

MONTSERRAT
STATUTORY RULES AND ORDERS

S.R.O. 27 OF 2019

PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)
(PROCUREMENT) REGULATIONS 2019

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**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)
(PROCUREMENT) REGULATIONS**

THE PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) (PROCUREMENT) REGULATIONS 2018 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET UNDER SECTION 58 OF THE PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) ACT (CAP. 17.07).

PART 1— PRELIMINARY

1. Citation and Commencement

- (1) These Regulations may be cited as the Public Finance (Management and Accountability) (Procurement) Regulations 2019.
- (2) These Regulations shall come into force on 1 September 2019.

2. Interpretation

In these Regulations—

“accounting officer” means a person designated as such under section 9 of the Act;

“Act” means the Public Finance (Management and Accountability) Act (Cap. 17.07);

“Chairperson” means the Chairperson of the Procurement Board under regulation 15(2)(a);

“construction” 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;

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“**contract**” means a contract concluded between a procuring entity and a supplier at the end of a procurement process

“**domestic supplier**” means a supplier who has his principal place of business in Montserrat;

“**good**” includes raw material, product, equipment and other physical object of every kind and description, whether in solid, liquid, or gaseous form and electricity;

“**Government**” means Her Majesty’s Government of Montserrat;

“**Head of Department**” has the meaning assigned to it in regulation 2 of the Public Finance (Management and Accountability) Regulations (Cap. 17.07);

“**material deviation or qualification**” means a deviation or qualification which would—

(a) detrimentally affect the scope, quality or performance of the goods, service or construction identified in the tender document; or

(b) change the supplier’s risk and responsibilities under the procurement contract;

“**Ministry**” means the Ministry with responsibility for finance;

“**open tendering**” means publicly publishing a request or invitation for tenders and considering all submissions received in response to the invitation;

“**prequalification**” means the proceeding under regulation 23 to identify qualified suppliers before solicitation;

“**prequalification document**” means a document issued by the procuring entity in prequalification proceedings under regulation 23;

“**procurement**” means the acquisition of goods by any means including purchase, rental, lease or hire-purchase, and the acquisition of construction, consulting and other services;

“**procurement process**” means the collective procedures for a method of procurement referred to in Part 4 including pre-qualification and framework agreements;

“**Procurement Board**” means the Procurement Board established under regulation 15;

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“**procurement contract**” means a contract between the procuring entity and a supplier resulting from the procurement process;

“**procuring entity**” means a ministry, department, agency, division, unit or any subdivision of the Government that engages in procurement;

“**public emergency**” means a period of public emergency declared in accordance with the Montserrat Constitution Order (Cap. 1.01);

“**public service law**” means any law relating to the matters referred to in section 24(2) of the Montserrat Constitution Order (Cap. 1.01);

“**publish**” has the meaning assigned in regulation 52;

“**responsive tender**” means a tender which conforms to the requirements and conditions of the tender documents without material deviation or qualification;

“**service**” means a service of a general nature other than construction;

“**solicitation**” means an invitation or request to participate in a procurement process including an invitation to tender, a request for quotations and a request for proposals;

“**solicitation document**” means a document, including any amendment, issued by the procuring entity for the purpose of solicitation which sets out the terms and conditions of a particular procurement and includes an invitation to tender;

“**submission**” means a tender, a proposal, an offer, a quotation or other document, including any amendment, issued by a supplier to a procuring entity for the purpose of responding to a solicitation or participating in a procurement process;

“**supplier**” means according to the context, a party or potential party to a procurement contract with the procuring entity and includes a consultant; and

3. Application

(1) These Regulations apply to all procurement by a procuring entity unless—

(a) the procurement is for the purposes of national defence, public emergency or national security; or

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- (b) these Regulations conflict with a provision of an international agreement.
- (2) The application of these Regulations may be extended to the type of procurement referred to in subregulation (1) if and to the extent that a procuring entity expressly declares the application of the Regulations to suppliers in its initial solicitation document.
- (3) These Regulations apply to procurement by a statutory body or other entity to the extent provided in regulation 18.

PART 2—GENERAL PROVISIONS

4. Procurement Plan and Strategy

- (1) A procuring entity shall prepare and submit to the Procurement Board an annual procurement plan no later than 31 April in each financial year, setting out details, including the approximate value, of a procurement the procuring entity intends to undertake during the financial year.
- (2) A procurement set out in a procurement plan shall be accompanied by a procurement strategy.
- (3) A procuring entity may submit an amendment to its procurement plan at least thirty days before the procurement process is to be undertaken in respect of that procurement.

5. Management of procurement contracts

- (1) A procuring entity shall, prior to the award of a procurement contract, appoint a contract manager who is responsible for the management of the procurement contract.
- (2) A contract manager shall—

 - (a) monitor a procurement contract in respect of—

 - (i) the performance of the supplier against the procurement contract specification and terms;
 - (ii) the procurement contract deliverables and outcomes;
 - (iii) the expenditure profile of the procurement contract against the available budget;

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- (iv) any anticipated wider business benefits or procurement contract objectives; and
 - (v) user satisfaction with the goods, construction or services delivered;
 - (b) maintain a risk register during the procurement contract period;
 - (c) undertake appropriate risk assessments; and
 - (d) for identified risks, ensure contingency measures are in place and appropriate action taken to manage the risks.
- (3) The contract manager shall prepare a report on the performance of a supplier in respect of the matters referred to in subregulation (2).
- (4) A report prepared by the contract manager under subregulation (3) shall be retained by the [Procurement Board] for at least seven years from the date procurement contract terminates.

6. Qualification of suppliers

- (1) A supplier is qualified to participate in a procurement process if the supplier—
- (a) possesses or has access to the technical competence, financial resources, equipment and other physical facilities, personnel, managerial capability, experience and reputation necessary to complete the procurement contract;
 - (b) has the legal capacity to enter into a procurement contract;
 - (c) is not insolvent, in receivership, bankrupt or being wound up and its activities or affairs are not suspended or being administered under any Act, by a court or by a judicial officer;
 - (d) is not the subject of legal proceedings for any of the matters mentioned in paragraph (c);
 - (e) has fulfilled or has made substantial arrangements satisfactory to the relevant authorities, to fulfil its obligations to pay taxes and social security and other contributions of its employees;

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- (f) has not, or in the case of a company, its owners and beneficial owners, directors or officers have not, been convicted of a criminal offence related to—

 - (i) its professional conduct;
 - (ii) the making of false statements; or
 - (iii) misrepresentations as to its qualifications to enter into a procurement contract

within a period of ten years preceding the commencement of the procurement process; and
- (g) has not, or in the case of a company, its owners and beneficial owners, directors or officers have not, been suspended or barred from a procurement process in Montserrat or another jurisdiction.
- (2) If a supplier is a public officer or a public officer owns or has an interest in a supplier, the public officer may only qualify to participate in a procurement process if he declares his interest to—

 - (a) the procuring entity on making a submission to pre-qualify, if the procuring entity engages in prequalification proceedings; or
 - (b) the Head of Procurement or the procuring entity, on making a submission, if the procuring entity does not engage in prequalification proceedings.
- (3) If a public officer does not declare his interest as required under subregulation (2), a procuring entity may disqualify the public officer or the supplier from the procurement process or terminate the procurement contract, if awarded.
- (4) Subject to the right of a supplier to protect his or its intellectual property or trade secrets, the procuring entity may require a supplier participating in the procurement process to provide appropriate documentary evidence or other information to satisfy itself that the supplier is qualified in accordance with the criteria in subregulation (1).
- (5) A procuring entity shall set out in a prequalification document or solicitation document the criteria for qualification in subregulation (1).

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- (6) The procuring entity shall not establish a criterion for qualification of a supplier that—
- (a) discriminates against or among a supplier or against categories of suppliers on the basis of nationality; or
 - (b) is not required for the performance of the procurement contract,
 - (c) is not related to the avoidance or management of legal, reputational or economic risk to the procuring entity,
- unless it is in the national interest to do so and the criterion is set out in the solicitation documents.
- (7) Despite subsection (6), a procuring entity may include a criterion for qualification of a supplier that relates to or is for the purpose of avoiding or managing —
- (a) legal, reputational and economic risk to the procuring entity or the Government of Montserrat; or
 - (b) the potential cost associated with legal, reputational and economic risks.

7. Assessment for qualification and disqualification of suppliers

- (1) A procuring entity shall assess the qualification of a supplier for participation in the procurement process against the criteria for qualification under regulation 6(1).
- (2) A procuring entity may disqualify a supplier from the procurement process if that supplier—
- (a) does not satisfy a criterion for qualification;
 - (b) knowingly submits information concerning its qualification that is materially inaccurate, materially incomplete or false; or
 - (c) a report of a contract manager under section 5(3) indicates non-performance or unsatisfactory performance by the supplier in respect of a previous procurement contract.
- (3) If a supplier knowingly submits information concerning its qualification which is materially inaccurate, materially incomplete or false on more than one occasion, a procuring entity may, with the approval of the Procurement Board—

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- (a) suspend the supplier, for a period not exceeding two years, from being considered for any procurement contract by a procuring entity; or
- (b) bar the supplier from participation in any or a certain type of procurement process, subject to any condition it considers necessary.

8. Form of communication

- (1) A document, notification, decision or other communication that these Regulations require—
 - (a) a procuring entity to submit to a supplier; or
 - (b) a supplier to submit to a procuring entity,shall be in a form that provides a record of the content of the communication.
- (2) The procuring entity shall not discriminate against or among suppliers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

9. Record of procurement process

- (1) The procuring entity shall maintain a record of the procurement process including the following information for at least seven years from the date of the commencement of the procurement contract—
 - (a) a brief description of the good, construction or service to be procured;
 - (b) the names, addresses and other relevant contact information of suppliers that applied for prequalification or a made a submission;
 - (c) the name and address of the supplier with which the procurement contract is entered into and the contract price;
 - (d) information relating to the qualification, or lack of qualification of suppliers that applied for prequalification or a made a submission ;
 - (e) the price or the basis for determining the price and a summary of the other material terms and conditions of each application for prequalification or submission;

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- (f)* the means used to solicit suppliers and a record of the solicitation documents;
 - (g)* the time and place for the opening of submissions;
 - (h)* the form of submission and those pages containing the original bill of quantities for construction;
 - (i)* a summary of the evaluation and comparison of submissions; and
 - (j)* any other information required to be recorded by these Regulations.
- (2) A procuring entity shall not disclose information in a record of the procurement process—
- (a)* if disclosure would—
 - (i) be contrary to law;
 - (ii) impede law enforcement;
 - (iii) not be in the public interest;
 - (iv) prejudice legitimate commercial interests of the other parties; or
 - (v) inhibit fair competition; or
 - (b)* which relates to the examination or evaluation of submissions,
- unless a court of competent jurisdiction orders disclosure.
- (3) Subregulation (2) does not prevent the disclosure of scoring sheets, rankings or any other information that provides a qualitative or quantitative summary or comparison of suppliers or the submissions of supplier.
- (4) The procuring entity shall not be liable to suppliers for damages solely for a failure to maintain a record of the procurement process in accordance with this regulation if the procuring entity has acted in good faith.

10. Publication of contract awards

A procuring entity shall publish a notice of the award of a contract if the value of the contract exceeds \$50,000.

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11. Inducements from suppliers

- (1) A procuring entity or the Procurement Board shall reject a submission, if the supplier that submitted it offers, gives or agrees to give, to any current or former officer or employee of the procuring entity—
- (a) a gratuity in any form;
 - (b) an offer of employment; or
 - (c) any other thing or service or value;
- as an inducement with respect to an act or decision of, or procedure followed by the procuring entity in connection with the procurement process.
- (2) A procuring entity shall promptly communicate a rejection of a submission under subregulation (1) to the supplier and record the rejection and reasons for the rejection in the record of the procurement process that is required under regulation 9.

12. Rules regulating obstacles against the participation of suppliers

- (1) A procuring entity shall not include or use in the prequalification documents or solicitation documents—
- (a) a specification, plan, drawing or design setting out the technical or quality characteristic of goods, services or construction;
 - (b) a requirement concerning testing and test methods, packaging, marking or labelling or conformity certificate; or
 - (c) a symbol, terminology or description of goods,
- if it creates an obstacle, including obstacles based on nationality, to the participation of suppliers in the procurement process.
- (2) Subject to subregulation (3), a procuring entity shall base a specification, plan, drawing, design or requirement on the relevant objective technical and quality characteristics of the goods, services or construction to be procured.
- (3) A procuring entity shall not refer to a particular trade mark, name, patent, design, type, specific origin or producer in a specification, plan, drawing, design or requirement, unless there is no other

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sufficiently precise or intelligible way of describing the characteristics of the goods, services or construction to be procured.

- (4) If there is a reference to a particular trade mark, name, patent, design, type, specific origin or producer, a procuring entity shall include words such as “or equivalent” in the prequalification documents or solicitation documents.
- (5) If available, a procuring entity shall use standardized features, requirements, symbols or terminology relating to the technical and quality characteristics of the goods, services or construction to be procured, in formulating the specifications, plans, drawings or designs to be included in the prequalification documents or solicitation documents.
- (6) A procuring entity shall use standardised trade terms in formulating the terms and conditions of the prequalification documents, solicitation documents or procurement contract.

13. Splitting procurement contracts

A procuring entity shall not—

- (a) split or cause a procurement contract to be split; or
 - (b) divide or cause a procurement contract to be divided,
- into separate procurement contracts if the sole purpose for doing so is to avoid the application of these Regulations.

14. Language of documents

A solicitation document, submission and other document required under these Regulations shall be in English and may also be in any other language that the procuring entity specifies.

PART 3—ADMINISTRATIVE STRUCTURE FOR PROCUREMENT

15. Establishment and meetings of Procurement Board

- (1) There is established the Procurement Board.
- (2) The Procurement Board consists of—

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- (a) the Deputy Financial Secretary, who shall be an *ex officio* member and Chairperson of the Procurement Board; and
- (b) five other members appointed by the Deputy Governor as follows—
 - (i) a public officer with experience in development policy;
 - (ii) a person with at least five years' legal experience;
 - (iii) a person with at least five years' experience in finance or public auditing;
 - (iv) a person who has shown competence in business or administration; and
 - (v) a person not in active practice who possesses technical expertise in engineering, architecture or other similar or relevant technical field.
- (3) In the absence of the Chairperson from a meeting of the Procurement Board, the members present may elect another member to chair that meeting.
- (4) A Head of a Department, director, representative of a donor agency or a designated representative of a procuring entity may attend meetings of the Procurement Board when matters concerning the relevant procuring entity are being considered but is not entitled to vote.
- (5) The Procurement Board may co-opt a person with the relevant technical expertise to assist the Procurement Board in the performance of its functions.
- (6) A member of the Procurement Board other than the Deputy Financial Secretary holds office for maximum period of three years and is eligible for reappointment.
- (7) The Chairperson or a person elected under subregulation (3) and three other members, constitute a quorum at a meeting of the Procurement Board.

16. Functions of the Procurement Board

- (1) The Procurement Board shall be responsible for—

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- (a) advising and supervising the procurement by a procuring entity of a good, construction or service, the value of which, exceeds \$75,000;
 - (b) the final determination on the award of a tender, on receipt of an evaluation report from an Evaluation Panel;
 - (c) reviewing and approving the annual procurement plan and procurement strategy of a procuring entity;
 - (d) reviewing and approving the membership of an Evaluation Panel recommended by a procuring entity;
 - (e) reviewing and approving procurement rules and regulations of a statutory body or public entity under regulation 18;
 - (f) maintaining efficient record keeping and quality assurance systems;
 - (g) determining the forms of documents for procurement;
 - (h) reporting annually to the Minister and Financial Secretary on the effectiveness of the procurement processes, and recommending any amendment to these Regulations that may be necessary to improve the effectiveness of the procurement process; and
 - (i) approving the suspension or debarment of a supplier from the procurement process.
- (2) The Procurement Board shall submit to the Minister reports of its decisions and other activities every quarter of the financial year and at any other time that the Minister requires.

17. Secretariat of the Procurement Board

- (1) The Ministry shall provide to the Procurement Board, a secretariat, which is responsible for the operational and day-to-day activities of the Procurement Board.
- (2) The Ministry shall ensure that the staff of the secretariat receives the training and other resources necessary to discharge its duties.

18. Procurement by statutory and certain other entities

- (1) A statutory body or public entity may conduct procurement in accordance with its own procurement rules or regulations if the rules and regulations are approved by the Procurement Board.

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- (2) A statutory body or public entity which does not have its own procurement rules or regulations that are approved by the Procurement Board shall conduct procurement in accordance with these Regulations.
- (3) The Procurement Board may, from time to time, review the approved procurement rules or regulations of a statutory body or public entity and may confirm or revoke its approval of the rules and regulations.
- (4) A private or public corporation, body or other entity that receives funds from the Consolidated Fund [or other public funds] for a specific project or procurement shall, for that project or procurement, apply—
 - (a) these Regulations; or
 - (b) procurement rules or regulations that are approved by the Procurement Board.
- (5) For the purpose of this regulation, a “**public entity**” means any corporation, authority, commission, board, body or other entity —
 - (a) in which the Government holds an ownership or controlling interest of at least 50%;
 - (b) established by an Act for a public purpose and which—
 - (i) receives more than 25% of its annual income from public funds; or
 - (ii) may be audited by the Auditor General.

**PART 4—METHODS OF PROCUREMENT OF GOODS,
CONSTRUCTION AND SERVICES AND CONDITIONS FOR USE**

19. Early Market Engagement

- (1) A procuring entity may, with the approval of the Procurement Board, engage in early market engagement if—
 - (a) the complex nature of the procurement contract makes it difficult for the procuring entity to—
 - (i) formulate detailed specifications for the good or construction or,

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- (ii) in the case of a service, identify the characteristics or elements of the service; or
 - (b) it wishes to enter into a procurement contract for the purpose of research, experiment, study or development.
- (2) For the purposes of this Regulation, “**early market engagement**” means market testing and research for information from the market, to—
 - (a) inform the procuring entity of the capability of the market; and
 - (b) generate interest among the market ahead of formal solicitation to increase competition in the procurement process.

20. Selection of procurement method

- (1) A procuring entity shall, acting in accordance with the advice of the Procurement Board, use open tendering for the procurement of a good, construction or service.
- (2) Despite subregulation (1), a procuring entity may use a method of procurement in regulation 21, 22, 24, 25, 26 or 27 if—
 - (a) the conditions prescribed in that regulation for the use of the specified method of procurement are satisfied; or
 - (b) open tendering was conducted or commenced but—
 - (i) no tenders were presented by suppliers; or
 - (ii) the open tendering process did not result in a contract, and in the opinion of the Procurement Board, the conduct of an additional open tendering process is not likely to result in a procurement contract.
- (3) If a procuring entity uses a method of procurement other than open tendering, the procuring entity shall specify in the record kept under regulation 9 a statement of the grounds and circumstances on which it relies to justify the use of that procurement method.

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21. Two-stage tendering

- (1) A procuring entity may, with the approval of the Procurement Board and acting in accordance with the advice of the Procurement Board, engage in two-stage tendering if—
 - (a) a proposal from a supplier is necessary for the procuring entity to—
 - (i) determine the most satisfactory solution for its procurement needs; or
 - (ii) define or detail the technical, quality or performance specifications and characteristics of the good, construction or other service to be procured; or
 - (b) a procuring entity needs to consider the financial aspects of proposals separately, after an evaluation of the technical, quality and performance characteristics of the proposals.
- (2) Two-stage tendering shall be preceded by prequalification proceedings in regulation 23.
- (3) During the first stage of two-stage tendering, the procuring entity may invite a supplier to submit—
 - (a) a technical proposal on the basis of a conceptual design or performance-based specifications provided in the solicitation documents; or
 - (b) a proposal or offer on a possible solution to a problem or the procurement needs of the procuring entity,
without indicating a price and these proposals may then be subject to further specification of technical and commercial requirements.
- (4) During the second stage of two-stage tendering, a supplier who is successful in the first stage shall be invited to submit final technical proposals with a price
- (5) Part 5 applies to two-stage tendering to the extent that Part 5 is not inconsistent with this regulation.

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22. Reverse auction

- (1) A procuring entity may engage in reverse auction at the second stage of two stage tendering, if the price is the only remaining selection criteria.
- (2) A procuring entity shall publish notice of its intention to engage in reverse auction in respect of the supply a good, construction or service.
- (3) For the purposes of this regulation, “**reverse auction**” means an electronic bidding process in which—
 - (a) a supplier—
 - (i) competes with another supplier for the right to supply a good or service; and
 - (ii) is able to view the current bid of another supplier and submit a lower bid in response; and
 - (b) the lowest bid wins the right to supply the good or service at the end of the reverse auction.

23. Prequalification proceedings

- (1) A procuring entity may conduct prequalification proceedings, prior to solicitation, in order to identify suppliers that are qualified to participate in a procurement process.
- (2) If the procuring entity conducts pre-qualification proceeding, the procuring entity shall publish an invitation to prequalify, which shall state the method of obtaining prequalification documents.
- (3) The prequalification documents shall include the following information—
 - (a) instructions for preparing and presenting an application to prequalify;
 - (b) the manner, place and deadline for presenting an application to prequalify; and
 - (c) any other requirements that may be established by the procuring entity in conformity with these Regulations.

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- (4) A supplier may request a clarification of the prequalification documents within the time set out in the prequalification documents for a request for clarification.
- (5) A procuring entity shall respond in a timely manner, prior to the deadline for presenting an application to prequalify, to a request under subregulation (4).
- (6) The procuring entity shall provide a response to a request in subregulation (4) to all suppliers who received the prequalification documents, but shall not identify the supplier who submitted the request.
- (7) A procuring entity shall only apply the criteria set out in prequalification documents when evaluating an application and determining whether a supplier prequalifies.
- (8) A procuring entity shall—
 - (a) promptly notify a supplier that presents an application to prequalify of the outcome of the application; and
 - (b) on request, inform a supplier that has not prequalified of the grounds for its decision.
- (9) Only a supplier who prequalifies may participate further in a procurement process in respect of which a prequalification proceeding was conducted.

24. Request for quotations

- (1) A procuring entity may, with the approval of the Procurement Board, engage in procurement by means of a request for quotations for the procurement of a good, construction or service if—
 - (a) the good, construction or service to be procured is readily available and is not specially produced or provided to the particular description or technical specification of the procuring entity;
 - (b) there is an established market for the good, construction or service to be procured; and

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- (c) the estimated value of the good, construction or service to be procured does not exceed \$75,000.
- (2) A procuring entity shall request a quotation from at least—
- (a) one supplier if the estimated value of the procurement contract does not exceed \$5,000; or
- (b) three suppliers if the estimated value of the procurement contract exceeds \$5,000 but does not exceed \$75,000.
- (3) If a procuring entity receives only one response to a request under subregulation (2)(b), the procuring entity shall request additional quotations to ensure that it receives a quotation from at least two suppliers.
- (4) If a procuring entity does not receive an additional quotation under subregulation (3), it shall notify the Procurement Board and the Procurement Board may authorise the procuring entity to proceed with the quotation received.
- (5) The procuring entity shall use its best efforts to verify the quotation submitted by a supplier, to ensure the reasonableness of the quotation.
- (6) A supplier shall submit only one quotation, which he or it is not permitted to change and the procuring entity shall not engage in negotiations with a supplier with respect to a quotation submitted by the supplier.
- (7) The accounting officer of a procuring entity shall evaluate a quotation received under this regulation and select a supplier on the basis of the—
- (a) price of the goods, construction or services, including any delivery, insurance, freight and other applicable cost;
- (b) quality of the good;
- (c) time for delivery or completion of the good, construction or service; and
- (d) cost of operating, maintaining or repairing the good or construction.
- (8) The procuring entity shall keep a record of all quotations received.

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25. Framework Agreements

- (1) If a procuring entity determines that there may be a need to procure a good, construction or service on a repeated, indefinite or urgent basis during a given period of time, the procuring entity may request that the Procurement Board establish a framework agreement for procurement of the good, construction or service.
- (2) A procuring entity may procure a good, construction or service from a supplier under the terms of a framework agreement if—
 - (a) the Procurement Board appointed the supplier to the framework agreement under subregulation (3); and
 - (b) the good, construction or service to be procured is similar to the good, construction or service described in the framework agreement.
- (3) The Procurement Board shall, in consultation with a procuring entity—
 - (a) establish a framework agreement for the procurement of the goods, construction or service;
 - (b) assess suppliers to select the supplier who offers the most economically advantageous option for the procurement of the good, construction or service; and
 - (c) appoint the selected supplier to the framework agreement.
- (4) A framework agreement shall not exceed three years.

26. Procurement by other jurisdiction

- (1) Despite these Regulations, if the Procurement Board is satisfied that a procurement process has been undertaken by a reputable public procurement authority of another jurisdiction, the Procurement Board may authorise the award of a contract to a supplier who is approved by the reputable public procurement authority for the provision of goods or services of a similar nature to the Government.
- (2) The Procurement Board has the authority to designate a public procurement authority for the purposes of this regulation.

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27. Single-Source Procurement

- (1) A procuring entity may engage in single source procurement, with the approval of the Procurement Board if—
- (a) the good or construction is available only from a particular supplier, or a particular supplier has exclusive rights with respect to the good or construction, and no reasonable alternative or substitute exists;
 - (b) the service, by reason of its technical, complex or specialized nature, is available from only one supplier;
 - (c) owing to a circumstance of extreme necessity, resulting from an unforeseeable event, other than a public emergency or natural disaster, there is an urgent need for a good, service or works and owing to time constraints it is impractical to use another method of procurement ;or
 - (d) the procuring entity, having procured a good or service from a supplier, determines that additional supplies shall be procured from that supplier for reasons of standardization or because of the need for compatibility with existing good or services, taking into account—
 - (i) the effectiveness of the original procurement in meeting the needs of the procuring entity;
 - (ii) the limited size of the proposed procurement in relation to the original procurement;
 - (iii) the reasonableness of the price; and
 - (iv) the unsuitability of alternatives to the original procurement.

28. Waiver

A procuring entity may, with the approval of the Head of Department or the manager of the procuring entity and the Financial Secretary, waive these Regulations if owing to a public emergency or natural disaster, there is an urgent need for a good, service or construction, and it is impractical to use the prescribed methods of procurement because of the time involved in using those methods.

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29. Procurement of consultants

The procurement of a consultant under a contract—

- (a) for a service shall be undertaken in accordance with these Regulations; or
- (b) of employment shall be undertaken in accordance with the public service law.

30. Approved list

(1) The Procurement Board shall—

- (a) at the request of a procuring entity; and
- (b) after the pre-qualification of suppliers by a procuring entity, establish an approved list for the procuring entity, for the acquisition of goods and services valued at \$75,000 or less.

(2) A procuring entity under subregulation (1) shall set rules for the engagement of suppliers on an approved list.

PART 5—PROCEDURE FOR OPEN TENDERING

Subpart I – Invitation to Tender

31. Procedure for soliciting tenders

(1) A procuring entity shall solicit tenders by publishing an invitation to tender.

(2) An invitation to tender shall include the following information—

- (a) the name and address of the procuring entity;
- (b) a summary of the nature, quantity and place of delivery of the good to be supplied, the nature and location of the construction to be effected or the nature of the service and the location where they are to be provided;
- (c) the desired time for the supply of the good, completion of construction or the timetable for the provision of service;
- (d) a summary of the criteria and procedures to be used for evaluating the qualifications of suppliers in regulation 6;
- (e) the place and means of obtaining the tender documents;

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- (f)* the price, if any, to be paid by the supplier for the tender documents; and
- (f)* the place and deadline for the submission of tenders.

32. Tender documents

- (1)** The procuring entity shall provide tender documents to a supplier who responds to the invitation to tender by the means and at the place specified in the invitation to tender, subject to the payment of any fee specified under regulation 31(2)(f).
- (2)** If prequalification proceedings have been conducted, the procuring entity shall provide tender documents to each prequalified supplier.
- (3)** The tender documents shall include, at least, the following information—
 - (a)* instructions for preparing a tender;
 - (b)* the criteria for qualification of suppliers under regulation 6;
 - (c)* the requirements for the submission by a supplier of documentary evidence to demonstrate his or its qualifications;
 - (d)* a detailed description of the nature and technical or quality characteristics of the good, construction or service to be procured, and any incidental services to be performed;
 - (e)* the location where the construction is to be effected, the goods are to be delivered or the services are to be provided;
 - (f)* the desired or required time, if any, when the goods are to be delivered, the construction is to be completed or the services are to be provided;
 - (g)* a requirement for the conduct of training, skills development or apprenticeship by the supplier, to the extent that it is practicable;
 - (h)* the criteria to be used to determine the successful tender, including the weight to be assigned to each criterion;
 - (i)* the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

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- (j) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the good, construction or service, such as any applicable transportation and insurance charges, customs duties and taxes;
- (k) the currency or currencies in which the tender price is to be formulated and expressed;
- (l) the language in which a tender shall be prepared;
- (m) the manner for the submission of a tender, which provides a record of the content of the tender and ensure the authenticity, security and confidentiality of the tender;
- (n) the place and deadline for the submission of tender;
- (o) the means by which a supplier may seek clarification of the tender documents under regulation 33;
- (p) the period of effectiveness of a tender, under regulation 36;
- (q) the name, post and address of one or more officer or employee of the procuring entity who is authorised to communicate directly with and to receive communications directly from a supplier in connection with the procurement process;
- (r) if applicable, a statement in accordance with regulation 41 that the procuring entity reserves the right to reject all tenders;
- (s) any formality required for a procurement contract to enter into force, once a tender has been accepted; and
- (t) any other requirement established by the procuring entity in conformity with—
 - (i) these Regulations; and
 - (ii) any other legislation relating to the preparation and submission of tenders and to other aspects of the procurement process.

33. Clarification and modification of tender documents

- (1) A supplier may request a clarification of the tender documents from the procuring entity and the procuring entity shall—

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- (a) respond within a reasonable time to any request for clarification that is received so as to enable the supplier to make a timely submission of its tender; and
 - (b) communicate the clarification to all suppliers to whom the procuring entity has provided tender documents, without identifying the source of the query.
- (2) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, modify the tender documents.

Subpart II – Submission of Tenders

34. Submission of tenders

- (1) A supplier shall submit a tender in the manner set out in the tender documents.
- (2) In the case of a tender submitted electronically, the tender shall be submitted through an electronic portal designated by the Procurement Board.

35. Deadline for submission of tenders

- (1) The procuring entity shall fix—
 - (a) the place; and
 - (b) a specific date and time as the deadline,for the submission of tenders.
- (2) If the procuring entity issues a clarification or modification of the tender documents under regulation 33 or holds a meeting with suppliers, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.
- (3) A procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline where it considers, based on documentary evidence, that suppliers were

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prevented from meeting the deadline by factors beyond their control.

- (4) A procuring entity shall promptly give notice of any extension of the deadline to each supplier to whom it provided the tender documents.

36. Periods of effectiveness of tenders and modification and withdrawal of tenders

- (1) A tender shall be in effect during the period of time specified in the tender documents.
- (2) Prior to the expiration of the period of effectiveness of a tender, the procuring entity may request that a supplier extend the period for an additional specified period of time.
- (3) A supplier may refuse the request under subregulation (2) and the effectiveness of his or its tender will terminate upon the expiration of the unextended period of effectiveness.
- (4) A supplier may modify his or its tender prior to the deadline for the submission of tenders and the modification is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

Subpart III – Evaluation of Tenders

37. Opening of tenders

- (1) The Chairperson shall open tenders—
 - (a) at the time specified in the tender documents as the time for the opening of tenders; or
 - (b) at the time specified in the last extension of the deadline, at the place and in accordance with the procedures specified in the tender documents.
- (2) A suppliers who has submitted a tender or the supplier's representative may attend the opening of tenders.
- (3) The Chairperson shall—

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- (a)* announce to the persons present at the opening of the tenders; or
 - (b)* communicate, on request, to suppliers that have submitted tenders but are not present or represented at the opening of tenders; and
 - (c)* immediately record in the record of the tendering process kept under regulation 9,
the name and address of each supplier whose tender is opened and the tender price.
- (4) The Procurement Board shall transmit tenders opened under subregulation (1) to an Evaluation Panel appointed under regulation 38 to evaluate the tenders.

38. Appointment of Evaluation Panel

- (1) A procuring entity in respect of which a tender is to be evaluated shall, after approval of the membership by the Procurement Board, appoint an Evaluation Panel to evaluate the tender.
- (2) An Evaluation Panel appointed under subregulation (1) shall be comprised of at least three persons, at least two of which shall have experience in law, finance, public administration or a field that is relevant to the good, construction or service to be procured.
- (3) An Evaluation Panel shall meet as necessary to evaluate a tender.
- (4) Subject to the directions of the Procurement Board, an Evaluation Panel has the power to regulate its own proceedings.

39. Examination and evaluation of tenders

- (1) An Evaluation Panel shall, considering only the evaluation criteria outlined in the tender documents in accordance with regulation 32(3)(h) and the matters referred to in subregulation (3)—
 - (a)* evaluate tenders transmitted to it by the Procurement Board;
 - (b)* determine the successful tender; and
 - (c)* convey its recommendation to the Procurement Board within a reasonable period of time after it determines the successful tender.

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- (2) The successful tender shall be the best evaluated tender determined on the basis of the criteria specified in the tender documents.
- (3) In determining the best evaluated tender, an Evaluation Panel shall, to the extent that it is practical, consider the following—
 - (a) the tender price;
 - (b) the quality characteristics of the services to be provided;
 - (c) the cost of operating, maintaining or repairing the goods or construction;
 - (d) the time for delivery of the goods, completion of construction or provision of the services;
 - (e) the terms of payment and of guarantees in respect of the goods, construction or services;
 - (f) the effect that acceptance of a tender would have on the balance of payments position and foreign exchange reserves of Montserrat;
 - (g) the extent of local content, including manufacture, labour and materials, in goods, construction or services being offered by suppliers;
 - (h) the potential for economic, environmental and social development offered by tenders, including domestic investment or other business activity, the encouragement of employment, training and apprenticeship, the reservation of certain production for domestic suppliers, the transfer of technology and the development of managerial, scientific and operational skills; and
 - (i) the report of the contract manager under regulation 5(3) on the performance of a supplier under any previous procurement contract.
- (4) The Procurement Board may, at the request of an Evaluation Panel, ask a supplier for clarification of his or its tender in order to assist in the examination and comparison of tenders but shall not seek, offer or permit a change to a matter of substance in the tender, including changes in price and changes aimed at making a non-responsive tender a responsive tender.

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- (5) Despite subregulation (4), an Evaluation Panel shall correct purely arithmetical errors or arithmetical oversights that are discovered during the examination of tenders and shall, through the Chairperson, immediately give notice of a correction to the supplier that submitted the tender.
- (6) An Evaluation Panel shall reject a tender if—
 - (a) the supplier that submitted the tender is not qualified;
 - (b) the supplier that submitted the tender does not accept a correction of an arithmetical error made under subregulation (5);
 - (c) the tender is not a responsive tender; or
 - (d) the circumstances referred to in regulation 11 exist.
- (7) An Evaluation Panel shall, as soon as is reasonably practical, convey its recommendations to the Procurement Board.
- (8) The Procurement Board shall consider the recommendations of the Evaluation Panel in determining the successful tender.

40. Invitation for best and final offer

- (1) A procuring entity may, on the advice of the Evaluation Panel, and after consultation with the Procurement Board, invite suppliers who have submitted a responsive tender to submit a best and final offer if—
 - (a) all tenders submitted do not sufficiently address the tender requirements;
 - (b) all tenders submitted require clarification;
 - (c) all tender prices submitted exceed the estimated budget for the procurement; or
 - (d) the scope of the works is not well defined in the tender documents.
- (2) A request for tender clarification under regulation 38(4) must be completed before an invitation is issued for the submission of best and final offers.

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- (3) The procuring entity shall issue with an invitation under subregulation (1)—
 - (a) a general statement as to the basis for an invitation for the submission of a best and final offer;
 - (b) details of the areas in which the tenders were deficient or require clarification or modification, if any;
 - (c) confirmation that a supplier is not obligated to submit a best and final offer;
 - (d) a deadline and place for the submission a best and final offer; and
 - (e) a time place for the opening a best and final offer.
- (4) Regulation 37(2), (3) and (4) apply, with the necessary modifications, to the opening of a best and final offer.
- (5) A best and final offer submitted under this regulation shall be evaluated by the Evaluation Panel in accordance with regulation 39.
- (6) If—
 - (a) a supplier decides not submit a best and final offer; or
 - (b) a best and final offer submitted by a supplier fails to correct a deficiency identified under subregulation (3),the prior evaluation of the tender submitted by the supplier stands.
- (7) A request for best and final offer—
 - (a) may only be used once in a procurement process; and
 - (b) is not a negotiation for the purposes of these Regulations.

41. Rejection of all tenders

- (1) A procuring entity may reject all tenders at any time prior to the acceptance of a tender.
- (2) If the procuring entity rejects the tenders under subregulation (1), it shall—

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- (a)* promptly give notice of the rejection of all tenders to all suppliers who submitted tenders; and
 - (b)* on request, communicate to any supplier who submitted a tender the grounds for its rejection of all tenders, but is not required to justify those grounds.
- (3) A procuring entity shall not incur any liability towards a supplier who submits a tender, solely because it rejected all tender under subregulation (1).

42. Restriction on negotiations

- (1) A procuring entity or a person engaged in the procurement process on behalf of a procuring entity shall not, prior to the determination of the successful tender, engage in negotiation with a supplier in respect of a tender submitted by the supplier.
- (2) A person who breaches subregulation (1) commits a summary offence and is liable—
- (a)* in the case of a member of a procuring entity who participated in the commission of the offence, to a fine of \$5,000; or
 - (b)* in the case of a person engaged in the procurement process on behalf of a procuring entity, to a fine of \$2,000.
- (3) In the case of a public officer, in addition to the penalties imposed under subregulation (2), he is subject to dismissal from the public service or any other punishment prescribed by the public service law.

43. Acceptance of tenders and entry into force of procurement contract

- (1) Subject to regulation 41, the tender that has been determined to be the successful tender shall be accepted.
- (2) The procuring entity shall—
- (a)* give notice of the successful tender to all suppliers within twenty-one days of the receipt of the notification of the successful tender; and
 - (b)* issue a procurement contract within a reasonable time to the supplier who submitted the successful tender.

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- (3) The procuring entity and the supplier shall sign the procurement contract within a reasonable period of time after the procurement contract is issued to the supplier.
- (4) Subject to subregulation (4), if a written contract is required to be signed pursuant to subregulation (2)—
 - (a) the contract enters into force when the contract is signed by the supplier and by the procuring entity; and
 - (b) neither the procuring entity nor the supplier shall take any action that interferes with the entry into force of the contract or with its performance between the time when the notice referred to in subregulation (1) is given to the supplier and the entry into force of the contract.
- (5) A procuring entity shall file the signed original of all procurement contracts with the Attorney General and copies shall be submitted to the—
 - (a) supplier; and
 - (b) Ministry of Finance.
- (6) Except as provided in subregulation (3), a procurement contract in accordance with the terms and conditions of the successful tender enters into force when the notice referred to in subregulation (1) is given to the supplier who submitted the tender, provided that notice is given while the tender is in force.
- (7) For the purpose of this regulation, notice is given when it is properly addressed or otherwise directed and transmitted to the supplier, in the form of communication prescribed by regulation 8.
- (8) If the supplier whose tender has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the procurement contract within a reasonable time, the procuring entity may, subject to the approval of the Procurement Board, withdraw the offer of tender to that supplier and offer it to the supplier who provided the second lowest evaluated tender.

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- (9) Despite subregulation (7) and regulation 41, the procuring entity may, subject to the approval of the Procurement Board, reject all remaining tenders.

44. Notice to other suppliers

The procuring entity shall, on the entry into force of the procurement contract, give notice to the other suppliers, specifying the—

- (a) name and address of the supplier that has entered into the contract; and
(b) the contract price.

PART 6—DISPUTE RESOLUTION

45. Right to Review

- (1) A supplier who claims to have suffered, or that he is likely to suffer loss or injury due to a decision, action, breach of a duty or non-compliance with these Regulations by a procuring entity or the Procurement Board may seek review under this Part.
- (2) Despite subregulation (1), the following is not subject to review—
- (a) the method of procurement selected; or
(b) a decision of the procuring entity to reject all tenders under regulation 40.
- (3) A supplier may submit, in writing, a request for review of a decision, action, breach of a duty or non-compliance by—
- (a) a procuring entity to the Chairperson; and
(b) the Procurement Board to the Financial Secretary.
- no later than ten days after the the notice of the successful tender is given under regulation 43.
- (4) A request for review after the period under subregulation (3) has expired will not be entertained.
- (5) The supplier shall set out the reasons for the request in the request for review.

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46. Review by the Chairperson or the Financial Secretary

The Chairperson or the Financial Secretary shall, within fourteen days from the date on which a request for review is received—

- (a) resolve the matter by mutual agreement with the supplier; or
- (b) issue a written decision and reason for the decision to the supplier.

47. Appeal to the Complaints Commission

- (1) A supplier may, within ten days of receipt of a decision under regulation 46, appeal to the Complaints Commission against the decision.
- (2) On receipt of a written request for appeal, the Complaints Commission shall request all records in respect of the relevant procurement process from the procuring entity or the Chairperson.
- (3) The Complaints Commission shall, within fourteen days of receipt of the request for appeal, issue a written decision to the supplier, the procuring entity and the Chairperson and the decision shall set out the reasons for the decision.
- (4) This regulation shall not be construed as authorising the Complaints Commission to award a procurement contract.

PART 7—MISCELLANEOUS

48. Information to be confidential

- (1) A person who obtains information in the performance of any role or function in the administration of these Regulations shall regard this information as secret and confidential and shall not disclose the information unless —
 - (a) to the extent necessary to discharge his functions under these Regulations or any other written law; or
 - (b) for the purpose of prosecuting an offence or other legal proceedings.
- (2) A member of the Procurement Board or a person referred to in subregulation (1) who contravenes subregulation (1) commits a summary offence and is liable—

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- (a)* in the case of a member of the Procurement Board who participated in the commission of the offence, to a fine of \$5,000 dismissal or revocation of his appointment; or
 - (b)* in the case of a person, to a fine of \$2,000 dismissal or revocation of his appointment.
- (3)** A person who receives any information or any document or part of a document, having solicited the information, knowing or having reasonable ground to believe at the time he receives it, that it is communicated to him in contravention of this regulation, commits a summary offence and is liable to a fine of \$3,000 and to six months' imprisonment.
- (4)** A person who, with the intention of gaining an advantage or concession for himself or any other person, offers—
 - (a)* a member of the Procurement Board; or
 - (b)* a public officer under subregulation (1),
a gift of money or other thing with respect to a matter that is expected to come before the Procurement Board or public officer, commits an offence and is, in addition to being disqualified from being awarded a contract, liable to a fine of \$5,000.
- (5)** Despite anything contained in any other written law, a person who—
 - (a)* attempts to commit;
 - (b)* conspires with any other person to commit;
 - (c)* solicits, incites, aids, abets or counsels any other person to commit or;
 - (d)* causes or procures or attempts to cause or procure the commission of,
an offence under subregulation (4) is, in addition to being disqualified from being awarded a contract, liable to be charged, tried, convicted and punished in all respects as if he were a principal offender.
- (6)** A member of the Procurement Board or a public officer who undertakes functions on behalf of the Procurement Board is not

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personally liable for an act of Procurement Board done in good faith in the course of its operations or administration.

49. General or special direction of Cabinet

- (1) In the exercise of its powers and the performance of its functions, the procuring entity or the Procurement Board shall conform to any general or special directions given to it by Cabinet.
- (2) The Cabinet shall not give any specific direction to a procuring entity of the Procurement Board with respect to the—
 - (a) qualification or disqualification of a supplier to participate in a procurement process;
 - (b) selection of the method of procurement;
 - (c) examination and evaluation of tenders;
 - (d) rejection or acceptance of tenders; or
 - (e) award or terms of a procurement contract.
- (3) All directions given by the Cabinet shall be in writing and shall be in relation to the economy, development, national defence, security and other matters of public interest or support some principle aimed at improving the level of transparency, equity and fairness.
- (4) Subject to subregulation (2), the Cabinet may only give general or specific directions to a procuring entity or the Procurement Board prior to the deadline for submission of a tender.

50. Disclosure of interest in procurement process

- (1) A member of the Procurement Board shall, immediately on his appointment or reappointment to the Procurement Board and prior to his participation in a meeting of the Procurement Board, sign a declaration confirming that he will declare any interest he has or may have in a matter before the Procurement Board.
- (2) A member of an Evaluation Panel shall, immediately on his appointment to the Evaluation Panel and prior to the evaluation of a tender, sign a declaration confirming that he will declare any interest he has or may have in the tender to be evaluated.

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- (3) A member of the Procurement Board under subregulation (2) shall not, without the approval of the Chairperson, vote on a matter in which he declares an interest.
- (4) If a member of the Procurement Board under subregulation (2) votes without the approval of the Chairperson, his vote shall not be counted.
- (5) A member of the Procurement Board who contravenes this regulation commits a summary offence and is liable to a fine of \$200,000 or to six months imprisonment.

51. Meaning of “publish”

- (1) If a document or information is required to be published in these Regulations, the requirement for publication is satisfied if the contents of the document or the information is disseminated through at least two of the following means—
 - (a) electronic means, including a Government website or portal;
 - (b) a newspaper circulating in Montserrat;
 - (c) a local public radio station; or
 - (d) a local television broadcast station.
- (2) A document or information that is required to be published under regulation 10 shall also be notified in the next issue of the Gazette after publication, as required under subregulation (1), and shall include a statement of the date, place and method in which the document or information was published.

52. Repeal

The Public Finance (Management and Accountability) (Procurement) Regulations 2012 (S.R.O. No. 11 of 2012) are repealed.

53. Consequential Amendment

The Procurement and Stores Regulations (Cap. 17.07) is amended in regulation 5(2) by deleting paragraph (b).

Montserrat
Public Finance (Management and Accountability) (Procurement)
Regulations, 2019
S.R.O. 27 of 2019

Made by the Governor acting on the advice of Cabinet this 25th day of July, 2019.

(Sgd.) Marjorie Smith
CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature,
Farara Plaza, Brades, MSR1110, this 30th day of July, 2019.

(Sgd.) Marjorie Smith
CLERK OF CABINET