

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (PROCUREMENT OF
CONSULTANTS) (NO.2) REGULATIONS, 2021**

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Legal Notice No.

REPUBLIC OF TRINIDAD AND TOBAGO

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY ACT, 2015**

REGULATIONS

Made by the Minister, on the recommendation of the Office of
Procurement Regulation, under section 63 of the Public
Procurement and Disposal of Public Property Act, and subject to
affirmative resolution of Parliament

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (PROCUREMENT OF
CONSULTANTS) (NO.2) REGULATIONS, 2021**

Citation

1. These Regulations may be cited as the Public
Procurement and Disposal of Public Property (Procurement of
Consultants) Regulations, 2021.

Interpretation

2. In these Regulations –
“Consultant” means a legal entity or natural person
who provides consulting services within the
meaning of the Act; and
“market knowledge” means a public body’s
knowledge about the characteristic of a good, work
or service which it requires and the person or
persons who provides the good, work or service.

Procurement of
Consultants

3. (1) A procuring entity may procure the services of a
Consultant using a competitive or non-competitive method of
procurement as set out in the Public Procurement and Disposal of
Public Procurement (Procurement Methods and Procedures)
Regulations, 2021.

(2) A procuring entity may utilize either the sole
source or single source method of procurement where –
(a) a Consultant is to be selected because of his
specialised qualification; or
(b) it is necessary for a Consultant to continue
a project where the initial contract was
awarded through an approved procurement
process in compliance with the Act and
Regulations.

4. (1) A procuring entity may invite proposals via open tendering or from a listing of pre-qualified or pre-selected Consultants.

Competitive process for selecting a Consultant

(2) A procuring entity shall evaluate proposals in accordance with these Regulations and the pre-determined evaluation methodology and criteria outlined in its request for proposals.

5. (1) A procuring entity may utilize the single source method of procurement to award a procurement contract to a public body where the award of the procurement contract would be advantageous to the procuring entity and the State.

Selection of Consultant from among public bodies

(2) Where a procurement contract is awarded pursuant to sub-regulation (1), the procuring entity shall include in its record of procurement proceedings its justification for the award of the contract which shall be consistent with the requirements for economy, efficiency, transparency and value for money.

Shortlisting

6. (1) Where the value of a contract is estimated to be equal to or greater than the threshold set out in the guidelines and handbooks a shortlist of Consultants is to be established by applying a pre-selection procedure in accordance with Public Procurement and Disposal of Public Property (Pre-Qualification and Pre-Selection) Regulations, 2021.

(2) Where the value of a contract is estimated to be less than the threshold set out in the guidelines and handbook. The shortlist is to be developed from the pre-qualified listing of consultants that are registered in the Procurement Depository.

(3) Where a Consultant is shortlisted the procuring entity shall send to the Consultant a request for proposals, including a letter of invitation, instructions to the Consultant, the terms of reference and a draft of the proposed contract.

7. (1) The letter of invitation referred to in regulation 6(3) shall state, *inter alia* –

Request for Proposal Method

(a) the intention of the procuring entity to enter into a contract for the provision of consulting services;

- (b) the details of the procuring entity; and
- (c) the date, time and address for the submission of a proposal.

(2) The instructions to the Consultant referred to in regulation 6(3) shall contain information which would help the Consultant to prepare a responsive proposal, including –

- (a) information on the evaluation process;
- (b) information on the evaluation criteria and factors and their respective weights; and
- (c) the minimum passing quality score.

(3) The terms of reference referred to in regulation 6(3) shall –

- (a) clearly define the objectives, goals and scope of the procurement; and
- (b) provide background information to facilitate the Consultant's preparation of his proposal.

(4) The draft contract shall inter alia set out –

- (a) the standard terms and conditions of the engagement of the Consultant for the procurement;
- (b) the role, responsibility and liability of each party to the contract;
- (c) the applicable law; and
- (d) the provisions for dispute resolution.

Submission of proposals

8. (1) A Consultant may be required to submit his technical and financial proposal, either combined in a single envelope or in separate envelopes, in accordance with approved guidelines issued by the Office.

(2) A financial proposal shall only be considered after the completion of the evaluation of the technical proposal.

Evaluation methods

9. (1) The procedure for evaluation will depend on the selection method chosen by the procuring entity, which will depend on the nature and value of the services sought as well as the characteristics and risks inherent in the market for those services.

(2) The most common methods of evaluation and the reasons for adopting them are:

- (a) quality and cost-based selection (**QCBS**) which applies a competitive process among shortlisted consultants taking into account the combined quality of the proposal and the cost of the services in the selection of the successful consultant;
- (b) quality based selection (**QBS**) is appropriate when assignments are complex or highly specialized making it difficult to define precise terms of reference or for assignments that can be carried out in substantially different ways such that financial proposals may be difficult to compare;
- (c) selection under fixed budget (**FBS**) is a method used when the assignment is simple and can be precisely defined, and when the budget is fixed;
- (d) least cost selection (**LCS**) is a method that is appropriate for assignments of a standard or routine nature in which the value of the contract is relatively small;
- (e) selection based on consultants' qualifications (**CQS**) may be used for small assignments where –
 - (i) highly specialized expertise is required for the assignment;
 - (ii) recruitment time is critical and the assignment is, typically, short-term;
 - (iii) few consultants are qualified; and
 - (iv) the preparation and evaluation of competitive proposals is not justified; and
- (f) individual consultants may be selected based on the consultants' qualifications method where –
 - (i) the qualification and experience of the individual are the paramount requirement;
 - (ii) teams of personnel are not required; and
 - (iii) no outside professional support is required; and

Evaluation
procedure

10. (1) The following procedures for evaluation of proposals may be applied:

- (a) in the case of quality and cost-based selection, the cost and quality scores are weighted and added to determine the highest total score, with the weight for the “cost” element being determined based on the complexity of the assignment and the relative importance of quality but within a range of 20 to 30 points out of a total score of 100;
- (b) in the case of quality-based selection, after evaluating all the technical proposals, the procuring entity shall open only the highest ranked technical proposal and negotiate the financial proposal with the Consultant who submitted the highest ranked technical proposal;
- (c) in the case of a fixed budget selection, following evaluation of all the technical proposals –
 - (i) all the financial proposals shall be opened and the financial proposals which exceed the budget for the procurement shall be rejected; and
 - (ii) the Consultant who submitted the highest ranked technical proposal, with a financial proposal which does not exceed the budget for the procurement, shall be selected and invited to negotiate a contract; or
- (d) subject to sub-regulation (2), in the case of selection based on qualifications, the procuring entity, shall –
 - (i) prepare the terms of reference;
 - (ii) obtain an expression of interest from at least three Consultants with the

required qualifications and experience;

- (iii) assess and compare the Consultants;
- (iv) select the best qualified and experienced Consultant and ask him to submit a combined technical and financial proposal; and
- (v) invite the Consultant to negotiate a contract if his combined technical and financial proposal is responsive.

(2) In the case of selection based on qualifications, where only two Consultants are available, the procuring entity shall include its justification for inviting less than three Consultants in its record of procurement proceedings.

(3) An individual Consultant may be selected based on his qualifications in the following manner:

- (a) subject to sub-regulation (4), the procuring entity shall shortlist at least three Consultants, established from market knowledge or other sources of information, and invite each of them to submit a proposal;
- (b) the procuring entity shall ensure that the shortlisted Consultants possess the required qualification and has the capacity to provide the good, work or service as set out in the terms of reference;
- (c) assess a Consultant's capacity on the basis of academic background, experience and, where necessary, knowledge of local conditions and other relevant factors; and
- (d) invite the selected Consultant to submit his technical and financial proposals prior to the conclusion of the agreement.

(4) For the purposes of sub-regulation (3)(a), where only two Consultants are available, the procuring entity shall include its justification for inviting less than three Consultants in its record of procurement proceedings

11. (1) A Consultant shall, at all times, provide professional, objective and impartial advice to the procuring entity which procures his services and avoid conflicts of interest.

General provisions

(2) A procuring entity shall not award a procurement contract to a Consultant where –

- (a) a conflict of interest exists between the Consultant’s consulting activities and the provision of the good, work or service to the procuring entity; or
- (b) the award of the procurement contract will create a conflict of interest with another good, work or service provided by the Consultant.

(3) Where a Consultant is a firm, the firm and any of its affiliates which is engaged by a procuring entity to provide goods, works or services shall be disqualified from providing consulting services related to those goods, works or services.

(4) Where a Consultant is a firm, the firm or any of its affiliates which is engaged to provide consulting services for the preparation or implementation of a project for a procuring entity shall be disqualified from providing goods, works or services resulting from or directly related to its consulting services for such preparation or implementation.

Dated this day of , 2021.

Minister of Finance

Approved by the Senate this day of , 2021.

Clerk of the Senate

Approved by the House of Representatives this day of , 2021.

Clerk of the House