

**FINANCIAL MANAGEMENT ACT 2004**

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**PROCUREMENT REGULATIONS 2010**

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### **PROCUREMENT REGULATIONS 2010**

In exercise of the powers conferred upon me by section 81 of the Financial Management Act 2004, I hereby make these Regulations -

#### **PART 1 - PRELIMINARY**

##### ***Short title and Commencement***

1.-(1) These Regulations may be cited as the Fiji Procurement Regulations 2010.

(2)These Regulations is deemed to have come into force on **1st** day of August **2010**.

##### ***Interpretation***

2.-(1) In these Regulations unless the context otherwise requires-

“Board” means the Government Tender Board established under Regulation 9;

“budget sector agency” means a budget sector agency as defined in the Financial Management Act 2004;

“common use goods and services” means goods and services that are used by one or more departments and for which the Director may enter into a standing offer contract;

“contract management” means the process in which the parties to a procurement contract ensure that they fully meet their respective obligations as efficiently and effectively as possible, according to the terms and conditions of the procurement contract;

“Director” means the person in charge of the Fiji Procurement Office;

“direct interest” means where a Board member or a dependant is personally a supplier or employee of a supplier or where a Board member or dependant (individually or combined) directly holds a financial interest in a supplier which exceeds a 10% equity interest. A “dependant” for this purpose is a spouse (including a de-facto spouse), child under 18 years of age, or any other person who is financially dependant on the Board member;

“indirect interest” means where a non-dependant relative of a Board member is a supplier or where a non-dependant relative holds a financial interest in a supplier which exceeds a 10% equity interest. A “relative” for this purpose includes a parent, parent-in-law, grandparent, sibling, step-sibling, non-dependant child or grandchild;

“Department” means a department as defined in the Financial Management Act 2004;

“expression of interest” means a response to an open approach to the market requesting submissions from potential suppliers interested in participating in a procurement. The list of potential suppliers who have submitted expressions of interests may be used as the basis for conducting a tender process;

“goods” means objects of every kind and description and includes raw materials and inventories, products, equipment and plant;

“Government assets” for the purposes of these Regulations is limited to inventories, equipment, furniture and motor vehicles;

“inventories” means stock or items held for sale or consumption by government;

“performance bonds” means 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;

“Minister” means the Minister for Finance;

“procurement” means the overall process of acquiring goods, civil works and services which includes all the functions from the identification of needs, selection and solicitation of sources, preparation and award of contract and all phases of contract administration and management through to the end of the services contracts or the disposal of the asset;

“procurement contract” means a contract between the procuring agency and the contractor resulting from procurement proceedings;

“services” means the rendering of a contractor, supplier or consultant of their time and effort and includes any object of procurement either than goods or works;

“standing offer contract” means a contract for the supply of goods or services where the supplier has agreed to supply specified goods or services to Government for a specified period and at a pre-determined price ;

“tender deposit” means a deposit which may be required to be paid with the submission of a bid as an act of good faith by the potential supplier or contractor. This deposit is to be refunded to unsuccessful bidders;

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

### ***Guiding Principles of Procurement***

3. -Any procurement of goods, services or works shall be issued so as to promote the following principles -
- (a) value for money;
  - (b) maximise economy and efficiency and the ethical use of Government resources;
  - (c) promote open and fair competition amongst suppliers and contractors;
  - (d) promote the integrity of, fairness and public confidence in the procurement process; and
  - (e) achieve accountability and transparency in the procedures relating to procurement.

## **PART 2 – FIJI PROCUREMENT OFFICE**

### ***Establishment of the Fiji Procurement Office***

4. There is hereby established a Fiji Procurement Office.

### ***Functions of the Fiji Procurement Office***

- 5.-(1) The functions of the Fiji Procurement Office are to regulate and administer the procurement of goods, services and works for the Government of Fiji.
- (2) These include -
- (i) the formulation of appropriate procurement policies in terms of the procurement guiding principles;
  - (ii) procurement of goods, services and works including –
    - (a) consolidation of the procurement of common goods and services across the whole of government;
    - (b) processing and advertising requests for tenders and requests for proposals;
    - (c) evaluating and awarding tenders through the Board;
    - (d) contract management;
  - (iii) logistical support for the administration and distribution of goods required by Government; and
  - (iv) conducting compliance assessment of procurement functions and activities across the whole of Government.

### *Function of the Permanent Secretary for Finance*

6. The function of the Permanent Secretary for Finance is to ensure that the Fiji Procurement Office performs its functions according to these Regulations.

### *Functions of Permanent Secretaries*

7. Permanent Secretaries shall-

- (a) be responsible for preparing the ministry's or department's Annual Procurement Plan outlining the requirements of the agency in terms of the procurement of goods, services and works that must be undertaken in a budget period;
- (b) ensure that all procurements in their ministry or departments are made with due regard to the guiding principles of procurement outlined in Regulation 3;
- (c) execute and manage all procurement contracts signed on behalf of their ministry or department;
- (d) ensure that all records and documents relating to procurement and procurement contracts are properly maintained and kept for at least five years,
- (e) provide these records on request for the Auditor-General for audit purposes or by the Director Fiji Procurement Office for compliance checks.

### *Functions of the Director*

8.-(1) The Director shall –

- (a) subject to the directions of the Permanent Secretary Finance, be generally responsible for the operations of the Fiji Procurement Office;
  - (b) ensure that all procurements are made with due consideration to the guiding principles of procurement outlined in Regulation 3;
  - (c) execute and manage all annual procurement contracts made on behalf of whole-of-Government;
  - (d) be generally responsible for the clearance, collection and recording of all goods directly ordered by the Fiji Government via sea or air; and
  - (e) periodically inspect and carry out compliance checks on the procurement procedures in Ministries or Departments and report thereon to the Permanent Secretary of the Ministry or Department concerned and the Permanent Secretary for Finance.
- (2) The Director may delegate some of his or her functions to a person with the appropriate qualifications for the purpose of discharging any of his or her functions under these Regulations.

## **PART 3 – THE GOVERNMENT TENDER BOARD**

### *Establishment*

9.-(1) This section establishes the Government Tender Board.

- (2) The Board is constituted with authority to approve all procurement of goods, services and works valued at \$30,000 and more.

### ***Membership of the Board***

10. Members of the Board shall include –

- i. The Permanent Secretary for Public Enterprise or nominee as Chair;
- ii. The Permanent Secretary for National Planning or nominee;
- iii. The Permanent Secretary for Works or nominee;
- iv. The Permanent Secretary for Health or nominee;
- v. The Permanent Secretary for Provincial Development or nominee;
- vi. The Deputy Secretary for Finance or nominee;
- vii. Director, Fiji Procurement Office
- viii. An independent person from an anti-corruption institution or similar body appointed by the Minister.

### ***Functions of the Board***

11-(1) The Board shall consider tenders, indents or orders for the supply of goods, services or works and may -

- i. award tenders or approve indents; or
- ii. reject tenders and indents; or
- iii. ask for additional information from procuring agencies with regards to that particular procurement in order to make a decision.

(2) Any variations to the value of the initial contract must be approved by the Board.

(3) A signatory to any contract on behalf of Government shall not terminate such contract unless the Board approves such termination.

(4) The Board may appoint a sub-committee comprising of at least two (2) members of the Board and one co-opted specialist to consider and recommend -

- i. specialized or technical tenders for civil or capital works;
- ii. any tenders for the supply of goods and services required exclusively for a Department, Ministry or a Division.

(5) The sub-committee established in sub regulation 4 shall be subject to the direction of the Board.

### ***Voting Rights***

12. (1) Each member of the Board shall have one vote, excluding the Director who has no vote.

(2) In the event where the votes are tied, the Chairperson or the temporary Chairperson will have the casting vote.

### ***Co-opting Members to the Board***

13.-(1) The Board may co-opt experts from within and outside the public service to provide advice on technical and complex tenders.

(2) If a member is co-opted from the private sector, that member is entitled to a sitting allowance that may be determined by the Higher Salaries Commission.

(3) A co-opted member has no vote in Board decisions but may be a part of the quorum in the meeting.

### ***Appointment of Temporary Chairperson***

14.-(1) If the Chairperson is not able to attend a scheduled meeting, the Board members present at that meeting may appoint a member as Chairperson to preside over that meeting.

(2) The Director of the Fiji Procurement Office cannot be appointed as Chairperson.

#### *Quorum*

15. The quorum for a meeting of the Board is four.

#### *Secretariat*

16. The Chairperson shall appoint a Secretary from the Fiji Procurement Office who shall not be a member of the Board.

#### *Minutes of meetings subject to Audit*

17. The minutes of the Board meetings are subject to audit by the Auditor-General.

#### *Declaration of Interest*

18.-(1) If a member of the Board has either a direct or indirect interest in a tender or proposed tender, that member shall as soon as practicable after relevant facts have come to their knowledge, declare the nature of their interest to the Chairperson of the Board and shall be excluded from the evaluation or the approval of that tender and their interest, recorded in the minutes of that meeting.

(2) For the purpose of carrying out their functions, Board members whilst considering tenders for procurement by their own Ministries or Departments would not be deemed as acting with a conflict of interest.

(3) A Register of Interests of each Board member shall be kept by the Secretary of the Board to record any shares or interests (direct or indirect) in any companies or institutions and this is to be kept updated. Board members are responsible for notifying any change in their interests within 14 days of the relevant change.

(4) A failure to declare interest by a member of the Board shall result in the member's vote being invalid and the matter being reported to the Minister in writing by the Secretary of the Board.

#### *Powers to Regulate Board Procedures*

19. Subject to the provisions of these Regulations and to any direction given by the Minister, the Board shall regulate its own proceedings.

#### *Retrospective Approval*

20.-(1) Retrospective approval shall not be considered by the Board and must be submitted to the Minister for approval.

(2) Poor planning or organisation of procurement does not justify the need for retrospective approvals and officers responsible will be liable for disciplinary action.

### **PART 4- GENERAL CONTROL OVER THE PROCUREMENT OF GOODS, SERVICES AND WORKS**

#### *General control on tenders, indents and orders*

- 21.-(1) No tender for the supply of goods, services or works shall be called for, considered or accepted otherwise than in accordance with these Regulations.
- (2) No indent or order for the supply of goods, services or works shall be issued or approved otherwise than in accordance with these Regulations.
- (3) The procurement of any goods, services or works required by Ministries or Departments must be initiated either by the issue of a purchase order for any purchases of goods, services or works made locally or by the issue of an indent for any purchase of goods from overseas.

***Duties of other officers in charge of Government plant, equipment and inventories***

- 22.-(1) All Government officials shall be personally responsible for the custody of all Government plant, equipment and inventories under his or her control.

***Inspection of Government plant, equipment and inventories***

- 23.-(1) The Director may inspect or appoint any officer of the Fiji Procurement Office to carry out an inspection of any Government plant, equipment and inventories or any books, records or returns relating to Government plant, equipment and inventories.
- (2) Every officer appointed under sub regulation (1) shall be furnished with an identification card of his or her appointment and shall, if so required, produce the identification card.
- (3) Every officer shall furnish to an officer appointed under sub regulation (1), all such information and access to any Government plant, equipment and inventories, books, records and returns as he or she may require for the purposes for which he or she was appointed.

***Boards of Survey***

- 24.-(1) All Permanent Secretaries shall appoint a Board of Survey annually to determine whether government plant, equipment and inventories under his or her control are—
  - (a) in working condition or serviceable;
  - (b) unserviceable or obsolete; or
  - (c) surplus to the requirements of that agency.
- (2) A Board of Survey appointed under sub regulation (1) shall consist of-
  - (a) Two officers from that Ministry or Department who are not directly responsible for the government plant, equipment and inventories being surveyed;
  - (b) an officer from another Ministry or Department with relevant expertise in the items being surveyed.
  - (c) An officer from the Fiji Procurement Office for Government plant, equipment and inventories worth \$50,000 and above.
- (3) The Chairperson of the Board of Survey shall not be an officer of that Ministry or Department.
- (4) The Board of Survey appointed under sub regulation (1) shall report its findings to the respective Permanent Secretaries and copied to the Permanent Secretary for Finance.

**PART 5 – PROCUREMENT PROCEEDINGS**



### ***Procurement Guidelines***

25. The Permanent Secretary for Finance may with the approval of the Minister from time to time issue and amend Procurement Guidelines.

### ***Annual Procurement Plans***

- 26.-(1) The Annual Procurement Plan for each year must be prepared by the Permanent Secretary of each Ministry or Department and submitted to the Fiji Procurement Office after the announcement of the Budget and in accordance with Finance Circulars issued by the Permanent Secretary for Finance.
- (2) The Annual Procurement Plan must contain the following information-
- (a) all procurement of goods, services or works required to be carried out during the budget year;
  - (b) the proposed methods of procurement;
  - (c) the estimated quantity, budget and timing of each purchase or group of purchases.
- (3) Each Annual Procurement Plan shall be approved by the Permanent Secretary for Finance.
- (4) Any amendments to the Annual Procurement Plan must be communicated to the Director as soon as practical.

### ***Procurement Authorities***

- 27.-(1) The procurement authorities delegated to Permanent Secretaries and the Board when procuring goods, services or works are as follows -

<b>Responsible Authority</b>	<b>Procurement Limits</b>
Permanent Secretaries	\$30,000 and less
Government Tender Board	\$30,001 and more

- (2) The Permanent Secretaries may delegate procurement authorities within their respective ministries or departments but in doing so, must have regard for the level of skills and experience of officers and must ensure that each officer does not exceed his or her limits.
- (3) Each delegation of procurement authority shall be documented in the Ministries or Departments Finance Manual.

### ***Valuing Procurement***

- 28.-(1) The procurement value is the maximum anticipated value of a contract, including options, extensions, renewals or other mechanisms to be executed during the life of a contract.
- (2) The estimated value of the goods, services or works must include-
- (a) all forms of remuneration including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the contract;
  - (b) the total maximum value of the goods, services or works being procured, including the value of any options in the proposed contract; and
  - (c) any taxes or charges (including Value Added Tax).

- (3) Ministries or Departments must not split at any stage any single requirement in order to avoid the application of the procurement limits in regulation 27-(1).

***Procurement of Goods, Services or Works \$30, 000 and less***

- 29.-(1) A minimum of three competitive quotes must be obtained for the procurement of goods, services or works valued at \$100 and more but \$30,000 and less.
- (2) Where the procurement of goods or services costs less than \$100, competitive quotes may be received verbally but must be documented and signed by the officer receiving the quotes.

***Procurement of Goods, Services or Works \$30, 001 and more***

- 30.-(1) A tender must be called for the procurement of goods, services or works valued at \$30,001 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 the other procurement method outlined in Regulation 31.

***Other Methods of Procurement***

- 31.-(1) A procuring ministry or department may engage in any of the following procurement methods, provided that all the conditions for the use of that method are satisfied -
- (i) Two stage tendering;
  - (ii) Prequalified tendering;
  - (iii) Selective tendering;
  - (iv) Single source procurement.
- (2) The conditions for the application of any of the above procurement methods are documented in the Procurement Guidelines, to be provided by the Ministry of Finance.

***Emergency Purchases***

- 32.-(1) Emergency purchases shall only be considered where there is extreme urgency brought about by unforeseeable events.
- (2) A procuring Ministry or Department can engage in emergency procurement only in the following circumstances –
- (i) In the event of a natural disaster such as a cyclone, flood, earthquake, tsunami, whirlwind, landslide, forest fire or drought;
  - (ii) In life or death situations;
  - (iii) In the event of an outbreak of disease for either human, plant or animal; or
  - (iv) Where there is an urgent need for goods, services or civil works and engaging in tender proceedings would be impractical due to time constraints or cost factors, but provided that the circumstances giving rise to that urgency were not foreseeable by the procuring ministry or department.
- (3) In relation to 32(2)(ii), (iii) and (iv), agencies must seek the approval of the Minister before undertaking any emergency procurement.

(4) All submission must be processed and analysed by the Fiji Procurement Office before submission to the Minister.

### ***Immediate Relief Assistance***

33. – (1) Within 30 days after a state of natural disaster has been declared, the Permanent Secretaries of Ministries given special responsibilities under the Disaster Management Control Act can procure goods, services or works for immediate relief assistance such as food items and access to clean and safe water, medical supplies, temporary shelter materials and seeds for subsistence purposes, provided that the procurement has been endorsed by the National Disaster Management Controller.
- (2) When procuring these goods, services or civil works, relevant agencies must first utilize existing standing offer contracts before procuring goods, services or civil works from other suppliers.
- (3) At the end of the immediate relief period, these Ministries must submit a report to the Minister of Finance stating the amounts of funds that have been used on the immediate relief assistance.

### ***Ongoing Relief Assistance and Rehabilitation***

- 34.-(1) Procuring Ministries or Departments must comply with competitive procurement procedures when procuring goods, services or civil works for ongoing relief assistance and rehabilitation purposes.
- (2) Procuring Ministries and Departments seeking additional funds for ongoing relief assistance and rehabilitation purposes shall seek redeployment or supplementary appropriations from the Ministry of Finance before incurring this expenditure.

### ***Common Use Goods and Services***

- 35.-(1) Where the Director identifies any goods or services that are required for the benefit of more than one Department, the Director may, in respect of up to one year, call a tender for the supply of goods, services or works to meet the requirements of those Departments for that year and enter into a standing offer contract.
- (2) If the Director is satisfied that it would be more advantageous to obtain tenders for the supply of such goods or services to meet those requirements over a longer period than one year, the Director may call for tenders for the supply of such goods and services to meet those requirements over such longer period.
- (3) Permanent Secretaries must ensure that all standing offer contracts executed by the Fiji Procurement Office on behalf of Government pursuant to sub regulations (1) and (2) are complied with at all times.

### ***Qualification of Suppliers and Contractors***

- 36.-(1) In order to participate in procurement proceedings, all potential bidders in addition to the requirements contained in any solicitation documents, must satisfy the following conditions to the satisfaction of the Board-
- (a) that they have the legal capacity to enter into the contract;
- (b) that they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation and the personnel to perform the contract;

- (c) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not subject of legal proceeding for any of the foregoing or otherwise which in the event of an adverse finding might cause the bidder to cease business;
  - (d) that they have evidence of a business relationship in the form of a partnership agreement, joint venture agreement, supply contracts or like documentation, if bidding in conjunction with another person, that would necessitate the demonstration to fulfil the contract.
- (2) The Board may disqualify a supplier or contractor if he/she finds at any time that the information submitted concerning the qualifications of the supplier or contractor was false, materially inaccurate or materially incomplete.
  - (3) The Board may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractor was inaccurate and incomplete in a non-material respect. The supplier or contractor may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring agency.

#### ***Requests to tender***

- 37.-(1) All requests to tender must be issued so as to encourage an open and competitive bidding process.
- (2) All requests to tender must contain all necessary information to enable potential bidders to prepare and submit responsive tenders, including the specifications of that particular procurement and the evaluation criteria for the award of the procurement contract. Where goods, services or works to be procured cannot be described in detail in the advertisement, additional information must be readily available from the Ministry or Department or any Government website.
- (3) All requests to tender must allow reasonable time for potential suppliers and contractors to respond and should not be more than 30 working days and not less than 10 working days from the day of advertisement.
- (4) All requests to tender for the procurement of goods, services or works shall be issued by the Director.
- (5) All requests to tender shall be published for a minimum of two occasions in at least one newspaper circulating in Fiji and where appropriate in relevant trade journals circulating in other countries.
- (6) Wherever possible, Government tenders must be advertised on a Government website or through any other means deemed appropriate to encourage an open and competitive bidding process.
- (7) Tender documents may be obtained by any bidder either free of charge or at a reasonable fee depending on the type or technicality of the tender.
- (8) Where necessary, the Director may require that bidders remit with their bids a tender deposit which is refundable to unsuccessful bidders.
- (9) In respect of e-tenders, an administration fee may be chargeable by the Fiji Procurement Office for the uploading of tenders.

### ***Request for Proposal***

- 38.-(1) A request for a proposal may be issued for the procurement of services where the procuring Ministry or Department has broad outputs that it seeks to achieve but allows potential suppliers scope for variety and innovation on the processes to be followed to achieve these broad outputs.
- (2) A request for proposal shall include the nature and characteristics of the services to be procured, the selection criteria and other relevant information relating to the submission of that bid.
- (3) A request for proposal must be issued and advertised in accordance with Regulation 37 (1) to (9).

### ***Expression of Interest***

- 39.-(1) A procuring Ministry or Department may advertise an expression of interest to request information from potential suppliers and may use the list of potential suppliers that have submitted compliant submissions as the basis for seeking tenders or proposals.
- (2) An expression of interest must contain adequate information to ensure potential suppliers understand the procuring Ministry or Department's requirements and are able to prepare submissions in response to these requirements and must include the evaluation criteria that will be used to assess submissions and other relevant information.
- (3) An expression of interest must be issued in accordance with Regulation 37(1), (3) and (5) - (9) where applicable.

### ***Late Submissions***

- 40.-(1) Late submissions will not be accepted.
- (2) Late submissions will be recorded, acknowledged and kept unopened.

### ***Receipt and Opening of Submissions***

- 41.-(1) Procedures to receive and open all submissions must guarantee fairness and impartiality and must ensure submissions are treated with confidence.
- (2) All bidders or their representatives shall be invited to the opening of the tenders.
- (3) The Board Secretary and one other Board member shall open all bids received by the final date and time and record details in a Tender Register.
- (4) Bidders shall not be permitted to alter their bids after the deadline except under the provisions of Regulation 42.

### ***Evaluation of Bids***

- 42.-(1) All bids received are to be evaluated in accordance with the evaluation criteria that were set for that particular tender and in accordance with the Procurement Guidelines.
- (2) The overall evaluation criteria shall be value for money, which may not necessarily be the lowest cost.

### ***Tender Negotiations***

- 43.-(1) A procuring Ministry or Department may conduct negotiations;

- (i) In the context of procurement in which they have indicated such intent in the tender notice or tender documentation; or
- (ii) Where it appears from the evaluation that no one tender is the most advantageous in terms of the specific evaluation criteria set out in the tender notice or tender documentation

(2) A procuring Ministry or Department shall:

(i) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the tender notice or tender documentation; and

(ii) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit new or revised tenders.

(3) A procuring Ministry or Department must inform the Fiji Procurement Office of their intention to conduct negotiations and seek representation from their Office before the commencement of any negotiations.

#### ***Award by Board before Signing of a Contract***

44. Subject to provisions of Regulation 48, approval of the Board is required before a contract is awarded to the successful bidder.

#### ***Post award information***

45. The Director must promptly publish or inform suppliers that have submitted a bid of the contract award decision.

#### ***Supplier Debriefing***

46. Upon written request from an unsuccessful bidder, the Director may promptly provide pertinent information concerning the reasons for the rejection of its tenders or the relative advantages of the tender that was accepted.

#### ***Withdrawal of tenders***

47. The Director may withdraw a tender for the following reason –

- (a) the procuring Ministry or Department has sought to amend the terms of reference to a large extent that requires a fresh tender to be put out;
- (b) there has been evidence of collusion or improper tender practices;
- (c) the tender process (from the advertisement of the tender to the Board approval) has gone on for over a period of three months and has thereby compromised the fairness and impartiality of the procurement process;
- (d) if inadequate bids, quotations or proposals have been received in response to an invitation to tender;
- (e) In the event of any other occurrence deemed by the Director to have a significant impact on the tender.

### ***Waiver of Tender Procedures***

- 48.-(1) The Board may approve that tenders procedures be waived where -
- (a) there is only one supplier capable of supplying the goods, services or works; and
  - (b) a supplier has been nominated by an aid agency which is fully funding the procurement.
- (2) Where the Board has given approval not to seek tenders, they must do so in writing.
- (3) If it is impractical to comply with regulation 30 sub regulation (1) in relation to the provision of legal services, the Attorney General may apply to the Minister for Finance to be exempted from Regulation 30 (1).
- (4) If it is impractical to comply with regulation 30 sub regulation (1) in relation to the provision of urgent infrastructure development and services, The Minister for Finance may on this basis exempt such particular infrastructural services from complying with regulation 30 sub regulation 1.

## **PART 6 – REVIEW PROCEDURES**

### ***Right to Review***

- 49.-(1) Any supplier or contractor who claims to have suffered, or may suffer from loss or injury due to breach of the duty imposed by the procuring Ministry or Department, Fiji Procurement Office or the Board may seek review in accordance with this part of the Regulations.
- (2) The following may not be subject to review as provided in sub regulation (1) above –
- (i) the method of procurement selected;
  - (ii) the choice of selection criteria;
  - (iii) the withdrawal of the tender under Regulation 47;
  - (iv) a decision taken to reject all tenders, proposals or quotations.

### ***Review by the Permanent Secretary for Finance***

- 50.-(1) Unless a procurement contract has already entered into force, a complaint shall in the first instance, be submitted in writing to the Permanent Secretary for Finance.
- (2) The Permanent Secretary for Finance shall not entertain a complaint, unless it is submitted within 20 working days from when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or of when that supplier or contractor should have become aware of those circumstances, whichever is earlier.
- (3) The Permanent Secretary for Finance shall not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force. In such circumstances, the aggrieved party shall seek redress under Regulation 51.
- (4) Unless the complaint is resolved by mutual agreement of the supplier or the contractor that submitted it, the Permanent Secretary for Finance shall within 30 days of the submission of the complaint, issue a written decision.
- (5) The written decision shall -

- (a) state the reasons for the decision; and
  - (b) if the complaint is upheld in whole or in part, state the corrective measures that are to be taken.
- (6) If the Permanent Secretary for Finance does not issue a decision within the time specified in sub-regulation (4), the supplier or contractor submitting the complaint is entitled immediately thereafter to institute proceedings under Regulation 51.
- (7) Upon the institution of such proceedings, the competence of the Permanent Secretary for Finance to entertain the complaint ceases.
- (8) The decision of the Permanent Secretary for Finance shall be final unless proceedings are instituted under Regulation 51.

### ***Judicial Review***

51. If a supplier or contractor is dissatisfied with the decision of the Permanent Secretary for Finance or the procurement contract has been entered into force, the supplier or contractor has the right to instigate court proceedings.

## **PART 7 – DISPOSAL OF GOVERNMENT ASSETS**

### ***Disposal of Government Assets***

- 52.-(1) The Permanent Secretary for Finance shall approve the disposal and write-off of Government plant, equipment and inventories up to \$50,000. Any approval above this limit must be referred to the Minister for Finance.
- (2) Upon submission and consideration of the recommendations of the Board of Survey Report, the Permanent Secretary for Finance may authorize the Permanent Secretary of that Ministry or Department to dispose of plant, equipment and inventories-
- (a) By sale or exchange;
  - (b) By transfer to any other agency, state institution or charitable organization;
  - (c) Where the assets are found to be unserviceable, by gift or as scrap, or
  - (d) by destruction in such a manner as the Permanent Secretary for Finance may direct.
- (3) Where the Permanent Secretary of Finance has authorized the sale of any government plant, equipment and inventories, the Director shall determine whether they are to be sold by auction or public tender.
- (4) The Director may levy a fee on Ministries or Departments for the facilitation of a government auction on their behalf.
- (5) The Director or any other person authorized by the Director shall execute any contract for the sale of government plant, equipment and inventories.
- (6) Permanent Secretaries must comply with this part of the Regulations when disposing of plant, equipment and inventories of Ministries or Departments.

### ***Disposal of Condemned Food Items***

- 53.-(1) Food items may be disposed after certification by the appropriate representative of the Health Ministry that it is unfit for human consumption.



- (2) A certificate obtained under sub regulation 1 above shall accompany the report of Unserviceable items seeking approval for write-off from the Permanent Secretary of Finance.

## **PART 8 - MISCELLANEOUS**

### ***Relationship to the Finance Instructions***

54. This Regulation prevails to the extent of any inconsistency with the Finance Instructions.

### ***Repeal, Award, Savings, etc***

55. The following Regulations are repealed -

- (a) Service and Supplies Regulations 2005
- (b) Public Works Regulations 2005

Dated this 29<sup>th</sup> day of July 2010

**J. V. BAINIMARAMA**

Prime Minister, Minister for Public Service,  
People's Charter for Change, Information,  
Archives, Finance, National Planning, Sugar,  
Provincial Development, Indigenous and  
Multi- Ethnic Affairs.