



Central Procurement Office

Cayman Islands Government

PROCUREMENT POLICIES & PROCEDURES

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1. INTRODUCTION

This document has been written for those involved in the procurement process to provide a greater understanding and respect of the Procurement Act, Regulations and associated best practices. The Central Procurement Office (CPO) is responsible for promoting sound procurement management practices which will result in reducing risk in government expenditures.

This document is to be read in conjunction the enabling legislation, other key directives and guidance are listed in the References section of this policy.

1.1. APPLICATION

The CIG has a decentralized contracting and procurement function with goods and services procured by public officers in the government ministries and departments. These policies and procedures are applicable to all public officers engaged in procurement activities in the CIG.

1.2. POLICY STATEMENT

Adherence to public procurement principles is essential to ensure an effective result and to limit risk to the CIG. The purpose of this policy is to achieve best value for CIG through procurement processes that are open, fair and transparent. This procurement policy is meant to clarify standard procedures and provide more robust direction to the various sections of the Procurement Regulations that guide how public procurement is to be conducted.

1.3. POLICY VARIATION & EXCEPTIONS

The CPO is aware that each procurement will have unique market conditions, deliverables, evaluation criteria, contract values and external vendor considerations. These influences may result in the Project Authority needing to consider alternatives to this policy. Where applicable, please contact the CPO with the alternative solution. Where the standard policy is deemed by the CPO to warrant modification in specific instance, and the proposed alternative is compliant with the regulations and principles of public procurement, the CPO may grant policy variations.

1.4. EXPECTED RESULT

Compliance with this policy is expected to result in CIG contracting activities that will:

- Meet operational requirements at the right time and the right price;
- Promote competition, reflect fairness and ensure value for money in the spending of public funds; and
- Stand the test of public scrutiny where suppliers have confidence that they will have equal opportunity to compete for bids.

2. POLICIES & PROCEDURES

2.1. BUSINESS CASE REQUIREMENT

- Use of Templates for Business Case – Regulations 3

The CPO has produced Business Case templates that are required for the procurement thresholds at \$100,000 and above. These templates provide instructions to guide the respective entity on how to complete the document. The CPO provides Support Services by reviewing and providing feedback to Project Owners and Entity Procurement Committees to ensure all legal requirements have been complied with.

- Project Disaggregation- Procurement Act section 14(2) & Regulation 20(4)
 - Project disaggregation is the division of a contract that could have otherwise been procured as a single contract. In keeping with the above legislation, this is only allowed under the conditions seen in Regulation (20) and must be documented in a business case. The CPO Policy on the treatment of project disaggregation is as follows:
 - If a contract's total value is under KYD\$100,000 but an entity can demonstrate that a regulation 20 criteria applies, a business case must be produced to support this despite the contract value.
 - If a contract's total value is over KYD\$100,000, an entity must produce a business case as required by regulation 3. However, once the business case is approved, the procurements for the smaller lots will be treated at its individual, smaller contract value to determine the appropriate procurement requirements for the remainder of the process. For example, a procurement project with a contract value of KYD\$150,000 requires EPC involvement. If the EPC approves a business case that recommends disaggregation of a project into 2 smaller lots of KYD\$110,000 and \$40,000 collectively, the contract above \$100,000 would be required to return to the EPC for review of the outcome and the lower value procurement would not, unless that is a condition of disaggregation approval.

2.2. TENDER REQUIREMENTS

- Use of Templates – Procurement Act Schedule 2(c)

The CPO has produced tender document templates that provide various options, with instructions to guide the respective entity on how to complete the document. The CPO provides support services to review and provide feedback to Project Owners and Entity Procurement Committees to ensure all legal requirements have been fulfilled. The available templates can be found on our website: <https://www.procure.gov.ky/bid->

[document-drafting-centre](#). The templates found here should be utilized for all procurements of value KYD\$100,000 or greater.

- Use of Brand Names in Specifications – Regulations 11

Unless there is no other way to describe a specification, trademarks or brands may be employed by way of reference, but shall not be used as the specification itself. Where an entity needs to specify a brand as a mandatory requirement, it must be preceded by a formal standard-setting exercise as prescribed by the policy established by the Central Procurement Office, seen below.

The exercise is meant to detail the need for standardisation. Once completed, please submit it in word document format to the CPO for review: procurement@gov.ky. Please answer the below questions with as much detail as possible.

Recommended Brand/Standard: [Please Insert]

1	Does the entity already have any investment in the recommend brand(s)? If yes, continue to Q2. If no, go to Q6.	
2	How much capital expenditure (KYD) has been made to date in this brand?	
3	How many years of life do these capital items have remaining?	
4	How many members of staff have been trained to use this specific brand?	
5	How much has been spent (KYD) on training to use this specific brand?	
6	Do you have any equipment/systems that require your proposed brand to operate? If yes, what is the value and remaining life of this equipment?	
7	What is the estimated life, in years, of the standardisation? Please explain what this is based on.	
8	Does local capacity exist to be able to provide and/or service this brand? Please list any local vendors and explain the plan for sourcing this brand.	
9	Would standardisation require a direct award?	
10	Are their competing or comparable brands or standards? If yes, why is this one better value for money?	
11	What is the estimated cost of complete standardisation? Please consider equipment, training and all operating cost	

12	Are there any expected savings from this standardisation? Please explain where those savings would be realised.	
Prepared by:		(Type Name)
Reviewed & Supported by (EPC Chair):		(Type Name)

For CPO Review Only (Send to procurement@gov.ky)		
CPO Feedback		
CPO Recommendation	[Approve / Disapprove]	
For CO/CEO Decision		
Name	Decision	Signature
	[Approve / Disapprove]	

- **Setting Evaluation Criteria & Minimum Scoring Thresholds**

Every tender should include a bid evaluation criteria that will be used to fairly determine which submission is best value for money. This step is crucial to both the integrity of the process and the success of the project. Evaluation criteria are meant to:

1. Inform bidders of their eligibility to submit a bid
2. Filter out ineligible submissions prior to in-depth evaluation
3. Rank bidders based on their compatibility with the project needs
4. Reduce risks & ensure compliance

The CPO has produced the following guide to help project managers set evaluation criteria in a structured way. **The “Example Criteria” below are not one size fit all.** It is the responsibility of the project owner to determine which rated criteria are needed to make a proper assessment and where they fit in the limits by comparison to the guidance.

Mandatory Criteria	Scoring	Guidance	Example Criteria
Compliance	Pass/Fail	These criteria are your project “ Security Blanket ”. Vendors that pass this section meet the minimum threshold to provide the deliverables requested.	Trade & Business License / Tender Terms & Conditions / Child Protection & Vulnerable Persons Training
Technical	Pass/Fail		Certifications / Product Specifications / Data Security / CIG Staff Training / Warranties
Rated Criteria	Weighting	Guidance	Example Criteria
Deciders	35+	Must have i.e. where you want your vendors to focus their efforts in their submissions.	Pricing / / Technical Proposal
Differentiators	16-34	Should have i.e. separate the “Ideal” from the “Adequate” suppliers.	Customer Service / References
Tie Breakers	0-15	Nice to have i.e. a slight advantage to vendors that include positive but non-critical contributions.	Local Industry Impact Assessment / Value-Added Services

Minimum Scoring Thresholds are minimum scores that must be obtained on Rated Criteria for further consideration. For example, if Customer Service is being scored out of a maximum of 20 points, a minimum scoring threshold of 10 points may be applied as a “Threshold”. In this instance, any vendor scoring below this threshold will not be eligible for contract award. However, these thresholds should not be used arbitrarily. **The use of minimum scoring thresholds should only be applied in accordance with this policy:**

1. Thresholds should only be used where a “Mandatory Criteria” (i.e. pass/fail) would not be sufficient to cover the minimum standard instead.
2. Thresholds should be set per criteria and the standard for achieving it should be included in the tender document.
3. Thresholds should only be set on “Differentiators” or “Deciders” as seen in the table above.

- Pre-Conditions of Contract Award

A Pre-Condition of Award is a mandatory requirement that will be requested only from the “Preferred Vendor” i.e. the vendor that is ranked the highest at the end of the submission evaluation process. These items need to be included in the tender document under the heading of “Pre-Conditions of Contract Award” so that potential bidders are aware of them. These are items that are not needed in the evaluation the stage to determine the suitability of a vendor’s submission, but are required to prior to contract signing in order to reduce the level of risk involved in delivering the project that was procured. In low risk procurements, there can be no “Pre-Conditions”. In higher risk or higher value projects, examples of pre-conditions of award are:

- Various Type of Insurance (Public Liability, Indemnity, etc)
- Certificates of Good Standing

- Bank Reference Letters / Guarantees

Award Letters to the highest ranked vendor must include the requirement to provide the Pre-Conditions of Contract Award with an appropriate deadline for doing so. Should the vendor not satisfy the conditions, the procuring entity has the option to discontinue the contract award process with the highest ranked vendor and either cancel the procurement or engage the second highest ranked vendor, should there be a suitable alternative.

- Use of Bonfire E-Procurement Platform – Regulation 6

Bonfire (<https://cayman.bonfirehub.com/>) is the website designated by the Central Procurement Office for the publication of procurement opportunities. The use of Bonfire is compulsory for procurements with a contract value of KYD\$100,000 and above. The CPO Policy on use of Bonfire is as follows:

- The minimum advertising period of 15 working days refers to the number of full days between the initial release date of the opportunity to the final date for submissions of bidders to be considered in the bid evaluation process. Advertising periods of longer than 15 working days are highly encouraged.
- If a procurement is multi-staged, the initial stage (e.g. a pre-qualification) must be advertised for a minimum 15 working days and any subsequent stages (e.g. Post Qualification, Best and Final Offers, etc.) can be opened for any additional period of time that is reasonable for the vendors to provide the information that is being requested.

- Restricted Tenders – Regulations 6, 7 & 8

Restricted tenders are competitive procurements that are not fully publically advertised. These tenders can be either partial or fully private based on the following CPO policy:

- Partially Restricted Tender
 - Type 1 - This type of restricted tender is preceded by a pre-qualification that is publically advertised on Bonfire. It is considered “partially restricted” because the second stage of the procurement will only include vendors that meet the pre-qualification threshold and only those vendors will be invited to submitting proposals for contract award consideration.
 - Type 2 - This type of restricted tender utilizes the allowances under Regulation 6(4), especially subsections (b) and (c), to issue a public notice of opportunity that does not publically include all of the documents required to tender, but instead states:
 - the location where further information may be obtained;
 - the conditions for obtaining such information, if any

It is considered “partially restricted” because although the notice of opportunity is public, access to the documents is not fully public

and there are reasonable conditions set to qualify for access to the relevant documentation.

- Fully Restricted Tender
 - This type of restricted tender is preceded by a pre-qualification that is available by invitation only. This option is available for procurements where disclosure of the project details through a public process is likely to compromise defence, security, public safety, or is likely to cause economic disruption. The rationale for use of this type of tender must be documented in an approved business case. Invited vendors must be required to sign a Non-Disclosure Agreement (NDA) that covers the information that is deemed to be sensitive enough to justify a fully restricted tender. The pre-qualification will be used to screen vendors prior to providing the sensitive information in a secondary stage where vendors will be invited to submit a proposal for contract award consideration.
 - Available for use for any contracts with a total value below KYD\$100,000.

- Framework Agreements – Regulation 9

A Framework Agreement is a means of contracting for works, goods or services needed by an entity to support its operations but are expected to arise on an irregular, indefinite or repeated basis. Framework Agreements are an arrangement with a vendor or multiple vendors to supply their goods and services under a predetermined pricing structure and on the specified terms and conditions within a specified period of time. Framework agreements can be used in conjunction with this policy:

- The opportunity for a vendor to be included in a framework agreement must be advertised in accordance with regulation 6. Every advertising for a framework agreement should clearly outline:
 - Specifications of the goods and/or services required;
 - Evaluation criteria for inclusion on the framework;
 - Estimated quantities, whether historical or projected, of the product and service needed over the term of the agreement;
 - The period of time for which the contracting under the framework agreement will be valid.
 - The number of vendors the framework is seeking to retain;
 - How contracts will be awarded during the term of the agreement.
- Approval of framework agreements and subsequent contracts
 - The initial approval of the evaluations for inclusion on the framework should go to the Public Procurement Committee (PPC) or the Entity Procurement Committee based on the value of the framework agreement.
 - Subsequent contracts awarded via the use of the Framework agreements should follow the rules established in the advertising and do not require additional EPC or PPC reviews, only Chief

Officer/Head of SAGC approvals.

- Use of Frameworks by CIG Entities not involved in the Initial Procurement
 - CIG entities that require goods or services that are already contracted under a framework agreement established by another entity can do so under the following conditions:
 - For contracts with a value of KYD\$100,000 or above, the new entity has an approved business case that outlines the need for the goods and/or service.
 - The scale of the need of the entity that was not originally involved is compatible with the scale that was advertised in the initial framework creation. Where the scale of the new entity is significantly larger, use of the framework may not result in value for money as the increased volume may warrant additional discounts.
 - The framework is still within the initially advertised validity period.

- Conversion of a PPC-level Procurement Contract to a Framework by the CPO
 - Where a contract has been approved by the Public Procurement Committee and the deliverables are such that they would be beneficial for all of CIG, the CPO may convert the contract to a Framework Agreement. Use of this framework would be subject to the conditions seen in the “Use of Frameworks by CIG Entities not involved in the Initial Procurement” section above.

2.3. EVALUATION & CONTRACT AWARD RECOMMENDATION

- Segregation of Submission Data & Reviewer Requirements

Information requested during a procurement should be clearly laid out in the tender documents, detailing what is being requested, when it will be evaluated and how it will be evaluated. Evaluations should be broken in to the following categories and have the following minimum number of evaluators assigned to each category.

Evaluation Category	Description	Min. # of Reviewers
Pass/Fail Evaluation	The evaluation of requested information where no points are assigned but vendors must be in compliance with the requirements to be considered further.	Two (2)
Technical (Non-Pricing) Rated Evaluation	The evaluation of information where points are assigned to differentiate submissions based on quality. This category is not required in all procurements as it may be sufficient to deem submissions as suitable with only a pass/fail and pricing evaluation, particularly in the procurement of goods.	Three (3)
Pricing	The evaluation of pricing-related information where points are	Two (2)

Evaluation	assigned to differentiate submissions based on financial value.	
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Any person that makes up part of an evaluation team must confirm that they do not have a conflict of interest, and this must form part of the procurement record, prior to participation in the evaluation procedure. Should the potential for conflict of interest (real or perceived) arise, an evaluator must recuse themselves from the process. If in doubt, please refer to the CPO for guidance. Evaluation procedures should be conducted in a phased approach, with non-pricing information being evaluated before the consideration of pricing. The overall process, must be fair, consistent, objective, unbiased, and impartial. Each team member should review each submission independently first, followed by a team consensus review and deliberations. Evaluation panels should strive for consensus as results are more readily understood and defensible. All scores should be supported by a thorough written rationale that covers all findings, including what was missing (if anything) and why.

- Best and Final Offer Process

A Best and Final Offer (BAFO) is an optional, secondary bid evaluation procedure that can be engaged after an initial evaluation is completed. This process takes place after the initial evaluation of submissions. In this process, top-ranked vendors are invited to make final adjustments to their submissions in order to increase value for money through a refinement of deliverables, decrease in costing, or both. The BAFO process can be engaged in by a procuring entity for the following reasons and in accordance with the following policy:

- Reason: Increase competition among top ranked vendors
 - BAFO Process: Issuance of a notice to eligible vendors indicating the new submission deadline with no changes to the deliverables but requesting their best and final offer on pricing only.
- Reason: Integration of deliverable changes
 - **Only to be used in consultation with the CPO.**
 - BAFO Process: Issuance of a notice to eligible vendors indicating the new submission deadline with changes to the deliverables and requesting their best and final pricing offer that reflects the deliverable changes.

- Addressing “Abnormally Low” Bids – Regulation 15(1)(f)

Abnormally low bids are submissions made by vendors that are low in relation to the subject matter of the procurement. These types of bids are typically easily identifiable as they are usually significantly below the average of the other submissions or significantly below the budget for the project. Abnormally low bids can be result of a vendor misunderstanding the deliverables, not including peripheral expenses (required travel, etc.) or attempting to unfairly better their position.

However, in some cases, these bids can be a result of a vendor using an innovative method to provide the deliverables and passing on the savings to CIG or other reasons that will not have a negative impact on the procurement. If an abnormally low bid is potentially identified, consultant with the Central Procurement Office is highly recommended prior to taking any actions. In order to not unfairly penalize vendors that can provide the deliverables of the project at a significant savings, below is the requirement for dealing with these situations where the particular bid is the top ranked:

- Request, in writing, from the supplier details of the bid that gives rise to concerns as to the ability of the supplier to perform the procurement contract as proposed. The request can include a further breakdown of pricing, work schedule or any other items such as demonstrations (where appropriate) that allow the procuring entity to confirm if all of the required deliverables are appropriated accounted and budgeted for in the subject proposal.
- The request should indicate that it is not a request for a revised submission or adjusted pricing. The decision being made is whether or not the submission as provided, and is the top bid as a result of an abnormally low bid pricing, is suitable for contract award.
- Taking into account any information provided by the supplier following the request and the information included in the bid, if a procuring entity continues to hold legitimate concerns, then the submission made by the bidder would be recommended to the relevant Chief Officer or Head of SAGC for elimination from consideration of contract award on the grounds of those concerns. The final decision is to be made by the relevant Chief Officer or Head of SAGC. Please consult with the CPO if there are any concerns.
- Elimination on the grounds of Regulation 15(1)(f) must be included in the evaluation summary report that is submitted for contract award recommendation.

2.4. POST-EVALUATION / PRE-CONTRACT ACTIONS

- Issuance of Award and Regret Letters – Regulation 16

Upon conclusion of a tender evaluation process, an award letter is issued to the successful supplier or a regret letter to the unsuccessful supplier to notify them of the outcome of the procurement process. The CPO has produced Sample letters as a guide to standardize the information to be included as per the regulations. When issuing a decision notice of the contract award, the sample letters can be found on our website <https://www.procure.gov.ky/awardregret-letters>.

- Pre-conditions of award, which can be found in your tender document, must be included in your Award Letter and must be provided by the vendor prior to contract execution.

- Debriefing of Bidders Upon Request – Regulation 17

Effective debriefing will demonstrate to suppliers that the procurement process has been undertaken in accordance with the rules and adheres to high standards of integrity. Every regret letter should clearly outline the timelines and communication protocols for requesting a debriefing. If a debriefing is requested, it should be provided within 30 days and it should be carried out in accordance with this policy:

- All vendors that submitted a response to a solicitation should be given the option for a debriefing. Where a multi-stage procurement process is undertaken, non-shortlisted suppliers from the preliminary stage of the procurement must also be given the opportunity for a debriefing.
 - De-briefing can be done in any format suitable to the requestor, including in-person, by phone, via email or via video conferencing.
 - Regardless of the format of the de-briefing, a summary of the discussions should be kept as a part of the procurement record.
- In keeping with the confidentiality requirements of the Procurement Act, the debriefing session is to be kept focused on the vendor's submission and its comparison to the evaluation criteria. Other vendor's submissions are not to be discussed. A sample agenda can be found here:
<https://www.procure.gov.ky/debrieffeedback-guide>
- Delegated Approval Authority of Chief Officers/Head of SAGC's – Regulation 16

The Procurement Act and Regulations give Chief Officers/Head of SAGC's the authority to accept bids and award contracts, subject to Procurement Committee reviews and recommendations. The Act and Regulations are silent on the delegation of authority but due to the volume of contract awards at all values, it is not practical for Chief Officers/Head of SAGC's to approve every procurement expenditure. As such, the CPO policy on delegation of approval authority is:

- The delegation must be done in line with the Public Management and Finance Act and should include the maximum value to which the designee is approved to award contracts.

The designee, based on the maximum value of delegation, should be made aware of any Procurement Committee's that need to be consulted prior to contract award.

2.5. CONTRACT AWARD, MANAGEMENT & VARIATION

Contract Management is the process of creating, implementing and reviewing contracts. This is a continuous process to ensure that suppliers and buyers adhere to their agreed contractual obligations, along with negotiating any future changes which are outlined in the CPO Contract Variation Policy found below.

Bonfire provides a contract performance monitoring database, whereby you may contact CPO to access. The purpose of this tool is to support entities with the contract management process to address the performance of contracts. This begins from the commencement of a contract at Kick-Off, through its life cycle to manage and review Amendments, Issues Management, Contract Termination and Contract close-out as established by the CPO in accordance with the Contract Management Toolkit, available on our website: <https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance>.

- Publication of Contract Award – Regulation 19

The outcomes of procurement projects, both competitive procurements and direct awards, are required to be published in line with the below requirements.

Contract Value (KYD)	Requirements
Less than \$10,000	<p>Publication on entity website or the Bonfire E-Procurement Platform within one year of contract award.</p> <p>Information to be included:</p> <ul style="list-style-type: none"> • the name of the procuring entity; • a brief description of the goods or services being procured; • the name of the successful bidder; and • the total contract value.
\$10,000 and greater	<p>Publication on Bonfire E-Procurement Platform within 30 days of contract award.</p> <p>Information to be included:</p> <ul style="list-style-type: none"> • the name of the entity; • the procurement number; • a brief description of the goods or services being procured; • the name of the successful bidder; • the date of contract award; and • the total contract value.

- Contract Variation (During Contract Term)

A successful procurement will result in a contract for the provision of the stated deliverables. Occasionally, a need may arise for adjustments to a contract for a variety of reasons and can result in changes to:

- Project Scope i.e. what is being done
- Methodology i.e. the way things are done
- Standards i.e. quality of work
- Volume of work i.e. increase/decrease in existing scope

- Term i.e. the length of the contract

Modifications can increase, decrease or have no impact on the value of the contract. Modifications can also impact contract performance positively or negatively based on the nature of the change. Important aspects to consider are:

- Does the change in value result in the procurement threshold being surpassed? e.g. if the contract was originally less than \$250,000 but this modification results in the contract being greater than \$250,000.
- Where the contract scope is being changed, does this make the contract materially different from the scope approved in the business case?
- Is the total value of the change(s) over 15% from the original contract value?
- Is the modification being requested by the vendor and was the modification related to an item that was required/included in the tender documents?

If the answer to any of the above is “Yes”, a contract modification may not be appropriate. If the answer to question 4 is yes, then the responsibility for and cost of the modifications should be the vendors in most instances. If the answer to questions 1, 2 & 3 are yes, a new procurement may need to be conducted for the provision of the changes. In order to determine this, please consider the following:

- Do any of the direct award justifications, under regulation 5 of the Procurement Regulations apply to the modification? If yes, which one and why?
 - If a direct award is applicable, a contract modification would be appropriate.
- Would the introduction of another vendor, via a competitive procurement for the additional scope, have a negative impact on the completion of the existing contract? If yes, how?

If the answer both of the above is “No”, then it is likely that a new competitive process, in line with the estimated value of the modification, should be carried out.

Please consult with the CPO where there is a potential need for a contract variation. In order to better support your needs, please have the answers to the above questions.

- Contract Extensions (After the Original Contract Term)

Contract lengths are to be included in the procurement documentation when the contract is being tendered, in the case of a competitive procurement, or when they are being negotiated, in the case of direct awards.

Any contract extension options should also be made clear at this stage so that the maximum contract length and associated value can be determined in order for the correct

procurement route to be determined and followed. There should be no contract extensions beyond the maximum agreed term and where necessary, a new procurement should be initiated with sufficient lead time to enter into a new contract.

There is one (1) exemption to the contract extension policy and it is as follows:

- Emergency Extensions – Where an emergency situation as described in the Procurement Act occurs, existing or expired contracts can be utilised beyond an expiration date until the emergency is averted. This exemption is in place to allow CIG to utilise proven providers in emergency situations to give the best chance for remedying the situation efficiently and effectively.
- Contract Modification/Extension Approval Procedure

Justifications for contract modifications should be submitted to and approved by the Chief Officer/Head of SAGC (or their delegate). The justification should be in the same format as the original project approval document (e.g. a business case). Where the extension is based on an emergency situation, as described in the Procurement Act, a summary of the emergency situation must be included.

- Contract Modification Reporting Procedure

Any modifications, both individually or cumulatively, that result in an increase of contract value over 15% from the original value should be reported to the CPO and relevant procurement process approval committee i.e. the Entity Procurement Committee (EPC) or Public Procurement Committee (PPC) at the next available meeting. Documenting and learning from these modifications is key to improving the quality of tender documents and other future procurement process elements.

2.6. DIRECT AWARD SCOPE & USE – REGULATION 5

Direct Award means a contract award outside of a competitive process and includes single source procurement. The CPO provides the following templates that are required for the Direct Award Justification for the appropriate threshold, which are available on the CPO website: <https://www.procure.gov.ky/direct-award-process>

When completing the Direct Award Justification & Approval form, it is imperative to include the reason why the exception to the competitive process applies to the procurement. When applicable, the justification support should accompany this request in the form of an approved business case, where the value is KYD\$100K or greater.

To further clarify Direct Award Criteria seen in Regulation 5, below is the list of criteria and their proper application. :

Direct Award Criteria	Proper Application
(a) the goods, services or works are valued at less than ten thousand dollars;	Can be used where the total project is below KYD\$10,000 or for individual contracts below KYD\$10,000 that have resulted from Project disaggregation in compliance with Section 2.1 of this policy.
(b) the goods or services are not competitive products and are only available from a single supplier;	Can be used where proof is provided by a supplier that they are the sole authorized provider of the relevant goods or services as the result of legal right or protection such as a patent, intellectual property rights, franchise agreements, etc). This does not apply where competing products are available and there is not an existing compatibility need with existing goods or services.
(c) the goods or services are required to — (i) match an existing brand of equipment for compatibility (including where the goods are replacement parts); or (ii) comply with established entity specifications and standards, and are available from only one supplier;	Can be used where an entity has an existing compatibility requirement with existing goods or services AND where proof is provided by a supplier that they are the sole authorized provider of the relevant goods or services as the result of legal right or protection such as a patent, intellectual property rights, franchise agreements, etc). This criteria should not be used where the existing compatibility need is near the end of life and could be replaced as a part of a competitive procurement without significant service disruption.
(d) the goods or services are required to meet physical design or quality specifications and are available from only one supplier;	Can be used subsequent to the completion and approval of a formal standard-setting exercise as prescribed by the policy established by the Central Procurement Office and seen in section 2.2 AND where proof is provided by a supplier that they are the sole authorized provider of the relevant goods or services as the result of legal right or protection such as a patent, intellectual property rights, franchise agreements, etc).
(e) the goods or services are of a confidential or privileged nature and the disclosure through a competitive process is likely to compromise defence, security, public safety, or is likely to cause economic disruption or is otherwise contrary to the public interest;	Self-Explanatory. Should be supported by the entity responsible for the relevant area of defence, security or public safety.
(f) construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographical limitations on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and premixed concrete or similar materials for use in the construction or repair of roads;	Self-Explanatory.
(g) no compliant bids have been received in response to a competitive process made in accordance with the Procurement Act	Evidence of the initial compliant competitive process must be provided to support the criteria include the open and close dates, any invitations issued and any vendor

and Regulations;	communications. Where feasible, a second attempt to competitively procure the goods or services should be attempted.
(h) it can be demonstrated that only one supplier is able to meet the requirements of a procurement project;	This criteria, as it is the most broad, should be used only as a last resort where other criteria do not appear to apply but there is a case that can be made that a competitive process cannot be carried out without significant risk or impact (e.g. risk to disruption or nullification of another existing significant contract).
(i) the goods or services that are being procured are from charitable and philanthropic institutions, or are produced by the labour of persons who are inmates in the prisons or persons with disabilities;	Self-Explanatory.
(j) the goods or services are being procured from an entity that operates an entertainment, sporting, convention or similar event in order that the procuring entity may comply with a commercial agreement containing provisions that may be in conflict with the Procurement Act, 2016 [Law 47 of 2016] and these Regulations;	Self-Explanatory.
(k) retaining the services of legal counsel in exceptional circumstances for the purpose of providing legal advice, opinion or representing an entity involved in litigation, arbitration, mediation or any other legal proceedings;	Self-Explanatory.
(l) Repealed	N/A
(m) the prototypes being procured are related to research, experiment, study or original development (not including subsequent purchases); or	Should be supported by a research/experiment plan that clearly outlines what will be measured and the plan for subsequent purchases (i.e. will another direct award apply or is the research/experiment being carried out in a fashion that will allow for future competitive procurements if it is successful.
(n) the purchase of goods is made possible through exceptionally advantageous circumstances as a result of the supplier's bankruptcy or receivership.	Self-Explanatory.

2.7. CONTRACT REVIEW & LEGAL ADVICE

In order to avoid the potential consequences of a badly drafted contract and to ensure the legal rights and interests of CIG are protected, Chief Officers & Heads of SAGC's should seek legal advice when they are required to review and negotiate contracts.

- For Core Government Entities, this is legal advice is provided by the Attorney's General Chambers (AGC). When seeking such assistance from the AGC, Chief Officers should provide the AGC with as much advance notice as possible.
- For SAGC's, legal advice should be sought through their respective arrangements for legal advice.

2.8 CODE OF CONDUCT

The Procurement Code of Conduct provides all those involved in the procurement process, public officers and suppliers alike, with a clear statement of mutual expectations to ensure a common understanding of their responsibilities to conduct procurement in an accountable, ethical and transparent manner.

Public officers and suppliers are required to respect the code when participating in procurement and contracting activities.

3 NON-COMPLIANCE

The Chief Officer in a given Ministry or Portfolio, or the Chief Executive Officer of each Public Authority is responsible for implementing and ensuring compliance with The Procurement Act (Schedule 6), and all associated legislation, policies and procedures within the Ministry or Portfolio. Non-compliance may result in project cancellation, mandatory training, disciplinary action as deem appropriate by the appointing officer or other actions depending on the specific conditions.

4 REPORTING

Following the approval of the annual budget, all entities should provide advance notice of upcoming procurement activity for the fiscal year to give suppliers the opportunity to plan their activities to ensure they have appropriate capability and capacity to undertake future work. The plans will be published after budget approval.

The CPO is responsible for compiling statistics on government-wide procurement and preparing an annual public report to be published in the Annual Public Procurement Report.

5 REFERENCES

All found here: <https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance>.

- **The Procurement Act, 2016**
- **Procurement (Amendment) Act 2022**
- **Procurement Regulations 2022 Revision**
- **The Procurement Code of Conduct**

RECORD OF REVIEWS AND AMENDMENTS

Nature of Change	Date of Change	Page(s) Affected	Changes Made by Name & Signature