

Content

Title :	Regulations for Cultural and Arts Procurements <b>Ch</b>
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Legislative :	1.Promulgated November 21, 2019 by Ministry of Culture No. Mi Zi Di 10820456152 2.Amendments to Article 3, 7, 10, 13, 17, and 19 promulgated August 5, 2021 by Ministry of Culture Order Wen Mi Zi Di No. 11020283641
Content :	<p>Article 1 These Regulations are promulgated pursuant to Paragraph 1 of Article 26 of the Cultural Fundamental Act (hereafter “the Act” ).</p> <p>Article 2 Government agencies, public schools, and publicly run businesses (hereafter “organizations” ) shall abide by these Regulations when engaging in procurement related to culture and the arts except where otherwise provided for in law. This applies to what is to be addressed in bid documents, purchase agreement templates, methods of priority procurement, and other related matters. However, these Regulations shall not be construed as to violate the stipulations of treaties or agreements in force.</p> <p>Article 3 Procurement related to culture and the arts as defined in Paragraph 1 of Article 26 of the Act, and arts and culture procurement as defined in Paragraph 2 and these Regulations shall mean the purchase of labor and material related to culture and the arts. In the preceding Paragraph, “culture and the arts” shall mean those items listed in Paragraph 2 of Article 3 of Culture and the Arts Reward and Promotion Act and the industries listed in Paragraph 1 of Article 3 of Development of the Cultural and Creative Industries Act.</p> <p>Article 4 When organizations engage in procurement related to culture and the arts, they may, in light of the particular circumstances of each case, draft special regulations concerning the following: 1. Budget or estimated budget; 2. Items to be evaluated or priority order for evaluation; 3. Principles for awarding bids; 4. Pricing and terms of payment; 5. Agreement clauses; 6. Rights and interests of vendor employees and employees of subcontractors; 7. Determination of intellectual property rights.</p> <p>Article 5 When organizations draw up a budget or estimated budget for procurement related to culture and the arts, they shall take into account the labor/time costs of vendors during the contracted period, the necessary expertise vendors require, vendors’ need to earn a reasonable profit, and market prices.</p> <p>Article 6 When organizations engage in procurement related to culture and the arts, they shall organize an evaluation committee of at least five members. Of these, scholars and experts shall comprise no less than one-third, with no fewer than two being scholars and experts in the field of culture and the arts. This stipulation concerning committee organization shall not apply to foreign branch offices of organizations, or where procurement related to</p>

culture and the arts is commissioned.

#### Article 7

When organizations engage in procurement related to culture and the arts, and where they do so by creating an evaluation committee or a review task force, items for evaluation or review shall emphasize vendors' ability to deliver and professional expertise concerning the item/service being procured. This shall account for no less than 60 percent.

"Professional expertise" as used in the preceding Paragraph shall include professional knowledge, creativity, level of mastery of related skills, technical understanding, innovativeness, aesthetic and artistic skills, and other items related to culture and the arts. "Ability to deliver" shall include a comprehensive review of items that reflect ability to honor the terms of the contract, such as preparing a professional workforce for project execution, as well as related experience and achievements. Sub-items concerning professional ability and ability to deliver shall be determined as items to evaluate and review; these items, and the weight they are given in the review, shall be listed in the request for tender.

#### Article 8

When organizations engage in procurement related to culture and the arts, and where they do so by creating an evaluation committee or a review task force, they shall use an overall score or ranking.

Where two or more vendors share the highest score or placement as per the terms of the preceding Paragraph, the vendor with the higher overall number of points concerning professional expertise and ability to deliver should be given priority consideration.

#### Article 9

When organizations engage in procurement related to culture and the arts, the lowest bid shall be taken as the winning bid except where the following hold true:

1. Where the procurement is a result of closed, non-public invitations to tender;
2. Where the procurement entails selecting the least qualified of qualified bidders;
3. Where the procurement involves making purchases in an open, competitive market or via centralized trading;
4. Where the bid has not exceeded 10 percent of the published price;
5. Where the procurement entails acquisition of property or services from other governmental entities;
6. Where the value has not reached the threshold for publication, an open acceptance of bids has been made, and the lowest bid has been accepted;
7. Where the procurement, approved by the organization, is of a nature wherein selecting the most advantageous tender is not suitable.

#### Article 10

Organizations undertaking procurement related to culture and the arts making their selection based on the most advantageous tender shall, in principle, not set a price floor or a fixed price.

Where organizations engaging in procurement related to culture and the arts set a price floor, they shall take into account the scale, nature, professional, regulations, contract and considering the costs and market price. They shall also collect and compile information about successful tenders by government organizations and from associations of related industries. This compilation shall then be approved by the head of the organization or individual so authorized.

"Price floor" as used in the preceding Paragraph shall not, in principle, be lower than 90 percent of vendor bids that fall within budget. This statute shall not apply in cases where a valuation meeting is held or a review committee is established to put forth a suggested price.

#### Article 11

Organizations may rule that vendors must submit a service proposal when presenting their bid. Vendors reaching a certain score or ranking but not being selected as the winning bid after the review may be given a set sum

or reward.

Organizations may, in line with their requirements and with the approval of the vendor, bestow a fee for authorization over the copyright, or for partial or full copyright attending to the service proposal submitted by vendors as in the previous Paragraph.

#### Article 12

Organizations engaging in procurement related to culture and the arts may, depending on the nature of the procurement and their requirements, allow winning vendors to designate portions of the work to be subcontracted to other vendors at a reasonable rate.

As concerns “portions of the work to be subcontracted” and “rate” as used in the preceding Paragraph, the organization shall, as per the terms of the Agreement, submit such information to the organization for its reference; the organization may require that the vendor make adjustments where portions of the work or the rate are unreasonable.

Where, as in Paragraph 1, an overall score is used in procurement related to culture and the arts, vendors shall not be required to remand excess funds or submit all receipts, except in cases where the scope or content of certain elements of the procurement requires payment according to actual expenditure, and this is clearly marked in the request to tender.

#### Article 13

Organizations shall take note of vendors’ contract execution and labor expenditure to establish reasonable payment installments and percentages.

Where a case is being carried out over a period of more than six months, payment shall in principle be in installments.

Where advance payment is agreed to as part of contracted payment, in principle the amount shall not be less than 20 percent of the total contracted amount or total estimate; the same shall apply to the first installment.

In principle, the terminal payment shall not exceed 30 percent of the total contracted amount or total estimate.

For cases of advance payment as in Paragraph 3, regulations stipulation the non-provision of an advance payment guarantee may be considered depending on the circumstances of the case.

#### Article 14

Contracts for procurement related to culture and the arts shall, in principle, use the Sample Contract for Procurement related to Culture and the Arts drafted by the Ministry of Culture.

#### Article 15

Organizations engaged in procurement related to culture and the arts shall clearly address protections for the rights and interests of vendors’ employees and subcontracted vendors’ employees in the contract. Vendors and subcontracted vendors shall abide by laws and regulations concerning labor and gender equality in employment.

Organizations, upon finding that vendors or subcontracted vendors are in violation of labor or gender equality in employment laws, shall submit concrete evidence to the local labor authority or the Bureau of Labor Insurance for investigation.

#### Article 16

When organizations engage in procurement related to culture and the arts, during the contract period, where vendors wish to change the content due to unforeseeable circumstances or where content more favorable to the organization than that of the original arises, the vendor may state explicitly the reasons for changes and append information comparing efficiencies and/or price. With the written approval of the organization, the vendor may elect to use the more effective/advantageous content.

#### Article 17

When organizations engage in procurement related to culture and the arts, and where contract performance results in the creation of copyrighted material, the organization shall consider the work being done and make

necessary and reasonable arrangements concerning the moral rights and copyright.

The organization shall ascertain which party it most benefits to hold the copyright and shall, in principle, obtain authorization to use the copyright. Where special circumstances apply, the organization may be named as the copyright holder, or the organization may seek to obtain partial or full copyright, or the organization may hold joint copyright with the enterprise.

#### Article 18

Organizations engaging in procurement related to culture and the arts are not to require a tender bond.

#### Article 19

Organizations engaging in procurement related to culture and the arts are to consider the scope, difficulty, and type of project, as well as the time vendors need to prepare and submit bid materials in determining the open period to accept bids for tender, and are not to use limitations set in government procurement regulations. However, where special circumstances apply or in the case of an emergency, this limitation shall not apply if a report is made to and approved by the head of an organization or his/her designee.

#### Article 20

When the organization is inspecting submissions, if on-site inspections are difficult, inspections in writing or convening an inspection meeting may be used. In such cases, the documents reviewed in a written inspection or the minutes of the inspection meeting shall be taken as record of inspection. In inspecting procurement related to culture and the arts, scholars and experts may be invited to assist with the inspection, or a scholarly or accredited organization may be commissioned to conduct product quality checks or accreditation.

The organization shall award certificates of inspection to those who have passed the inspection process. This may take different forms depending on the needs of the vendor.

#### Article 21

These Regulations shall be effective as of the date of their promulgation.