or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;
- (b) in the case of works: a list of works carried out over a defined period of years, together with evidence of satisfactory execution for similar works, issued by previous clients, as specified in the Standard Solicitation Documents (SSDs). Such evidence will indicate the value, date and site of the works and shall specify whether they were properly executed;
- (c) in the case of goods and services: a list of supplied goods over a defined period of years with the sums, dates and purchasers (public and private), together with evidence of satisfactory execution issued or signed by the purchaser, as specified in the SSDs;
- (d) in the case of works a list of the contractor's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting;
- (e) in the case of goods: detailed descriptions or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified.

(2) The procuring entity may require the tenderers to furnish evidence of their financial capacity to fulfil the requirements of the contract. The procuring entity shall set out the level of financial capacity required from the tenderers in the solicitation documents. Such evidence may be furnished by

- (a) certified statements from bankers including, if necessary, details of available line of credits;

- (b) presentation of the tenderer's balance sheet or extracts from the balance sheets for a defined period of years; and
 - (c) overall turnover and the turnover in respect with works, supply of goods or services similar to those required in the contract for the same defined period of years.
- (3) The procuring entity shall indicate the evidence it requires in the solicitation documents.
- (4) Where the tenderer is a joint venture
- (a) all parties to the joint venture shall be jointly and severally liable; and
 - (b) the joint venture shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all parties of the joint venture during the tender process and, in the event the joint venture is awarded the contract, during the contract execution.

Prequalification documents

30. (1) Where a procuring entity engages in pre-qualification proceedings, the invitation to prequalify shall include the following information:

- (a) the name and address of the procuring entity;
- (b) the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the works to be effected or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, the completion of the works or the provision of the services;
- (c) a summary of the key criteria to be used for ascertaining the qualifications of tenderer;
- (d) the price, if any, to be charged by the procuring entity for the application documents and the means of currency of payment;
- (e) the manner, at the place and by the deadline for presenting applications.

(2) Prequalification documents should elaborate on the information provided in the notification advertisement and contain a description of

- (a) the proposed procurement;
- (b) location of the work;
- (c) selection requirements including procedures to be used for ascertaining the qualifications of tenderer, and of any documentary evidence or other information that must be submitted by tenderer to demonstrate their qualifications, in conformity with section 38 of the Act;
- (d) eligibility requirements for local preference, if any;
- (e) procurement scheduling of goods or works to be procured;

- (f) main quantities to be procured;
- (g) delivery or implementation schedules;
- (h) other information in sufficient detail to enable applicants to assess their interest and respond appropriately; and
- (i) the name and address of the procuring entity and of the procuring entity's official in charge of the procurement with a statement of their roles.

Exclusion based on conflict of interest

31. (1) A tender may be excluded from consideration whenever the tenderer is shown to have an actual conflict of interest which provides or could provide it with an unfair competitive advantage.

(2) A conflict of interest may arise where a tenderer

- (a) including its personnel, has a close business or family relationship with a professional staff of the procuring entity or any other party representing or acting on behalf of the procuring entity who
 - (i) is directly or indirectly involved in the preparation of the solicitation documents or contract specifications/terms of reference, or the evaluation process of such contract; or
 - (ii) would be involved in the execution or supervision of such contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to the procuring entity throughout the procurement process and execution of the contract;
- (b) seeks to provide goods, works, or non-consulting services resulting from, or directly related to, consulting services that it provided for the preparation or implementation of a goods, works, or non-consulting services contract or where such services were provided by an affiliate;
- (c) seeks to provide consulting services resulting from, or directly related to, goods, works, or non-consulting services it had previously been engaged to provide or where such goods, works, or non-consulting services were provided by an affiliate;

(3) Where a tenderer or an affiliate is in a situation described in subregulation (2)(b) or (c),

- (a) the procuring entity shall take appropriate measures to ensure that the tenderer in question does not derive an unfair competitive advantage from that situation by
 - (i) providing to the other tenderers relevant information exchanged in the context of or resulting from the involvement of the tenderer in the preparation or implementation of the procurement; and
 - (ii) fixing adequate time limits for the receipt of tenders to take account of such information;

- (b) the tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to prevent the unfair competitive advantage; and
- (c) prior to any such exclusion, tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure does not, in fact, give rise to an unfair competitive advantage.

(4) A tenderer may be excluded from consideration under section 38(1)(c) of the Act whenever it has been disqualified pursuant to the debarment proceedings in the Schedule.

Local preference

32. (1) In accordance with section 37(1) of the Act and in exercise of the power granted to the Minister by section 56(2)(d) of the Act, these regulations authorise the Central Tenders Board to issue rules or schemes for local preference to be applied in international tendering.

(2) Any rules or schemes issued under subregulation (1) shall clearly state the

- (a) eligibility for the margin of preference, in terms of location of tenderer or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
- (b) documentation required as evidence of eligibility for the margin of preference; and
- (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(3) Where such rules or schemes apply, procuring entities may only apply the preference where it is satisfied that the tenderers benefiting from the preference have the capacity and experience necessary to provide the required goods, works or services, and are able to submit responsive tenders which, in particular, meet the terms and conditions, qualification criteria and technical specifications set out in the solicitation documents.

(4) Procuring entities shall indicate in the solicitation documents the margin of preference to be applied to eligible tenders.

(5) Where a local preference is applied pursuant to subregulation (3), responsive tenders shall, for the purposes of comparison, be classified in one of the following two groups:

- (a) Group A: tenders exclusively offering
 - (i) goods manufactured in the Virgin Islands where the tenderer establishes to the satisfaction of the procuring entity that labour, raw material, and components from within the Virgin Islands will account for 30 percent or more of the EXW price of the product offered; or
 - (ii) labour provided by nationals of the belongsers; and
- (b) Group B: tenders offering

- (i) goods manufactured abroad that have been already imported or that will be directly imported; or
- (ii) labour provided by non-belongers.

(6) The prices of all evaluated tenders in each group shall be compared to determine the lowest in each group and the lowest evaluated tenders shall be compared with each other.

(7) If, as a result of the comparison referred to in subregulation (6), a tender from Group A is the lowest, it shall be selected for the award where the evaluation criterion used is the lowest evaluated bid. Where non-price factors are taken into account in the evaluation of the most advantageous bid, the scoring method used shall reflect the results of this comparison.

(8) If as a result of this comparison, the lowest evaluated tender is a bid from Group B, the lowest evaluated tender from Group B shall be further compared with the lowest evaluated tender from Group A after adding to the evaluated price of goods offered in the tender from Group B, for the purpose of this further comparison only, an amount equal to the stated domestic margin of preference to the CIP bid price. The lowest evaluated tender determined from this last comparison shall be selected where the evaluation criterion used is the lowest evaluated bid.

(9) Where non-price factors are taken into account in the evaluation of the most advantageous bid, the scoring method used shall reflect the results of this comparison.

(10) For the purposes of this regulation,

“CIP” means ‘Carriage and Insurance Paid To’ and is a shipping arrangement in which seller pays freight and insurance to deliver goods to a seller-appointed party at an agreed-upon location (as defined in Incoterms 2020); and

“EXW” or “Ex works” means a shipping arrangement in which a seller makes a product available at a specific location, but the buyer has to pay the transport costs (as defined in Incoterms 2020).

Contractors’ Registration and Classification System

33. The Ministry shall maintain a Contractors’ Registration and Classification System (CRCS) which provides for the registration of contractors and classifies them into three categories in accordance with regulation 35.

Effect of registration

34. (1) Pursuant to section 47(1) of the Act, registration on the Contractors’ Registration and Classification System (CRCS)

- (a) establishes a presumption of general compliance with the criteria identified for the registration and classification; and
- (b) qualifies registered tenderers to participate in any procurement procedures without the need once more to demonstrate, by way of pre-qualification or otherwise, their compliance with those identified criteria.

(2) Tenderers who are not registered do not benefit from such a presumption of general compliance and will be required to demonstrate their qualifications to participate in the procurement procedure.

(3) Notwithstanding the general compliance of registered contractors with the identified criteria, procuring entities shall establish contract-specific criteria in accordance with section 37 of the Act for each procurement requirement and shall assess the suitability of all tenderers for the specific contract in question. Such criteria shall be set out in the pre-qualification document or solicitation document, as appropriate.

CRCS registration process

35. (1) Applications for registration in the Contractors' Registration and Classification System (CRCS) shall be invited at the beginning of each fiscal year by a notice published in accordance with regulation 22 and indicating the address from which the application documents may be obtained.

(2) The application documents shall detail the procedures for submitting applications and set out the criteria to be applied to registration and classification.

(3) Tenderers already registered and classified on the CRCS need only update their relevant information in respect of the criteria identified in subregulation (2).

(4) Initial admission to the CRCS shall remain open for 1 month from the date of notification and any subsequent requests for admission to the CRCS may thereafter be made at any time and a decision on admission will be taken within 1 month.

(5) Applicants may apply for admission to the CRCS in writing enclosing all relevant information and documentary evidence demonstrating their compliance with the identified criteria.

(6) The evaluation of suitability of the potential tenderers will be made by the appropriately qualified staff in accordance with the criteria identified in subregulation (2).

(7) Potential tenderers admitted to the CRCS may, at any time, apply in writing for re-classification in order to reflect their changed capabilities; the re-classification procedure will follow the procedure of subregulations (4), (5) and (6).

(8) Reasons for the rejection of any applicant or for the re-classification of any applicant must be notified promptly to the unsuccessful applicant.

(9) Tenderers will be issued with a Certificate of Registration indicating its category which will be valid for one year.

(10) The list of tenderers registered on the CRCS may be consulted by any interested party upon request.

Registration and classification

36. (1) Contractors registered in the Contractors' Registration and Classification System (CRCS) will be classified with 3 categories.

(2) For the purposes of registration, tenderers must provide

- (a) their name and address and the contact details of their representative;
- (b) copies of their status such as trade licence and company registration;
- (c) evidence that they satisfy all the legal requirements to carry on business in Virgin Islands and, if the tenderer has its headquarters outside Virgin Islands, of its entitlement to carry on business in that jurisdiction; and
- (d) evidence that they comply with the criteria established by section 38(8) of the Act as at the date of the application.

(3) Tenderers are classified into three categories according to their technical and financial capabilities as well as their performance record and the classification is based on tendering capacity expressed as the estimated value of the contract for which they are eligible, as follows:

- (a) **Class A** consists of tenderers capable of carrying out individual complex works contracts of a value exceeding \$500,000;
- (b) **Class B** consists of tenderers capable of carrying out individual contracts of a value between \$100,000 and \$500,000;
- (c) **Class C** consists of tenderers capable of carrying out individual contracts up to a value of \$100,000.

(4) Tenderers may be restricted to the number and value of contracts they may carry out simultaneously in accordance with their category.

(5) Tenderers are classified on the basis of the minimum levels of capacity specified for each category as follows:

- (a) their financial capacity, calculated on their:
 - (i) net worth;
 - (ii) average annual turnover; and
 - (iii) available credit;
- (b) their technical capacity which takes account of such things as their personnel, staff qualifications, plant and equipment depending on the nature of works to be performed;
- (c) their performance record based on the number and value of contracts executed during a specified period similar to those defined in the category for which they wish to be classified and registered.

(6) The Central Tenders Board (CTB) shall monitor the capability of a registered tenderer under its current classification and may take appropriate action (such as downgrading its classification or cancelling any category heading) if the tenderer fails to maintain the prescribed minimum requirements for such classification at any time during the validity of its certificate of registration.

(7) A tenderer may be disqualified or removed from the list if it is found, at any time, that the information submitted concerning the qualifications of the contractor was false or deliberately misleading or if admission was based on fraud or corruption. Procuring entities should promptly report any such findings, along with any evidence and the reason(s) for its findings, to the CTB.

(8) Registered tenderers may be required to attend development training in various areas arranged by the CTB and their capability to engage in more complex projects (advancement to a higher category) will be assessed on the completion of the training regime and any contracts they have performed within the required range.

Notification of intention to award a contract

37. (1) In respect of all contracts with a value exceeding \$10,000, the procuring entity shall, in addition to the information provided in section 51(2) of the Act, inform unsuccessful tenderers of the

- (a) reasons for the rejection of tender;
- (b) the characteristics and relative advantages of the successful tender.

(2) Procuring entities may decide to withhold certain information regarding the contract award, where it is classified or where the release of such information would prejudice the legitimate commercial interests of a particular tenderer or might prejudice fair competition between tenderers.

Notification of contract award

38. (1) Pursuant to section 52 of the Act, for all contracts with a value exceeding \$100,000, the procuring entity shall publish in the same manner as the invitation to tender for the contract concerned was published in accordance with regulation 22(1), a notice containing the following information:

- (a) the name, description and scope of contract sufficient to identify the contract in question;
- (b) the name of each tenderer who submitted a tender/proposal;
- (c) the prices as read out at the tender/proposal opening;
- (d) the evaluated prices of each tender/proposal that was evaluated;
- (e) the name of the successful tenderer/proposer and the price offered as well as the duration of the contract awarded.

(2) For all contracts with a value below \$100,000, the procuring entity shall, in accordance with section 52(2) of the Act, publish an aggregated summary of such contracts in the format provided and at the intervals mandated by the Financial Secretary.

Procurement records

39. (1) The procuring entity shall maintain an easily accessible and retrievable individual record for each procurement requirement, which shall be marked with the relevant procurement reference number.

(2) Where appropriate, the record shall contain the originals and copies of all information, documents and communications related to that procurement proceeding and shall, to the extent that not already contained in the annual procurement plan, also include at least the following:

- (a) procurement file number;
- (b) the complete solicitation document;

- (c) the pre-qualification document, if applicable;
- (d) a description of the object of the procurement;
- (e) a statement of the reason for choice of a procurement method;
- (f) a list of the participating tenderers and their qualifications;
- (g) any reasons for limiting participation to domestic tenderers;
- (h) any reasons for applying a local preference;
- (i) any requests for clarifications and any responses thereto;
- (j) reasons for any cancellation of tenders;
- (k) tender prices;
- (l) a summary of the evaluation of tenders, including reasons for any rejection based on abnormally low tenders;
- (m) the manner of conducting and results of any trials, sample testing or other methods of technical evaluation applied;
- (n) the signed contract;
- (o) the contractual dates for commencement and completion;
- (p) any variation subsequently made to the terms and conditions of the contract;
- (q) any progress payment made;
- (r) the final payment made;
- (s) any payment of retention money made;
- (t) any deduction for penalty;
- (u) any decision based on a challenge of the procedure, and the related decisions; and
- (v) any other information required by the Procurement Coordinator, to be recorded.

(3) The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(4) The record or selected parts of the record shall, on request, be made available to any person having a legitimate interest after a tender has been awarded, unless any portion of the record is required to be disclosed earlier pursuant to law, or by order of the Central Tenders Board (CTB), Procurement Appeals Board, a competent court or a duly appointed arbitrator.

(5) Procurement records shall be kept for a minimum period of seven years following completion or termination of the contract or cancellation of the procurement proceedings.

(6) Procuring entities shall submit report summaries on their procurement activities to the Procurement Coordinator or CTB, as the case may be, in accordance with templates issued by the Procurement Unit.

SCHEDULE

[Regulation 31(4)]

DEBARMENT PROCEEDINGS

Prohibited practices

1. (1) For the purposes of these debarment proceedings, the following are considered to be prohibited practices :

- (a) corrupt or fraudulent behaviour pursuant to section 50(1)(a) of the Act or regulation 36(7), including but not limited to behaviour contrary to Part IV of the Criminal Code Revised Laws of the Virgin Islands 2013;
- (b) the provision of false or misleading information or misrepresentation by a tenderer, its directors or officers pursuant to sections 38(9) and 38(10)(c) of the Act or regulation 36(7);
- (c) convictions of the directors or officers of a tenderer for criminal offences related to misconduct pursuant to sections 38(10)(c) of the Act, including convictions for an offence involving corruption, dishonesty, obstruction of justice; lack of honesty or business integrity; or for engaging in anti-competitive practices, whether or not involving collusion.

(2) A prohibited practice shall also include the deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify debarment on condition that such neglect or failure:

- (a) has resulted in the termination of the contract by the procuring entity; or
- (b) has led to the imposition of liquidated damages or other remedies foreseen in the contract for such acts or omissions; or
- (c) has been identified in a judgment of a court of law in respect of a case brought by the procuring entity for breach of contract.

(3) Prohibited practices may be committed by a tenderer or its affiliate.

(4) An 'affiliate' shall mean business concerns, organisations or individuals which, directly or indirectly,

- (a) either control or have the power to control the tenderer, or
- (b) is controlled by or may be subject to the control of the tenderer.

(5) For the purposes of subsection (4), "indicia of control" include, but are not limited to

- (a) interlocking management or ownership;
- (b) identity of interests among family members;
- (c) shared facilities and equipment;
- (d) common use of employees; or

- (e) a business entity organised following the debarment or proposed debarment of a tenderer which has the same or similar management, ownership, or principal employees as the tenderer that was debarred or proposed for debarment.

Initiating the debarment procedure

2. (1) If any officer of a procuring entity suspects that a tenderer participating in a contract award procedure or an affiliate of such tenderer has committed a prohibited practice defined in paragraph 1 or has been the subject of a civil judgment or criminal conviction in respect of a prohibited practice, the officer may bring this to the attention of the Procurement Coordinator together with any documentary evidence at his or her disposal.

(2) The Procurement Coordinator shall consider or investigate allegations of the commission of prohibited practices.

(3) If, as a result of the information provided or of his or her own investigation, the Procurement Coordinator is satisfied that there is sufficient evidence to support a finding of a prohibited practice, the Procurement Coordinator may prepare a Draft Notice of Proposed Debarment and submit the same to the Central Tenders Board.

(4) Within 10 days of receiving the Draft Notice of Proposed Debarment, the Chairperson of the Central Tenders Board shall convene a meeting of the Board to review its contents and decide whether or not to proceed.

(5) If the Central Tenders Board determines that the Draft Notice of Proposed Debarment does not contain sufficient evidence to support the proposed debarment or sanction, it will notify the Procurement Coordinator of its decision and of the reasons for the decision.

(6) If new facts or evidence come to light, the Procurement Coordinator may, at his or her discretion, amend and resubmit a revised Draft Notice of Proposed Debarment for consideration by the Central Tenders Board.

(7) If the Central Tenders Board agrees with the conclusions of the Procurement Coordinator as set out in the Draft Notice, it will initiate the debarment proceedings by establishing a Debarment Committee in accordance with paragraph 3.

Debarment Committee

3. (1) The Debarment Committee shall consist of three members as follows:
- (ia) a member of the Central Tenders Board who shall also be the chairperson of the Debarment Committee;
 - (b) a legal officer of the Attorney-General's Chambers; and
 - (c) the head of a procuring entity other than that which proposes the debarment. The Procurement Unit shall provide the secretariat services.

(2) The decision of the Debarment Committee shall be by majority vote, the Chairperson having the casting vote.

(3) The Debarment Committee shall have the task, on the basis of a referral from the Central Tenders Board, of determining whether there is sufficient

evidence in each case to debar a tenderer accused of a prohibited practice and to issue a Notice of Debarment.

Notice of Proposed Debarment

4. (1) The Debarment Committee shall send to the tenderer (known as the ‘Respondent’) a Notice of Proposed Debarment in the same terms as the Proposal submitted by the Procurement Coordinator. If an accusation is made against an affiliate of a tenderer, such affiliate must also be named.

(2) The Notice of Proposed Debarment will be communicated to the named Respondent and any affiliate specifically named therein by registered mail and will inform the Respondent of the details of the proposed debarment, the evidence to be relied upon and the applicable procedure.

(3) If within 10 days the Respondent does not inform the Debarment Committee of its intention to contest the allegations or responds to the Notice admitting all or part of the allegations, the Debarment Committee will and without need of a hearing issue a decision imposing the sanction recommended in the Notice of Proposed Debarment, taking into account any mitigating factors disclosed by virtue of paragraph 6(3).

(4) If the Respondent informs the Debarment Committee that it intends to contest the allegations recommended in the Notice of Proposed Debarment, the Committee will, within 5 days inform the Respondent of the procedure to be followed, including any hearing proposed.

Hearings and evidence

5. (1) The Hearing shall take place in the manner provided for by the Debarment Committee.

(2) A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Debarment Committee as suitable for the purposes of such representation.

(3) The Hearing shall be closed to the public save that, with the consent of the Debarment Committee, persons having a justifiable interest in the proceedings may be admitted.

(4) The Debarment Committee shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

(5) Formal rules of evidence shall not apply and any type of evidence may form the basis of arguments presented. The Debarment Committee retains the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

Recommendation of the Debarment Committee

6. (1) At the conclusion of the hearing, the Debarment Committee shall recommend to the Board whether the proposed debarment is in the interests of the procuring entity and the Government on the basis of the evidence presented.

(2) The existence of a proven cause for debarment does not necessarily require that the tenderer be debarred or receive the sanction proposed in the Notice

of Proposed Debarment. The seriousness of the tenderer's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. The burden rests on the Respondent to provide evidence of mitigating factors which might tend to reduce or remove the desirability for debarment.

(3) Before arriving at any debarment recommendation, the Debarment Committee should consider factors such as the following:

- (a) the severity of the Respondent's conduct;
- (b) the degree of involvement of the Respondent in the prohibited practice (including whether the conduct involved was "active" or "passive");
- (c) the magnitude of any losses caused by the Respondent and damage caused by the Respondent to the credibility of the procurement process;
- (d) the past conduct of the Respondent involving a prohibited practice;
- (e) the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the procuring entity;
- (f) whether the tenderer has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Debarment Committee or taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;
- (g) whether the tenderer's management recognises and understands the seriousness of the misconduct giving rise to the cause for debarment and has instituted or agreed to institute new or revised review and control procedures and ethics training programs or other programmes to prevent recurrence;
- (i) any other factor that the Debarment Committee deems relevant.

(4) Where the Debarment Committee determines that there is insufficient evidence to support the proposed debarment sanction, it shall recommend to the Board that no debarment sanction be imposed.

(5) Based on the recommendation of the Debarment Committee in the terms of subsection (4), the Board shall notify the tenderer and any affiliate of the decision not to impose any debarment sanction.

Debarment sanction

7. (1) The debarment sanction shall be taken by the Board on the basis of the recommendation of the Debarment Committee. It may take one of the following forms:

- (a) **Reprimand:** a formal "Letter of Reprimand" based on the Respondent's conduct but which falls short of debarment.

This may be used where it is the Respondent's first offence *and* where the offence is relatively minor *or* where there are sufficiently

compelling mitigating factors. It should not be used for a second or subsequent offence.

- (b) **Suspended Debarment:** a sanction which threatens debarment where certain conditions are not met.

Based on the gravity of the offences and the existence of mitigating factors, the Debarment Committee may decide that the Respondent be required to comply with certain remedial, preventative or other measures as a condition to avoid debarment. In the event the Respondent fails to demonstrate compliance with the conditions within the time periods established by the Debarment Committee, a debarment would automatically become effective for a period of time established by the Debarment Committee, i.e. it would be converted into a Temporary Debarment.

- (c) **Temporary Debarment:** the primary sanction which debars the Respondent from participation for a specific period of time not to exceed five (5) years.

Based on the gravity of the offence and of any mitigating factors, the Debarment Committee may impose a temporary debarment of one, three or five years. Whilst this is dependent on the circumstances of the case, it would be expected that a first offence would attract the shortest duration with subsequent offences attracting longer periods of debarment. Sufficiently serious offences could, however and in the absence of mitigating factors, attract longer periods of debarment even where they are first offences.

- (d) **Permanent Debarment:** this is the most serious sanction and will be used rarely.

It is appropriate only in cases of particularly egregious offences where the Respondent has consistently failed to correct its practices following at least two orders of temporary debarment, at least one of which must have been accompanied by a compliance programme of remedial, preventative or other measures intended to assist the Respondent in overcoming any institutional impediments to improvement.

(2) Other than in the case of permanent debarment, the debarment decision of the Board will be final and will take effect immediately, without prejudice to any other action taken by any other government organisation under applicable law.

(3) In the case of permanent debarment, the decision shall automatically be referred to the Procurement Appeals Board which shall review the facts and evidence presented during the investigation or hearings before confirming or rejecting the proposed Notice of Debarment. The Procurement Appeals Board shall

- (a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;
- (b) only reject the proposed Notice where, in its opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

Scope and consequences of debarment

8. (1) The Board may extend the effect of the Notice of Debarment to include any affiliates of the tenderer provided they are

- (a) specifically named in the Notice of Proposed Debarment; and
- (b) given an opportunity to respond.

(2) Following debarment, the name of the debarred tenderer, affiliates, joint venture partner, officer, director, shareholder, partner, employee or other individual, as appropriate, shall be included in a List of Debarred Tenderers to be maintained by the Procurement Unit and published on the public procurement website;

(3) In respect of tenderers and other persons properly included in the List of Debarred Tenderers, all government agencies shall:

- (a) exclude such tenderers and other persons from receiving contracts awarded by them;
- (b) not solicit offers from, award contracts to, or consent to subcontracts with them;
- (c) reject any bids received from them in response to an invitation for bids;
- (d) not evaluate any proposals, quotations, or offers received from them or enter into discussions with them during the period of ineligibility;
- (e) not consent to their appointment as a sub-contractor to a tenderer which has not been debarred.

(4) If the period of ineligibility expires or is terminated prior to award, the procuring officer may, but is not required to, consider such bids proposals, quotations, or offers.

(5) Notwithstanding the debarment of a tenderer or other person, procuring entities may continue contracts or subcontracts in existence at the time of the debarment unless the head of the procuring entity directs otherwise.

Review and appeals

9. (1) A debarred tenderer may seek review of a debarment with the Central Tenders Board at any time when:

- (a) newly discovered material evidence or facts come to light which tend to exculpate the debarred tenderer;
- (b) a conviction or civil judgment upon which the debarment was based has been reversed;
- (c) there has been a *bona fide* change in ownership or management of the tenderer;
- (d) the tenderer has successfully complied with any remedial, preventative or other measures imposed by the Central Tenders Board in the context of a Suspended Debarment or Temporary Debarment.

(2) A request for review shall be made in writing and the procedure for review shall be determined by the Central Tenders Board at its discretion.

(3) Where a tenderer is not satisfied with the decision of the Board in respect of a Suspended Debarment or Temporary Debarment only, he or she may apply in writing to the Central Tenders Board who will refer the case to the Procurement Appeals Board within 5 days of the receipt of the request.

(4) The procedure for the appeal shall be determined by the Procurement Appeals Board at its discretion but a decision must be finalised within a reasonable period of time and, in no case, more than 30 days after the request has been received by the Procurement Appeals Board.

(5) The Procurement Appeals Board shall review the facts and evidence presented during the investigation or hearings before confirming or rejecting the Notice of Debarment adopted by the Central Tenders Board. The Procurement Appeals Board shall

- (a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;
- (b) only reject the proposed Notice where, in his or her opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

Made by the Cabinet this day of , 2022.

Cabinet Secretary.