



Tuvalu

# **PUBLIC PROCUREMENT ACT 2013**





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## Tuvalu

# PUBLIC PROCUREMENT ACT 2013

## AN ACT TO PROVIDE FOR THE POWERS AND RESPONSIBILITIES OF OFFICERS OF THE GOVERNMENT OF TUVALU IN UNDERTAKING PUBLIC PROCUREMENT

Commencement [ 31<sup>st</sup> January, 2014]

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### PART 1 PRELIMINARY

#### 1 Short Title

This Act may be cited as the Public Procurement Act 2013.

#### 2 Commencement

This Act shall come into force on such date as the Minister by notice appoints.

#### 3 Interpretation

In this Act, unless the context otherwise requires:

“**Act**” means the Public Procurement Act 2013.

“**Central Procurement Unit**” means the unit established under section 10 of the Act.

“**consultant**” means an individual or firm or consortium of firms or joint venture of firms that provides consulting services.

“**consulting services**” means services of an intellectual and advisory nature provided by a consultant.

“**contractor**” means a potential party or party to a contract with a Ministry for the construction of buildings, physical infrastructure and other works of a civil engineering nature.

“**corrupt practices**” are defined in section 367 of the Penal Code.

“**forms**” means templates that have been prepared as standard documents for use by procuring entities during procurement proceedings.

“**major procurement**” means procurement estimated to cost in excess of the threshold prescribed in the Regulations.

“**Minister**” means the minister responsible for finance.

“**minor procurement**” means procurement estimated to cost not more than the threshold prescribed in the Regulations.

“**non-consulting services**” means services other than consulting services that are contracted on the basis of a measurable physical output.

“**procurement**” means the acquisition of goods, works and non-consulting services and the recruitment of consulting services.

“**procurement proposal**” means a written application by a procuring entity to commence a procurement proceeding.

“**Procurement Review Committee**” means the committee established under section 9 of the Act to consider the recommendations of the Central Procurement Unit on major procurement proceedings.

“**procuring entity**” means for major procurement the Central Procurement Unit and for minor procurement the ministry that undertakes the procurement.

“**public officer**” means a person employed in the public service of Tuvalu and any person serving under the Crown.

“**public procurement**” means procurement funded by public funds.

“**Regulations**” means the regulations promulgated by the Minister under section 18 of the Act.

“**supplier**” means a potential party or party to a contract for the supply of goods or non-consulting services to a public body.

#### 4 Scope of application

- (1) The Act shall apply to all procurement carried out by the Government. A contract awarded after a procurement proceeding during which there has been serious and wilful breach of the provisions of this Act shall not be binding upon the Government.
- (2) Where any provision of this Act conflicts with the procurement rules or guidelines of an overseas Government, international organisation or commercial undertaking, the application of which is mandatory pursuant to an obligation entered into by Tuvalu under any treaty or other form of agreement, those rules shall prevail but in all other respects, procurement shall be governed by the provisions of this Act.

## **5 Responsibility**

The Minister is responsible for the Act.

## **6 This Act shall bind the Crown**

This Act shall bind the Crown.

## **7 Purpose**

The purpose of this Act is to regulate public procurement in order to:

- (a) maximize economy and efficiency;
- (b) achieve transparency in procurement proceedings;
- (c) promote competition among suppliers, contractors, consultants and non-consulting service providers;
- (d) provide for fair, equal and equitable treatment of all suppliers, contractors, consultants and non-consulting service providers seeking to obtain contracts with the Government; and
- (e) promote public confidence in the integrity and fairness of procurement proceedings.

# **PART 2 INSTITUTIONAL ARRANGEMENTS**

## **8 Procurement Monitoring and Oversight**

- (1) The Tuvalu National Audit Office shall provide monitoring and oversight of all procurement by:
  - (a) reviewing samples of recent and ongoing procurement proceedings in all procuring entities and determining whether the proceedings comply with the provisions of this Act;
  - (b) reporting its findings on sample reviews to the Minister on a case by case basis; and
  - (c) reporting to Parliament annually on its findings during the previous twelve months, including recommendations for follow up action by the Minister where appropriate.
- (2) After consideration of the reports from the Tuvalu National Audit Office, the Minister shall instruct the Central Procurement Unit to take further action as appropriate.

**9 Procurement Review Committee**

- (1) There is hereby established a Procurement Review Committee, which has the purposes of reviewing and approving all major procurement.
- (2) The composition of the Procurement Review Committee shall be determined by the Minister in the Regulations.

**10 Central Procurement Unit**

- (1) There is hereby established within the ministry responsible for finance a Central Procurement Unit, which has the purposes of developing public procurement policy, carrying out all major procurement and other functions as prescribed by Regulation.
- (2) The Central Procurement Unit shall have such structure and organisation as the Minister may determine necessary for the efficient performance of its functions.

**11 Procurement Officer**

The Minister shall designate staff from each ministry as Procurement Officers, who shall be responsible for undertaking all minor procurement for that ministry as defined in the Regulations. The Procurement Officer shall also be responsible for other duties as prescribed in the Regulations.

**12 Review Panels**

The Procurement Review Committee shall establish a list of specialists from which shall be formed a number of Review Panels in the manner set forth in the Regulations for the purpose of reviewing complaints with respect to any breach by a procuring entity of its obligations under this Act.

**13 Leadership**

Staff of the Central Procurement Unit, Procurement Officers and members of the Procurement Review Committee are hereby declared Leaders under the Leadership Code Act 2006.

## **PART 3 RECORDS AND PUBLIC DISCLOSURE**

### **14 Documentary record of procurement**

The procuring entity shall maintain a record of all procurement in the manner set forth in the Regulations.

### **15 Public disclosure of procurement**

The procuring entity shall publish the outcome of procurement proceedings within one week of the award of a contract for each proceeding, or within one week of cancellation of a proceeding.

## **PART 4 OFFENCES AND THE RIGHT TO CHALLENGE**

### **16 Offences and Penalties**

- (1) All public officers and staff and agents of bidders, potential bidders, suppliers, contractors, non-consulting service providers and consultants shall observe the highest standard of ethics during procurement proceedings and the implementation and management of contracts awarded therefrom.
- (2) Any public officer who wilfully engages in corrupt practices in relation to a procurement proceeding shall be prosecuted under Part X and section 367 of the Penal Code and in addition to any penalty provided under the Penal Code shall upon conviction be liable to a fine of \$10,000.

### **17 Right to challenge**

- (1) Any party to a procurement proceeding who is aggrieved by a decision or action of the procuring entity may challenge the decision or action concerned. Challenge proceedings may be made by way of a written application for reconsideration to the procuring entity or a written application to the Minister for review by a Review Panel.
- (2) The time limits for challenging decisions or actions and the consequences of challenge proceedings on a procurement proceeding will be decided by the Minister through the Regulations.



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## PART 5 REGULATIONS AND FORMS

### 18 Regulations

- (1) The Minister shall issue Regulations to implement the provisions of this Act.
- (2) The Regulations shall provide for:
  - (a) annual procurement planning linked to budget preparation and approval;
  - (b) defining activities that are, or are not, procurement for the purpose of this Act;
  - (c) methods and procedures for the procurement of goods, works, consultants and non-consulting services to be applied by procuring entities during procurement proceedings;
  - (d) thresholds to determine which method of procurement shall be used by procuring entities;
  - (e) procedures for the exceptional waiver of competitive bidding; and
  - (f) other matters as the Minister may decide.
- (3) The Minister may, on the advice of the Central Procurement Unit, amend methods of procurement and thresholds from time to time.

### 19 Forms

- (1) The Minister may cause to be prepared and issued standard Forms for use as templates by procuring entities during procurement proceedings. Forms may comprise:
  - (a) procurement plan;
  - (b) procurement proposal;
  - (c) advertisements, invitations for expressions of interest, invitations for bids and requests for proposals;
  - (d) standard bidding and proposal documents;
  - (e) model templates for bid and proposal evaluation and reporting;
  - (f) forms of contract; and
  - (g) other forms as the Minister may decide.
- (2) The Minister may, on the advice of the Central Procurement Unit, amend the Forms from time to time.