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CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar
Office of the State Administration Council

Directive No. 1/2022
1383, 1st Waning Day of Tabaung
(17 March 2022)

Directive on public procurement, and on the disposal and lease of state-owned assets

1. In order to proceed in a fair and orderly manner and to speed up the government's operation during the period of emergency declared in accordance with the Constitution, the State Administration Council hereby issues this directive so as to ensure that there is no loss or damage to the state or the people when departments and organisations of Union-level organisations, Union ministries, the Nay Pyi Taw Council or Region or State governments engage in construction with a permitted budget, purchase goods or receive services with a permitted budget, or dispose of or lease state-owned land, buildings and assets.
2. Expressions in this directive shall have the following meanings:
 - (a) **"Purchase"** means the construction or purchase of goods and services carried out with a permitted budget by departments or organisations of Union-level organisations, Union ministries, the Nay Pyi Taw Council or Region or State governments;
 - (b) **"permitted budget"** means all revenue and expenses shown in the relevant schedule of the Union Budget Law, Supplementary Appropriation Law, Region or State Budget Law, or Region or State Supplementary Appropriation Law;
 - (c) **"state-owned assets"** means assets owned by a department, fixed assets owned by a department, movable or immovable assets, land, buildings, intellectual property rights, and other assets legally owned by the state;
 - (d) **"assets owned by a department"** means storage equipment, tools and accessories, and the department's inventoried and surplus goods, irrespective of whether inanimate or animate, if they are controlled or owned by departments or organisations of Union-level organisations, Union ministries, the Nay Pyi Taw Council or Region or State governments;
 - (e) **"fixed assets owned by a department"** means buildings, factories, workshops, machinery, furniture and equipment, and the like items, if they are controlled or owned



by departments or organisations of Union-level organisations, Union ministries, the Nay Pyi Taw Council or Region or State governments;

- (f) **“request for a price proposal”** means a request for a price proposal by the purchasing department or organisation from the tenderer for goods to be imported [*sic*], construction works or services, in order to procure valuable goods, construction works or services that are of a quality that is readily available in the market;
- (g) **“unrestricted tendering (open tendering)”** means a tendering method which allows anyone fulfilling the requirements set forth in the tender document to submit a proposal;
- (h) **“restricted tendering”** means a tendering method where the tender is not announced in public and a limited number of tenderers, at least two, are invited to compete;
- (i) **“two-stage tendering”** means a method where a technical proposal is submitted first, a tenderer is screened and selected, and then a price proposal is submitted and selected;
- (j) **“direct procurement”** means a method where, without tenders having been invited, the tendering person proposes a price and negotiates and signs the contract;
- (k) **“tender validity period”** means the period from the time the tender is opened until the time the contract is signed with the successful tenderer;
- (l) **“tender committee”** means the committee formed by the relevant purchasing department or organisation to carry out public procurement activities;
- (m) **“disposal”** means the sale, transfer, deletion from the accounts, exchange, or change to another form of assets owned by a department or fixed assets owned by a department that are used and in excess, usable, unusable, or outdated;
- (n) **“direct sale”** means the a method where, without tenders having been invited, the tendering person proposes a price and negotiates and signs the contract.

Tendering methods for procurement and applicable conditions

- 3. Departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments shall use the following tendering methods when engaging in procurement:
 - (a) Request for a price proposal;



- (b) unrestricted tendering;
 - (c) restricted tendering;
 - (d) two-stage tendering;
 - (e) direct procurement.
4. Departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments may use the method of requesting a price proposal for procuring simple construction works or goods or services that are readily available in the market if the estimated value of the purchase is less than 20 million kyats.
5. Procurements shall be made by the method of unrestricted tendering where anyone may submit a tender, except in the cases set forth in paragraphs 4, 6, 7 and 8 of this directive.
6. The two-stage tendering method may be used in the following situations:
- (a) Impossibility to determine in advance the technical or contractual requirements of the object of the procurement at the time of the procurement process;
 - (b) due to the extremely difficult nature of the procurement, the purchasing department or organisation needs to negotiate with the tenderer to elaborate and revise the technical details of the object of the procurement.
7. The restricted tendering method may be used in the following situations:
- (a) Inability to receive quality tenders and the number of tenderers is limited when inviting unrestricted tenders for procurement;
 - (b) the cost of evaluating a large number of tenders is disproportionate to the value of the procurement;
 - (c) impossibility to advertise under circumstances related to public security;
 - (d) specific issues that need to be implemented immediately in case of state-owned large construction projects that are critical to public security or involve high technology, or in case of natural disasters and emergencies.
8. Direct procurement may be made in any of the following situations. A price proposal from the tendering person shall be collected if:
- (a) Only the tenderer is considered to have the technical expertise;



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- (b) the tenderer has an exclusive right to be the sole tenderer;
 - (c) there is a need to purchase in an emergency situation;
 - (d) after having made a public procurement, departments and organisations of Union-level organisations, Union ministries, the Nay Pyi Taw Council or Region or State governments need to make a purchase from the original supplier due to additional needs, provided that the additional public procurement does not exceed 30% of the value of the original contract, there is no change in the price of each kind of item, and there is no substantial change to the original terms of the contract;
 - (e) there is a need to purchase only from the original supplier, unless equipment or services may be replaced with others that are compatible with the technology or services used by the department or organisation;
 - (f) tenders were called with the unrestricted tendering method or the restricted tendering method, but there were no tenderers;
 - (g) there are issues of the state's national security and safety, special tasks related to security and law enforcement and [or?] related to skills, tasks to be carried out in conjunction with the original tasks, and [or?] separately authorised tasks.
9. When using the tendering methods in paragraphs 7 and 8 above, purchases of less than 100 million kyats may be decided by a meeting of the management committee of the Union-level organisations, Union ministries, the Nay Pyi Taw Council and Region and State governments, and purchases above 100 million kyats may be made with the approval of the chairman of the State Administration Council or the Union government.
10. The tender committee shall proceed as follows in relation to purchases:
- (a) For purchases under 20 million kyats, the tender committee may solicit price proposals from at least 3 reliable companies without having to call an unrestricted tender;
 - (b) unrestricted calls for tenders for purchases from 20 million kyats to 200 million kyats must be prominently announced 7 days before the tender opening date on the notice board of the relevant ministry and the notice board of the general administration department, district administration office and township administration offices;
 - (c) unrestricted calls for tenders for purchases above 200 million kyats must accurately describe the kind of work to be carried out and be advertised at least twice in state-



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owned newspapers at least 14 days before the tender opening date. The same shall be announced on the ministry's website at least 14 days in advance.

11. The tender committee shall do the following in relation to leases and sales:
 - (a) If the floor price (sales price or annual rent) is less than 20 million kyats, the "tender committee" shall accurately describe the type of business to be sold or leased and prominently announce the call for tender on the notice board of the relevant ministry and the notice board of the general administration department, district administration office and township administration offices at least 7 days before the tender opening date;
 - (b) If the floor price (sales price or annual rent) is 20 million kyats or more, the type of business to be sold or leased must be accurately described and the call for tender must be advertised at least twice in state-owned newspapers at least 14 days before the tender opening date. The same shall be announced on the ministry's website at least 14 days in advance.

Submission of tenders

12. Except for complex and large projects, the tender validity period shall not exceed 2 months from the date of submission of the tender. The tender commission shall set the tender validity period for complex and large projects.

Purchasing from abroad

13. Purchases abroad may be made due to non-availability in the local market and lack of a dealer authorised by the manufacturer to sell the foreign product locally. Purchases abroad shall be made in accordance with the methods set forth in paragraph 3 above.

Contract management

14. Departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments are responsible for managing the contract from the procurement contract's effective date until the completion of contract implementation, as well as providing the equipment and personnel required for the implementation of the contract in a timely manner. If necessary, the services of professionals may be obtained. Depending on the nature and difficulty of the contracted work, a contract administrator may be appointed.
15. If, after signing the contract, the successful tenderer does not deliver the goods or perform the work within the specified period, the contract may be terminated, provided that the successful



tenderer may terminate the contract only after having refunded all monies paid by the government departments or organisations.

16. If any dispute arises in relation to the contract, it shall be resolved by prompt negotiations or the dispute resolution method in the contract, and by arbitration or a court.
17. When departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments dispose of assets owned by a department or fixed assets owned by a department, any one or more than one of the following methods may be used:
 - (a) sale;
 - (b) transfer to other departments and organisations;
 - (c) destruction or deletion from the accounts;
 - (d) exchange;
 - (e) change to another form.

Sale and lease of assets owned by a department and fixed assets owned by a department

18. When departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments sell or lease assets owned by a department or fixed assets owned by a department, this may be done by inviting tenders, or by a direct sale or lease.
19. Tenders for sale [*should probably be: "Tenders to buy"*] may be called in the following situations:
 - (a) There are many purchasers, there are no specific conditions, there are no end-user or export restrictions;
 - (b) there are many purchasers for unique and valuable items;
 - (c) it is possible to gather and auction all items that should be put up for sale in one place so that travel costs may be saved;
20. Direct selling may be done in the following situations:
 - (a) There is a limited market and only one person is expected to purchase for the fixed price;



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- (b) for considerations of national security or public interest, or for legal or environmental considerations, the sale should be made only to one company, group or individual;
 - (c) if the goods to be sold are located in the premises of the purchaser for rent or free of charge, that person should be allowed to preferentially purchase the goods at the market price;
 - (d) sales for less than 100 million kyats may be decided by a meeting of the management committee of Union-level organisations, Union ministries, the Nay Pyi Taw Council and Region and State governments, and sales above 100 million kyats may be made with the approval of the chairman of the State Administration Council or the Union government.
21. The lease of fixed assets owned by a department shall comply with “directive no. 3/2018 to be followed when leasing, transferring, or having a joint venture involving, state-owned land and buildings” of the President’s Office.

Sale and lease of state-owned assets

22. Departments and organisations of Union-level organisations, Union Ministries, the Nay Pyi Taw Council and Region and State governments may sell or lease state-owned assets in accordance with applicable laws, except assets owned by a department and fixed assets owned by a department.
23. If there is no applicable law, a sale or lease may be done as follows:
- (a) Calling auctions;
 - (b) price offer;
 - (c) conducting leasing and sales activities with the approval of the chairman of the State Administration Council or the Union government.
24. The “tender committee” shall prominently advertise the assets to be sold in state-owned newspapers and on the ministry’s website at least 14 days before the tender opening date, except for the case in paragraph 23(c).

Miscellaneous

25. The following shall not be covered by this directive:
- (a) Procurement that is necessary for national defence and national security;
 - (b) participation in scholarships, courses, seminars or similar cases;



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- (c) matters related to the appointment of civil servants and the hiring of temporary contract workers;
 - (d) purchase of land and existing buildings.
26. In order for construction works to be completed on time in the relevant financial year, the tender process shall be carried out without delay in accordance with the tender procedures within two (2) months from the beginning of the financial year.
27. By the former President's Office, "directive no. 1 on tender procedures to be followed when government departments and organisations carry out construction, purchase goods, sell, and lease", "directive no. 2 on a project bank, "directive no. 3/2018 to be followed when leasing, transferring, or having a joint venture involving, state-owned land and buildings" and "directive no. 7/2020 – standard operating procedures for requesting state funds and tenders in construction works", and by the previous Ministry of Planning, Finance and Industry, "notification 1/2020 on procedures for unsolicited proposals submitted voluntarily without an invitation for tender" were issued.
28. If there are contradictions between the directives and the notification in paragraph 27 above and this directive, this directive shall prevail.

By order

17/3/2022

Khin Latt

Permanent Secretary

Office of the State Administration Council

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About Lincoln Legal Services (Myanmar) Limited

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