

**GOVERNMENT OF TUVALU
MINISTRY OF FINANCE & ECONOMIC DEVELOPMENT
CENTRAL PROCUREMENT UNIT**

PROCUREMENT SUSPENSION AND DEBARMENT PROCEDURE

INTRODUCTION

1. The Public Procurement Regulations of Tuvalu, under Regulation 70, provide for suspension or debarment for a period not exceeding two years of a bidder or person found to have wilfully breached the Regulations or to have engaged in fraudulent acts during procurement or execution of a contract. Regulations and other procurement documents referring to reasons most relevant to debarment include, but are not limited to:

Regulation 33 (5) – evidence of integrity

Regulation 67 – fraud and corruption

Regulation 70 (4) and (5) – reasons for suspension and debarment

Declaration of Ethical Conduct – included in all Major Procurement bidding documents

Zero tolerance of fraud and corruption – Government of Tuvalu (GOT) policy stated in all Major Procurement Conditions of Contract

2. The Suspension and Debarment Procedure described herein is an administrative process. It is not a substitute for legal process which, in serious cases, may be pursued by the Government of Tuvalu separately from suspension and debarment.

DEFINITIONS

3. In the context of these suspension and debarment procedures, the key terms are defined as follows:

“Suspension” is a temporary ban on participation by a bidder or person in the Government’s procurement process pending implementation of measures agreed with the Government to lift such suspension;

“Debarment” is a ban on participation by a bidder or person in the Government’s procurement process for a fixed period determined by the Government and not exceeding the limit prescribed in the Public Procurement Regulations;

“Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official;

“Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a public official to obtain a financial or other benefit or to avoid an obligation;

“Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in a procurement process, or the property of that participant, to influence improperly the actions of a public official;

“Collusive Practice” is an arrangement between two or more parties participating in a procurement process designed to achieve an improper purpose, including to influence improperly the actions of a public official;

“Obstructive Practice” is: (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; (b) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under the conditions of contract.

PROCEDURES

4. When cases of apparently wilful contravention of the Public Procurement Act or Public Procurement Regulations come to light, especially if they appear to involve fraudulent behaviour, the Central Procurement Unit (CPU) shall assign one of its staff as a case officer. The steps in the subsequent procedures to be led by the case officer are:

5. Step 1. Investigate and compile basic facts and evidence from all appropriate sources. Maintain confidentiality as evidence is compiled. Enquiries made to overseas sources, if necessary, should be sent in neutral and unbiased language, asking questions to expand the basic facts but revealing as little background as possible. If there is an informant, he should be quizzed in depth but the bidder or person who is the subject of the case should not be approached at this stage. Unless there are unexpected complications, this stage should take no more than two weeks.

6. Step 2. Present a concise description of the case, with basic facts and evidence, to the Director of the CPU, who will decide whether it is sufficient to support a finding that the bidder or person engaged in wilful contravention of the Public Procurement Act or Public Procurement Regulations, with or without fraudulent acts, in connection with a GOT-funded procurement transaction or contract implementation.

7. Step 3. If the evidence is compelling, the Director of CPU and the case officer shall agree on appropriate sanctions (see Annex for guidance), prepare a Case Report recommending those sanctions for consideration by the Procurement Review Committee (PRC), attend the PRC meeting to discuss the Case Report and carefully record the discussions and decisions reached. The Case Report and recorded PRC discussions shall be passed to the Minister for information.

8. Step 4. If the PRC approves the imposition of sanctions, the Director of CPU shall issue a “Notice of Sanctions to be Imposed” to the bidder or person concerned advising of the sanctions proposed and the basic reasons. The letter shall set a date for imposition of the sanctions, which shall be at least seven days after the letter is sent. The letter shall advise the bidder or person concerned that they may appeal to the Minister of Finance before the date for imposition of sanctions, providing evidence to counter the CPU’s findings. If no response is received, the sanctions will automatically commence on the date set in the Notice of Sanctions to be Imposed.

9. Step 5. If an appeal is received by the Minister within the timeframe allowed in the letter from the Director of CPU, it shall be reviewed by the Minister in conjunction with the CPU. Depending upon the additional evidence provided by the person or bidder concerned, the sanctions may be left unchanged, extended, reduced or removed completely. The Minister shall sign a response letter to the bidder or person concerned with his final decision.

ANNEX – Guidance on Sanctions

Sanction	Aggravating Circumstances
Debarment for full two years.	Repeated pattern of sanctionable conduct. Central role in sanctionable conduct. Corrupt, fraudulent, coercive, collusive or obstructive practice involved. Interference with the CPU’s investigation process. Refusal to accept Notice of Sanctions to be Imposed, or not responding thereto. Harm caused to the project or public welfare.
Debarment for lesser periods – for example, six months, one year or 18 months.	Little or no previous pattern of sanctionable conduct. Peripheral role in sanctionable conduct. Little of no evidence of corrupt, fraudulent, coercive, collusive or obstructive practice. Some degree of contrition shown in response to Notice of Sanctions to be Imposed.
Suspension for agreed period (up to two years) while corrective measures are applied. (This could permit the bidder or person concerned to bid for small value contracts lower than the thresholds in the Regulations.)	Sanctionable conduct partly or wholly due to genuine ignorance of the Regulations, rather than being deliberate. Acceptance of guilt by the bidder or person concerned. Proposal by bidder or person concerned to apply measures to ensure that similar conduct does not recur (e.g. dismissal of the concerned staff member by a bidder). Financial compensation offered by the bidder or person concerned.