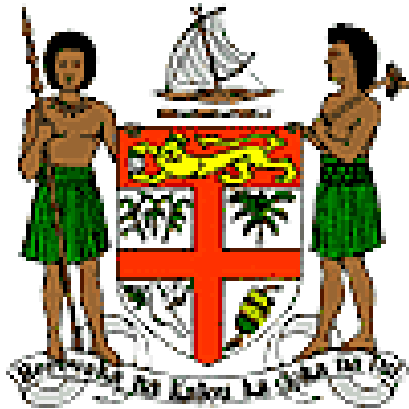


MINISTRY OF FINANCE

DETERMINATION OF PERFORMANCE BONDS



Fiji Procurement Office
Ministry of Finance
Ro Lalabalavu House
Suva

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DETERMINATION OF PERFORMANCE BONDS

1.0 Introduction

- 1.1 A Performance Bond is a form of security that must be paid or submitted to the procuring department by the supplier or contractor as a means of security for the due and faithful performance of the contract. The performance bond may be in the form of a guarantee arranged by a bank, insurance company or the parent company of the supplier or contractor.

2.0 Scope

- 2.1 This policy applies to all tenders for the supply and purchase of items, particularly those projects that are above FJD50, 000.00.

3.0 Purpose

- 3.1 The purpose of this policy is to:
- (i) Ensure when contractor is awarded a contract, government agencies may require the contractor to post a performance bond in order for the work to be completed and also compensate for any monetary damages;
 - (ii) Ensure that all agency staff particularly procurement staff are familiar with the determination of performance bond and its calculation; and
 - (iii) Assures government agencies that if the contractor does not complete the job or takes longer than agreed upon, agencies will be paid adequately to compensate loses.

4.0 Requirements of the Procurement Regulations 2010

- 4.1 Regulation 30 of the Procurement Regulations state that:
- 1) A tender must be called for the procurement of goods, services or works valued at FJD50, 001 and more.
 - 2) Open tendering shall be the preferred tender method used unless the nature of the tender or its complexity justifies that the procuring agency use any of other procurement methods outlined in Regulation 31.

5.0 Performance Bond Terms and Conditions

5.1 Performance Bond terms and conditions for the supply and purchase of whole of government goods and services shall be reflected in the contract document as follows:

i. Eligibility

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

ii. Maintenance Contracts

Companies shall be required to submit performance bond for maintenance contracts above FJD50, 000.00. If the contractor/company fails to perform its obligations under the contract, a report should be submitted to the accounts team of the procuring agency, by the project officers or clerk of works for reprisal of performance bond.

Apart from the statement in (ii) above, in situations where some contracts have been executed with supplier(s) who is registered but have not paid a performance bond or have a performance bond imposed and services provided are unsatisfactory, what action should be taken?

In this case the supplier shall be given a reminder and if the service is still not satisfactory a warning letter is issued. If there is still no progress, the contract shall be terminated and Report is to be submitted to the Ministry of Finance for further action.

iii. Rates of performance bonds

Performance bond rates are as follows:

Overseas

For overseas contractor, they are required to pay 10% of the total project cost in Fijian Dollars.

Local

- a) 5% of the contract value for supply/services contract worth FJD50,000.00 to FJD80,000.00.(e.g. If the estimated cost of project is around FJD70,000 then the performance bond will be $FJD70,0000 * 5\%$ which is equal to FJD3,500.00).
- b) 10% of the contract value for supply/service contract exceeding FJD80, 000.00. to FJD150,000.00
- c) For supply/services timed contract effective for a period of two (2) years or more, the percentage and amount of performance bond is calculated according to the estimated contract value per year. However the performance bond submitted by the contractor shall cover the entire timed contract period. (For example a supply of A4 papers in whole of government contract is charged on the rates basis therefore in order to determine the 10% performance bond on the exact full amount, officers responsible at Fiji Procurement Office must gather historical data from the Supplier's report and also on the Financial Management Information System (FMIS) report for the correct figure).

- d) 10% of the contract value for works within a range of FJD80,000.00 to FJD150,000.00 whereas any amount beyond that will be charged 15%.
 - e) If the contractor(s) do not agree to the percentage charge on performance bond, negotiation shall be done by the procuring agencies in consultation with the Director Fiji Procurement Office and approval must be obtained from the Permanent Secretary of Finance on the approved negotiated rates.
- iv. Validity period of the performance bond
The validity periods of performance bond are as follows:
- a) Works Procurement
Six (6) months after the completion of defects liability period whereby the contractor must repair any defects identified by the supervisory officer after a particular work was duly completed. All expenses to repair the defects shall be borne by the contractor and no additional cost charged to Government.
 - b) Supplies procurement
Valid only on the contracted period (e.g. the supplies of tyres to whole of government by selected tyres centres are valid only during the period for which they are contracted).
 - c) Service procurement
The Validity period will be the expiry of contract. (E.g. a hiring of the consultant)
- v. Payments and Refunds
- After seven (7) days of receiving the letter of notification, informing of the award. The contractor has to pay the full percentage of the performance bond. Failure to do so, may lead to the withdrawal of the award by the Government Tender Board (GTB). This bond is to be paid on cash basis in the form of a Bank draft or telegraphic transfer unless the performance bond is quite high and cannot be met by the contractor, further arrangements could be made with their banks to provide a stamped bank guarantee.
- a. Within (3) days of receiving the performance bond, Contract Document should be signed by both parties and thereafter work shall commence.
 - b. If the performance of the contractor is satisfactory, the agency shall refund the full performance bond, however if the contract is not executed as required, for example in:
 - i. Works Procurement
Considering factors like Project not completed on time, late delivery of materials to the site, Loss of item/material in the project site etc.
 - ii. Supplies Procurement
These are factors including when the approved supplier not accepting purchasing orders/indent, poor availability of stocks, late delivery time,

different items/brand being supplied rather than the one in the approved lists, items supplied are not working or in good condition.

iii. Service Procurement

This is where the consultancy firm hired has not met the requirements needed by the agency, in terms of timelines, project proposals, etc.

As a result the agency is to be guided by the contract document pertaining to the percentage of the refunds.

Agencies may use the following as the recommended percentage for the two critical aspects of performance management:

- 30% to the late delivery and
- 70% for the quality of product or workmanship as per assessment of the expertise.

Executing agencies must further breakdown and detail the terms and condition of the refund percentage in the contract documents.

5.2 Procuring agencies shall comply with these requirements as follows:

- i. All performance bond money are to be deposited in their various Trust Fund Account, whereby if there is none available the agency can utilise the account called the Government Supplies Trust Account in the Fiji Procurement Office, provided that all information relating to the performance bond is well documented.
- ii. Fiji Procurement Office accounts section shall be responsible for monitoring the release of funds to procuring agencies as a means to control procuring items are delivered or projects are completed before payments are made. This should correspond with the compliance and Annual Procurement Plan check.
- iii. Approval to release or refund performance bond to the contractor(s) or supplier(s) shall be vested with Director Fiji Procurement Office
- iv. All copies of contracts signed between the contractor(s) or supplier(s) and a procuring agency with value above FJD50,000.00 shall be submitted to the Fiji Procurement Office.

6.0 Requirements of Bidders

6.1 The contract will have conditions that the contractor must satisfy on an ongoing basis and which will affect the relationship with the procuring agencies. The contract will outline the progress of the project, the cost and the date of completion.

6.2 It may also contain penalties for delays or cost overruns.

6.3 There will be a description of the circumstances that signal a failure of the project, which also describe the legal process that will take place if the project fails.

7.0 Policy Review

7.1 This policy will be reviewed as and when required.

8.0 Glossary

“Bond” means a certain amount of money that is kept aside in order for work/services to be done and create a relationship between two parties

“Contractor” means a company or supplier that has been awarded to facilitate the required project or supply of goods and services.

“Procurement” means the process of acquiring the right items at the right time at the right price to meet the needs of the Government.

“Agencies” means Ministries and Departments

“Eligibility” means something that matches to a set of requirements.

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

“Bidders” means interested Suppliers or contractors that have offered goods, services and works for a specific price.

“Cost Overruns” means excess of cost over budget.