

BILL No. 7 of 2003

Friday 30th May, 2003

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

The following BILL which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 7 of 2003

PROCUREMENT BILL 2003
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A Bill
Intituled

AN ACT to provide for the regulation of the procurement of goods, services and the execution of works, to promote competition among suppliers and contractors and to promote fairness and transparency in the procurement process.

WHEREAS it is considered desirable to regulate, the procurement of goods, services and of construction so as to promote the objectives of -

- (a) maximizing economy and efficiency in procurement;
- (b) fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially participation by suppliers and contractors regardless of nationality, thereby promoting international trade;
- (c) promoting competition among suppliers and contractors for the supplying of goods, services, or construction to be procured;
- (d) providing for the fair and equitable treatment of all suppliers and contractors;
- (e) promoting the integrity of, and fairness and public confidence in, the procurement process; and
- (f) achieving transparency in the procedures relating to procurement.

A.D. 2003

Enacted by the Parliament of Guyana:-

PART I - PRELIMINARYShort title and
commencement.

1. This Act may be cited as the Procurement Act 2003 and shall come into operation on such date as the Minister may by order appoint.

Interpretation.

2. In this Act -

- (a) "Administration" means the National Procurement and Tender Administration established under section 16;
- (b) "appropriate board" means, as the context requires, the National Board, the Ministerial Board, a Regional Board, a District Board, a Departmental Board or an Agency Board;
- (c) "construction" means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;
- (d) "consulting services" means services of an intellectual nature which do not lead to a physically measurable result;
- (e) "currency" means monetary unit of account;
- (f) "domestic supplier" means a supplier having his principal place of business in Guyana;

- (g) "goods" includes raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;
- (h) "Minister" means the Minister of Finance;
- (i) "National Board" means the National Procurement and Tender Board established under section 16;
- (j) "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;
- (k) "procurement contract" means a contract between the procuring entity and a supplier or contractor resulting from the procurement process;
- (l) "procuring entity" means any ministry, department, agency or other unit, or any subdivision thereof, of the Government, that engages in procurement;
- (m) "Public Procurement Commission" means the Public Procurement Commission referred to in article 212W of the Constitution;
- (n) "regulations" except the context otherwise requires, means regulations made under this Act;
- (o) "services" means services of a general nature other than consulting and construction services;

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(p) "supplier or contractor" means, according to the context, any party or potential party to a procurement contract with the procuring entity and includes a consultant;

(q) "tender security" means a security provided to the procuring entity to secure the fulfillment of any obligation referred to in section 37(2) and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes, and bills of exchange.

Application. 3.(1) This Act applies to all procurement by procuring entities, except as otherwise provided in subsection (2).

(2) Subject to the provisions of subsection (3), this Act does not apply to procurement involving national defence or national security.

(3) This Act applies to the types of procurement referred to in subsection

(2) where and to the extent that the procuring entity, subject to the approval of the National Board, expressly so declares to suppliers or contractors when first soliciting their participation in the procurement proceedings.

(4) This Act applies *mutatis mutandis* to a supplier or contractor who is a person as it does to a supplier or contractor who is a body of persons, corporate or incorporate.

PART II - GENERAL PROVISIONS

International obligations.

4. The provisions of this Act shall apply to any procurement unless they conflict with any provisions made applicable by virtue of an international agreement.

Qualifications of
suppliers and
contractors.

5.(1) Every supplier or contractor wanting to participate in procurement proceedings must qualify by meeting such of the following criteria as the procuring entity considers appropriate –

- (i) that it possesses or has access to the technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the contract;
- (ii) that it has legal capacity to enter into the contract;
- (iii) that it is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;
- (iv) that it has fulfilled its obligations to pay taxes and social security contributions of its employees;
- (v) that it has not, and its directors or officers have not, been convicted of any criminal offence related to its professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of ten years preceding the commencement of the procurement proceedings, or has not been otherwise disqualified pursuant to administrative

suspension or debarment proceedings in this or other jurisdictions over the last three years;

- (vi) that its past performance substantiated by documentary evidence would commend it for serious consideration for the award of the contract.

(2) Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the suppliers or contractors are qualified in accordance with the criteria set forth in subsection (1).

(3) Any requirement mentioned in this section shall be set forth in the prequalification documents, if any, or in the solicitation documents and shall apply equally to all suppliers or contractors. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those set forth in this section or the regulations.

(4) Subject to section 39 (6)(b), the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof on the basis of nationality.

(5) (a) A procuring entity may disqualify a supplier or contractor if it finds at any time that the supplier or contractor knowingly submitted information concerning the qualifications of the supplier or contractor that was materially inaccurate, incomplete, or

false. A supplier or contractor that has been disqualified pursuant to this paragraph may be subject to such sanctions as the National Board may impose.

(b) Other than in a case to which paragraph (a) applies, a procuring entity may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractors was inaccurate or incomplete in a non-material respect. The supplier or contractor may be disqualified if it fails to remedy such non-material deficiencies promptly upon request by the procuring entity.

Pre-qualification
proceedings.

6.(1) The procuring entity may engage in prequalification proceedings in order to identify, prior to the submission of tenders in procurement proceedings conducted pursuant to PART V, suppliers and contractors that are qualified to participate in such proceedings.

(a) A procuring entity shall solicit invitations to prequalify by causing an invitation to prequalify to be published in newspapers of wide circulation and posted in public places. Such solicitations shall reach the area impacted by the procurement.

(2) If the procuring entity engages in pre-qualification proceedings, it shall provide, on payment therefor, a set of prequalification documents to each supplier or contractor that requests them in accordance with the invitation to prequalify.

(3) The prequalification documents shall include, the following information -

- (a) instructions for preparing and submitting prequalification applications;
- (b) a summary of the required terms and conditions of the contract to be entered into as a result of the procurement proceedings;

- (c) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
- (d) the manner and place for the submission of applications to prequalify and the deadline for such submission, expressed as a specific date and time and allowing sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the needs of the procuring entity;
- (e) any other requirements that may be established by the procuring entity in conformity with this Act and the procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings.

(4) The procuring entity shall respond to a valid query by a supplier or contractor for clarification of the prequalification documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by the procuring entity shall be given within a reasonable time so as to enable the supplier or contractor to make a timely submission of its application to prequalify. The response to any query shall, without identifying the source of the query, be communicated to all suppliers or contractors to which the procuring entity provided the prequalification documents.

(5) The procuring entity shall make a decision with respect to the qualifications of each supplier or contractor submitting an application to prequalify. In

reaching that decision, the procuring entity shall apply only the criteria set forth in the prequalification documents.

(6) The procuring entity shall promptly notify each supplier or contractor submitting an application to prequalify whether or not it has been prequalified and shall make available to any member of the general public, upon request, the names of all suppliers or contractors that have been prequalified. Only suppliers or contractors that have been prequalified are entitled to participate further in the procurement proceedings.

(7) The procuring entity shall, upon request, communicate to any supplier or contractor that has not been prequalified the grounds therefor.

(8) Should the procuring entity decide that a supplier or contractor does not satisfy the prequalification requirements, the supplier or contractor may, upon request, obtain a review of that decision pursuant to Part VII.

(9) The procuring entity may require a supplier or contractor that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such supplier or contractor. The procuring entity shall disqualify any supplier or contractor that fails to demonstrate again its qualifications if requested to do so. The procuring entity shall promptly notify each supplier or contractor requested to demonstrate again its qualifications as to whether or not the supplier or contractor has done so to the satisfaction of the procuring entity. Where a supplier or contractor is disqualified for failing to demonstrate again its qualifications, the procuring entity shall, upon request, communicate the grounds therefor.

Participation
by suppliers or
contractors.

7. Suppliers or contractors are permitted to participate in procurement proceedings without regard to nationality.

Form of
communications.

8.(1) Subject to the other provisions and any requirement of form specified by the procuring entity when first soliciting the participation of suppliers or contractors in the procurement proceedings, documents, notifications, decisions and other communications referred to in this Act to be submitted by the procuring entity or administrative authority to a supplier or contractor or by a supplier or contractor to the procuring entity shall be in a form that provides a record of the content of the communication. This shall include forms of electronic communication provided that a record of the content is produced.

(2) Communications between suppliers or contractors and the procuring entity referred to in section 6 (4) and (6), and PART V, Sections I and II, may be made by a form of communication that does not provide a record of the content of the communication provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which does provide a record of the confirmation.

(3) The procuring entity shall not discriminate against or among suppliers or contractors on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

Rules concerning
documentary evidence
provided by suppliers or
contractors.

9.(1) If the procuring entity requires the authentication of documentary evidence provided by suppliers or contractors to demonstrate their qualifications in

procurement proceedings, the procuring entity shall not impose any requirements as to the authentication of such evidence other than those provided for by law.

(2) The procuring entity may require authentication of documentary evidence only of the lowest evaluated bidder recommended to be awarded the tender.

Record of
procurement
proceedings.

10.(1) The procuring entity shall maintain a record of the procurement proceedings including -

- (a) a brief description of the goods, services, construction, or consulting services to be procured;
- (b) the names and addresses of suppliers or contractors that submitted tenders, proposals, or quotations, and the name and address of the supplier or contractor with which the contract is entered into and the contract price;
- (c) information relating to the qualification, or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations;
- (d) the price and a summary of the other principal terms and conditions of each tender or proposal;
- (e) the means used to solicit suppliers or contractors and a record of any such advertisements;
- (f) the time and place for the opening of tenders;

- (g) the names of the suppliers or contractors or their representatives or members of the public attending the opening of tenders or proposals;
 - (h) the form of tender and those pages containing the original bill of quantities for construction.
- (2) Subject to section 38(3), the portion of the record referred to in subsection (1)(a) and (b) shall, on request, be made available to any person after a tender has been accepted and a public notice as required by section 11, has been published, or after procurement proceedings have been terminated.
- (3) Subject to section 38(3), the record referred to in subsection (1) shall, on request, be made available to suppliers or contractors that submitted tenders, or applied for prequalification, after a tender has been accepted or procurement proceedings have been terminated. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose -
- (a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the other parties or would inhibit fair competition;
 - (b) information relating to the examination or evaluation of tender proposals, but this non-disclosure shall not be construed as preventing the disclosure of scoring sheets or rankings, or any other documents that provide a qualitative or quantitative comparison of the tender proposals.

(4) Where the procuring entity has acted in good faith, the procuring entity shall not be liable to suppliers or contractors for damages solely for a failure to maintain a record of the procurement proceedings in accordance with the provisions of this section.

Publication of contract awards.

11.(1) The procuring entity shall publish notice of procurement contract awards within seven days of awarding such contracts.

(2) The procurement regulations shall provide for the manner of publication of the notice required by subsection (1).

Inducements from suppliers or contractors.

12. An appropriate board shall reject a tender, if the supplier or contractor that submitted it offers, gives or agrees to give, to any current or former officer or employee of the procuring entity or other governmental authority directly or indirectly including through a family member, a gratuity in any form, an offer of employment or any other thing or service or value, as an inducement with respect to an act or decision of, or procedure followed by, such appropriate board in connection with the procurement proceedings. Such rejection of the tender or proposal and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.

Rules concerning
description of
goods, services
of construction

13.(1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods, services, or construction to be procured, and requirements concerning testing and test methods, packaging, marking or labeling or conformity certification, any symbols and terminology, that create obstacles to participation, including obstacles based on nationality, by suppliers or contractors in the procurement proceedings shall not be included or used in the prequalification documents, solicitation documents or other documents for solicitation of tenders.

(2) To the extent possible, any specifications, plans, drawings, designs and requirements shall be based on the relevant objective technical and quality characteristics of the goods, services, or construction to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, services, or construction to be procured and provided that the words such as "or equivalent" are included.

(3) (a) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, services, or construction to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the documents for the solicitation of tenders.

(b) Due regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the documents for solicitation of tenders.

Splitting of
contracts.

14. A procuring entity shall not split or cause to split contracts or divide or cause to divide its procurement into separate contracts where the sole purpose for doing so is to avoid the application of any provision of this Act or any regulations made thereunder.

Language of
solicitation
documents.

15. All documents for the solicitation of tenders shall be in English.

PART III - ADMINISTRATIVE STRUCTURE FOR PUBLIC PROCUREMENT

Creation and
membership of the
National
Procurement and
Tender
Administration.

16.(1) There is hereby established an agency reporting to the Minister of Finance to be known as the National Procurement and Tender Administration.

(2) The Administration shall be managed by the National Board which shall consist of seven members, appointed by the Minister from among persons of unquestioned integrity who have shown capacity in business, the professions, law, audit, finance and administration.

(3) The members of the National Board to be appointed by the Minister shall comprise -

- (i) five persons from the Public Service;
- (i) two persons from the private sector.

(4) Two members of the National Board shall serve on a full time basis and the remainder shall serve on a part-time basis. The Minister shall appoint as Chairman one of the full-time members.

(5) Subject to subsection (6), the term of membership on the Board shall be two years.

(6) The appointment of members to the Board shall be staggered, by making the first appointment of two part-time members for one year only.

(7) Members of the National Board shall receive such remuneration and allowances as may be determined by the Minister.

(8) Each member of the National Board shall declare his assets to the Integrity Commission.

(9) Four members including the Chairman shall form a quorum, the Chairman having a casting vote.

(10) The National Board shall meet weekly and taking into account the volume of its adjudication and evaluation may meet at such other times as it may determine.

Functions of the
National Board:

17.(1) The National Board shall be responsible for exercising jurisdiction over tenders the value of which exceeds such an amount prescribed by regulations, appointing a pool of evaluators for such period as it may determine, and maintaining efficient record keeping and quality assurances systems.

(2) In addition, pending the establishment of the Public Procurement Commission, the National Board shall be responsible for –

(a) making regulations governing procurement to carry out the provisions of this Act;

(b) determining the forms of documents for procurement including, but not limited to –

(i) standard bidding documents;

- (ii) prequalification documents;
 - (iii) contracts;
 - (iv) evaluation forms; and
 - (v) procurement manuals, guidelines, and procedures.
- (c) organizing training seminars regarding procurement;
 - (d) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending therein any amendment to this Act that may be necessary to improve the effectiveness of the procurement process;
 - (e) as provided for in section 52, upon request, reviewing decisions by the procuring entities;
 - (f) adjudicating debarment proceedings.

(3) When the Public Procurement Commission is established, the responsibilities of the National Board shall be limited to those provided for in subsection (1), and all other responsibilities listed in this section shall be the responsibility of the Public Procurement Commission.

(4) For each procurement subject to its jurisdiction, the National Board shall select and appoint from the pool of evaluators appointed pursuant to subsection (1), three individuals with appropriate expertise and experience, to serve as members of an Evaluation Committee for such procurement, and shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received. The Evaluation Committee shall evaluate the tenders as provided for in section

39.

Secretariat of the
Administration.

18.(1) The National Board shall, in consultation with the Minister, establish a Secretariat to be responsible for the operational management of the Administration. The day-to-day activities of the Secretariat shall be managed by a professional staff of proven experience and capabilities.

(2) The Secretariat shall receive the staff, training, and equipment necessary to discharge its responsibilities.

(3) Each member of the Secretariat shall declare his assets to the Integrity Commission.

Creation and
membership of
Regional Tender
Boards.

19.(1) The National Board shall create within each administrative region a Regional Tender Board, hereinafter referred to as the Regional Board and subject to section 17(1), a Regional Board shall have jurisdiction over procurement by the relevant regional administration the value of which is less than such an amount as may be prescribed by regulations.

(2) Each Regional Board shall consist of five members, as follows -

(a) three members appointed by the National Board;

(b) two members appointed by the regional administration, from among persons with qualifications not dissimilar to those required for appointment to the National Board;

(3) One member of each Regional Board appointed by the National Board shall serve on a full-time basis and he shall be the Chairman; the others on a part-time basis.

(4) The term of membership on a Regional Board shall be two years.

(5) Members of the Regional Board shall receive such remuneration and allowances as may be determined by the Minister.

(6) A member of a Regional Board shall declare his assets to the Integrity Commission.

(7) Three members including the Chairman shall form a quorum.

Functions of the
Regional Boards.

20.(1) Each Regional Board shall nominate for consideration by the National Board qualified individuals to serve on an Evaluation Committee.

(2) Each Regional Board shall in accordance with this Act and the regulations oversee the administration of procurement in its respective administrative region.

(3) Each Regional Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction. A Regional Board may, with the approval of the National Board, make such minor alterations or modifications to such forms and criteria as are deemed necessary on a case-by-case basis.

(4) Each Regional Board shall determine whether suppliers or contractors satisfy such qualification requirements as may be imposed under section 5(1).

(5) For each procurement subject to its jurisdiction, a Regional Board shall select from the pool of evaluators appointed by the National Board under section 17, three evaluators with expertise and experience, to serve as members of the Evaluation Committee for such procurement.

(6) In selecting evaluators to serve on an Evaluation Committee, a Regional Board is not restricted to selecting individuals from its administrative region.

(7) The Evaluation Committee shall evaluate the tenders pursuant to section

39.

(8) A Regional Board may, on a case-by-case basis, retain the services of agencies, procurement consultants, or, with the approval of the responsible Minister, the staff of a related Ministry, to provide such assistance as may be required in carrying out its responsibilities.

Creation and
membership of
District Tender
Boards.

21. (a) The National Board may, at its discretion, create District Tender Boards for procurement by Neighbourhood Democratic Councils, hereinafter referred to as District Boards, comprising part-time members as follows –

- (i) two members appointed by the relevant Regional Board;
- (ii) one member appointed by the relevant Neighbourhood Democratic Council,

from among persons with qualifications not dissimilar from those required for appointment to the National Board.

(b) The term of membership on the District Board shall be stated in the letter of appointment.

(c) The Chairman of a District Board shall be appointed by the Regional Board from among the members appointed under paragraph (a).

(d) Section 19 (5) and (6) shall mutatis mutandis apply to a District Board.

(e) Three members including the Chairman shall form a quorum.

(f) A District Board with the approval of the National Board shall discharge such functions as may be assigned to it by the Regional Board.

Creation and membership of Ministerial, Departmental and Agency Tender Boards.

22.(1) Each Ministry, Department or Agency that engages in procurement shall create a Tender Board and subject to section 17(1), each such Tender Board shall have jurisdiction over procurement by the relevant Ministry, Department or Agency, the value of which is less than such an amount as may be prescribed by regulations.

(2) Each such Tender Board shall consist of five part-time members, as follows —

- (a) three members shall be appointed by the Minister;
- (b) two members shall be appointed by the National Board,

from among persons with qualifications not dissimilar to those required for appointment to a Regional Board;

(3) The term of membership on the each such Tender Board shall be two years.

(4) Section 16(7) and (8) shall mutatis mutandis apply to such a Tender Board.

(5) Three members including the Chairman shall form a quorum.

Functions of the Ministerial, Departmental and Agency Tender Boards.

23.(1) Each Ministerial, Departmental and Agency Tender Board shall nominate for consideration by the National Board qualified evaluators to serve on Evaluation Committees.

(2) Each such Tender Board shall, in accordance with this Act and the regulations, oversee the administration of procurement for its respective Ministry, Department, or Agency.

(3) Each such Tender Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction; and may, with the approval of the National Board, make such minor alterations or modifications to the forms and criteria as are deemed necessary on a case-by-case basis.

(4) Each such Tender Board shall determine whether suppliers or contractors satisfy the qualification requirements in accordance with section 39 (8).

(5) For each procurement subject to its jurisdiction, each such Tender Board shall select from the pool of evaluators appointed by the National Board under section 17, three evaluators with expertise and experience, to serve as members of the Evaluation Committee for such procurement.

(6) Each such Tender Board shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received from contractors or suppliers pursuant to section 35.

(7) The Evaluation Committee shall evaluate the tenders pursuant to section 39.

Procurement by public corporations and certain other bodies.

24.(1) Public corporations and other bodies in which the controlling interest is vested in the State may, subject to the approval of the National Board, conduct procurement according to their own rules or regulations, except that to the extent that such rules and regulations conflict with this Act or the regulations, this Act and the regulations shall prevail.

(2) If funds are received from the Treasury for a specific procurement, then the corporation or other body shall be obliged to follow the procedure set out in this Act and the regulations.

(3) Employees of any procurement entity who by their job description are responsible for procurement shall declare their assets to the Integrity Commission.

PART IV - METHODS OF PROCUREMENT OF GOODS, CONSTRUCTION AND SERVICES AND THEIR CONDITIONS FOR USE

Open tendering.

25.(1) Subject to subsection (2), public tendering is mandatory. For such tendering an invitation to tender or to prequalify, as applicable, is mandatory.

(2) A procuring entity may use a method of procurement other than tendering proceedings in accordance with sections 26 through, 29, in which case the procuring entity shall include in the record required under section 10 a statement of the grounds and circumstances on which it relied to justify the use of that particular method of procurement. The procuring entity may engage in procurement by means of restricted tendering in accordance with this section when -

- (a) the goods, construction or services by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors, in which case all such suppliers or contractors shall be invited to submit tenders;
- (b) if the estimated cost of the contract is below the threshold set forth in the regulations

(2) When the restricted tendering procedure is used, only suppliers or contractors invited by the procuring entity due to their qualifications can submit tenders.

All other steps and requirements applicable to open tendering, as set forth in Part V of this Act, shall be complied with.

26.(1) The procuring entity may engage in procurement by means of restricted tendering in accordance with this section when -

- (a) the goods, construction or services by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors, in which case all such suppliers or contractors shall be invited to submit tenders;
- (b) if the estimated cost of the contract is below the threshold set forth in the regulations.

(2) When the restricted tendering procedure is used, only suppliers or contractors invited by the procuring entity due to their qualifications can submit tenders.

All other steps and requirements applicable to open tendering, as set forth in Part V of this Act, shall be complied with.

27.(1) The procuring entity may engage in procurement by means of a request for quotations provided that the estimated value of the procurement contract does not exceed such amount as may be prescribed by regulations.

(2) Before awarding a contract under this section, the procuring entity shall obtain and compare quotations from as many qualified suppliers or contractors as feasible, but not fewer than three.

(3) The procuring entity shall make its best efforts to check prices on the Internet to ensure the reasonableness of quoted prices and shall publish the price of its most recent procurement at least once a quarter in a newspaper of national circulation.

(4) Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor.

(5) The procurement contract shall be awarded to the supplier or contractor that submitted the lowest-priced quotation that complied with the requirements of the invitation.

Single-source
procurement.

28. The procuring entity may engage in single-source procurement when

- (a) the goods or construction are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights with respect to the goods or construction, and no reasonable alternative or substitute exists;
- (b) the services, by reason of their highly complex or specialized nature, are available from only one source;
- (c) owing to a catastrophic event, there is an urgent need for the goods, services or construction, making it impractical to use other methods of procurement because of the time involved in using those methods;

- (d) the procuring entity, having procured goods, services, equipment or technology from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, services, equipment or technology, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods in question; or
- (e) the procuring entity applies section 3(2), to procurement involving national defence or national security and determines, as a result of national security concerns, that single-source procurement is the most appropriate method of procurement.

Procurement
through
community
participation.

29. In circumstances where procurement is conducted in poor remote communities, where the competitive procedures described in this Act are not feasible, goods, works and services the value of which does not exceed such an amount as may be prescribed by regulations, may be procured, either -

- (a) in accordance with procedures that promote efficiency through participation of community organizations; or
- (b) through single source procurement from direct contracting of suppliers or contractors located near the community.

PART V – PROCEDURE FOR OPEN TENDERING
SECTION I - INVITATION TO TENDER

Invitation to tender.

30. (1) A procuring entity shall solicit tenders by causing an invitation to tender to be published in newspapers of wide circulation and posted in public places. The invitation to tender or to prequalify, as applicable, shall contain a brief description of the goods or construction to be procured and shall state the deadline for submission and where the solicitation documents and additional information regarding the tender may be obtained.

(2) The invitation to tender or invitation to prequalify, shall be published in at least a newspaper of wide circulation or in at least one journal of wide international circulation dedicated to publishing international tendering whenever foreign tenderers are expected to be interested in the contract. Contracts in which only national tenderers are expected to be interested may be advertised only nationally, pursuant to subsection (1).

Two-stage tendering.

31.(1) A procuring entity may engage in open tendering by means of two-stage tendering when it is not feasible for the procuring entity to formulate detailed specifications due to the complex nature of the contract in order to obtain the best performing solution for the procurement contract. Two-stage tendering may be preceded by pre-qualification proceedings pursuant to section 6.

(2) During the first stage of a two-stage tender, suppliers and contractors shall be invited to submit technical proposals on the basis of a conceptual design or performance-based specifications provided in the tender documents, without submitting prices. These proposals may then be subject to further specification on technical and commercial requirements. During the second stage, suppliers and contractors shall be

invited to submit final technical proposals with prices on the basis of the tender documents, as revised by the procuring entity following the first stage.

Tender documents.

32.(1) The procuring entity shall provide tender documents to suppliers or contractors subject to the payment of the cost of printing and providing them. If prequalification proceedings have been engaged in, the procuring entity shall provide a set of bid documents to each prequalified supplier or contractor.

(2) The tender documents shall include such information as may be determined by the National Board.

Clarification and modification of tender documents.

33.(1) A supplier or contractor may request a clarification of the tender documents from the procuring entity. The procuring entity shall respond within a reasonable time to any query by a supplier or contractor for clarification of the tender documents that are received by the procuring entity so as to enable the supplier or contractor to make a timely submission of its tender and shall, without identifying the source of the query, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the solicitation documents.

(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 or contractor, modify the tender documents.

(3) If the procuring entity convenes a pre-bid meeting of suppliers or contractors, it shall prepare minutes of that meeting containing the queries submitted at the meeting for clarification of the tender documents, and its responses to those queries, without identifying the sources of the queries. The minutes shall be provided promptly to

all suppliers or contractors to which the procuring entity provided the tender documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders. All modifications of tender conditions made by the procuring entity whether on its own initiative, as a result of clarifications requested by the tenderers, or provided during a pre-tender meeting, shall be issued in the form of amendments to the tender documents, which shall be provided to all prospective bidders who purchased the tender documents. Such addendum shall be binding upon all tenderers.

SECTION II - SUBMISSION OF TENDERS

Language of
tenders.

34. Tenders must be formulated and submitted in English.

Submission of
tenders.

35.(1) The procuring entity shall fix the place for, and a specific date and time as the deadline for, the submission of tenders. For every submission there shall be the original and two copies of the tender.

(2) If pursuant to section 33, the procuring entity issues a clarification or modification of the tender documents, or if a meeting of suppliers or contractors is held, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers or contractors reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.

(3) The 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 or contractors were prevented from meeting the deadline by factors beyond their control.

(4) Notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring entity provided the solicitation documents.

(5)(a) Subject to paragraph (b), a tender shall be submitted in writing, signed and in a sealed envelope clearly marked "Tender For". The name of the tenderer must not be stated on the envelope.

(b) Without prejudice to the right of a supplier or contractor to submit a tender in the form referred to in paragraph (a), a tender may alternatively be submitted in any other form specified in the solicitation documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

(c) The procuring entity shall record the time and date when the tender was received, and on request, provide to the supplier or contractor a receipt showing that information.

(6) A tender received by the procuring entity after the deadline for the submission of tenders shall be so marked and shall not be opened except for the purpose of ascertaining the name and address of the bidder for the return of the tender.

(7) No bid shall be rejected at the public opening ceremony.

36.(1) Tenders shall be in effect during the period of time specified in the solicitation documents.

(2)(a) Prior to the expiration of the period of effectiveness of tenders, the procuring entity may request a supplier or contractor to extend such period for an additional specified period of time. A supplier or contractor may refuse the request

without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiration of the unextended period of effectiveness.

(b) Suppliers or contractors that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender security provided by them or provide new tender security to cover the extended period of effectiveness of their tenders. A supplier or contractor whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

(3) Unless otherwise specified in the solicitation documents, a supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

Tender security.

37.(f) When the procuring entity requires suppliers or contractors submitting tenders to provide a tender security -

- (a) the requirement shall apply equally to all such suppliers or contractors;
- (b) the solicitation documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;

- (c) notwithstanding paragraph (b), a tender shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in Guyana if the tender security and the issuer otherwise conform to the requirements set forth in the solicitation documents.

(2) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security; any requirement that refers directly or indirectly to conduct by the supplier or contractor submitting the tender shall not relate to conduct other than —

- (i) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the solicitation documents;
- (ii) failure to sign the contract if required by the procuring entity to do so;
- (iii) failure to provide a required performance bond for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the contract specified in the solicitation documents.

(3) The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, at such time as whichever of the following occurs earliest —

- (a) the expiration of the tender security;
- (b) the entry into force of a contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
- (c) the termination of the tendering proceedings without entry into force of a procurement contract; or
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

(4) Tender securities in an amount between one and two percent of the estimated cost of the contract shall be required only for contracts the value of which exceeds an amount as may be prescribed by regulations.

SECTION III - EVALUATION OF TENDERS

38.(1) Tenders shall be opened in public at the time specified in the solicitation documents as the deadline for the submission of tenders, or at the deadline specified in any extension of the deadline, at the place and in accordance with the procedures specified in the solicitation documents.

(2) All suppliers or contractors that have submitted tenders, or their representatives, may attend the opening of tenders.

(3) The name, address and bid number of each supplier or contractor whose tender is opened and the tender price shall, in accordance with the bid documents be announced to those persons present at the opening of tenders, and communicated to

suppliers or contractors that have submitted tenders but are not present or represented at the opening of tenders, and recorded immediately in the record of the tendering proceedings.

Examination and
evaluation of
tenders.

39(1) The procuring entity shall transmit to the Evaluation Committee all tenders timely received from contractors or suppliers promptly following the bid opening ceremony for the evaluation.

(2) The Evaluation Committee shall, using only the evaluation criteria outlined in the tender documents, evaluate all tenders, determine which tenderer has submitted the lowest evaluated tender, and convey its recommendation to the procuring entity within a reasonable period of time, but not longer than fourteen days.

(3) The procuring entity shall, if it agrees with the Report of the Evaluation Committee, publicly disclose the name of the tenderer identified by the Evaluation Committee as the lowest evaluated tenderer. If the procuring entity does not agree with the Evaluation Committee's determination, the procuring entity shall issue an advisory recommendation to the Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe.

(4)(a) The procuring entity may ask, within a reasonable period of time, suppliers or contractors for clarifications of their tenders in order to assist in the examination and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making a non-responsive tender responsive, shall be sought, offered or permitted.

(b) Notwithstanding paragraph (a), the Evaluation Committee shall correct purely arithmetical errors that are discovered during the examination of tenders except that any such correction shall in no manner influence the outcome of the evaluation process. The Evaluation Committee shall give prompt notice of any such correction to the supplier or contractor that submitted the tender.

(c) Subject to paragraph (b), the Evaluation Committee may regard a tender as responsive only if it conforms to the requirements set forth in the tender documents; the Evaluation Committee may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.

(5) A tender shall be rejected -

(a) if the supplier or contractor that submitted the tender is not qualified;

(b) if the supplier or contractor that submitted the tender does not accept a correction of an arithmetical error made pursuant to subsection (4)(b);

(c) in the circumstances referred to in section 12.

(6) (a) All evaluation criteria for the procurement of goods, works and services in addition to price, will be quantified in monetary terms and the tender will be awarded to the lowest evaluated tenderer.

(b) The procuring entity may grant a margin of preference not exceeding ten percent to tenders submitted by domestic contractors or for the benefit of tenders for domestically produced goods, provided that such preference is specified in the tender documents. If the lowest evaluated tender was submitted by a foreign tenderer, the evaluating committee will apply the margin of preference to the prices submitted by all foreign tenderers, for evaluation purpose. If, after applying the margin of preference, the lowest evaluated tender was submitted by a domestic tenderer, such tenderer shall be awarded the contract. Otherwise, the foreign tenderer who has submitted the lowest evaluated tender shall be awarded the contract.

(7) The currency of the bid shall be in accordance with the bid documents.

(8) Whether or not it has engaged in prequalification proceedings pursuant to section 6, the appropriate board may require the supplier or contractor submitting the tender that has been found to be the successful tender pursuant to subsection (2) to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of section 5 (1) (i) and (vi). The criteria and procedures to be used for such further demonstration shall be set forth in the solicitation documents. Where prequalification proceedings have been engaged in, the criteria shall be the same as those used in the prequalification proceedings.

(9) If the lowest evaluated tenderer is requested to demonstrate again its qualifications in accordance with subsection (5) (1) (i) and (vi) but fails to do so, the Evaluation Committee shall reject its tender and determine which of the remaining

tenders is the second lowest evaluated tender. The second lowest evaluated tenderer shall also be required to demonstrate again its qualifications.

Rejection of all tenders.

40.(1) Subject to approval by the National Board, if so specified in the solicitation documents, the appropriate board may reject all tenders at any time prior to the acceptance of a tender. The appropriate board shall upon request, communicate to any supplier or contractor that submitted a tender the grounds for its rejection of all tenders, but is not required to justify those grounds.

(2) The appropriate board shall incur no liability, solely by virtue of its invoking subsection (1), towards suppliers or contractors that have submitted tenders.

(3) Notice of the rejection of all tenders shall be given promptly to all suppliers or contractors that submitted tenders.

Prohibition of negotiations.

41. There shall be no negotiation between the procuring entity and any of the bidders.

Acceptance of tender and entry into force of procurement contract.

42.(1) Subject to sections 39 (8) and 40, the tender that has been identified as the lowest evaluated tender shall be accepted. Notice of acceptance of the tender shall be given within fourteen days to the supplier or contractor submitting the tender.

(2) (a) Notwithstanding subsection (4), the solicitation documents may require the supplier or contractor whose tender has been accepted to sign a written contract conforming to the tender. In such cases, the procuring entity and the supplier or contractor shall sign the contract within a reasonable period of time

after the notice referred to in subsection (1) is dispatched to the supplier or contractor.

(b) Subject to subsection (3), where a written contract is required to be signed pursuant to paragraph (a), the contract enters into force when the contract is signed by the supplier or contractor and by the procuring entity.

Between the time when the notice referred to in subsection (1) is dispatched to the supplier or contractor and the entry into force of the contract, neither the procuring entity nor the supplier or contractor shall take any action that interferes with the entry into force of the contract or with its performance.

(3) Where the solicitation documents stipulate that the contract is subject to review by the Cabinet, the contract shall not enter into force before such review is completed as provided for in section 54.

(4) Except as provided in subsections (2)(b) and (3), a contract in accordance with the terms and conditions of the accepted tender enters into force when the notice referred to in subsection (1) is dispatched to the supplier or contractor that submitted the tender, provided that it is dispatched while the tender is in force. The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor, or conveyed to an appropriate authority for transmission to the supplier or contractor, by a mode authorized by section 8.

(5) If the supplier or contractor 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 contract, the appropriate board shall refer the matter to the Evaluation Committee to determine which of the remaining tenders is the second lowest evaluated tender based on the evaluation criteria outlined in the bid documents subject to its right, in accordance with section 40(1), to reject all remaining tenders. The notice provided for in subsection (1) shall be given to the supplier or contractor that submitted that tender.

Notice to
other
suppliers
or contractors.

43. Upon the entry into force of the contract and, if required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract, notice of the contract shall be given to other suppliers or contractors, who had tendered specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.

PART VI – METHOD FOR PROCUREMENT FOR CONSULTING SERVICES

Request for
proposals.

44.(1) Subject to section 46, the procuring entity shall request proposals for consulting services from consulting firms which have been included in a short list. Short lists shall be prepared on the basis of expressions of interest received in response to an invitation to express interest published in the newspapers of wide circulation. The notice shall include the name and address of the procuring entity, and a brief description of the services to be procured.

(2) When foreign firms are expected to be interested in providing the services, the notice shall also be published in a newspaper of wide circulation or in an appropriate trade or professional publication of wide international circulation.

Contents of the request for proposals.

45. The request for proposals shall include –
- (a) the manner in which the proposals shall be prepared and submitted;
 - (b) the evaluation criteria and the manner in which they will be applied;
 - (c) the minimum qualifying technical score;
 - (d) a statement informing the consultants that they may be excluded from future participation in procurement of goods, works, services or consulting services resulting from the assignment for which the Request for Proposals was issued; and
 - (e) the draft contract.

Criteria for the evaluation of proposals.

46. The Evaluation Committee shall evaluate the proposals based on for the the technical quality of the proposal, including such considerations as the consultant's relevant experience and the expertise of its staff, the proposed work methodology, and the price of the proposal. The method of selection stated in the Request for Proposals may be based on either -

- (a) a combination of quality and price, according to the relative weights stated in the Request for Proposals;
- (b) the quality of the technical proposal within a predetermined fixed budget specified in the Request for Proposals; or
- (c) the best financial proposal submitted by a bidder that has obtained the minimum qualifying score.

Quality-based
selection.

47. Where the consulting services are of an exceptionally complex nature, will have a considerable impact on future projects, or may lead to the submission of proposals which are difficult to compare, the procuring entity may select the consultant based exclusively on the technical quality of the submitted proposal.

Clarification
and
modification
of requests
for proposals.

48.(1) A consultant may request a clarification of the request for proposals from the procuring entity. The procuring entity shall respond to any of request for clarification of the request for proposals that is received by the procuring entity within a reasonable time prior to the deadline for the submission of proposals. The procuring entity shall respond within a reasonable time so as to enable the consultant to make a timely submission of its proposal and shall, without identifying the source of the request, communicate the clarification to all consultants to which the procuring entity has provided the request for proposals.

(2) At any time prior to the deadline for submission of proposals, the procuring entity may, for any reason, whether on its own initiative, or as a result of a request for clarification by the consultant, modify the request for proposals by issuing an amendment. The amendment shall be communicated promptly to all consultants to which the procuring entity has provided the request for proposals and shall be binding on them.

(3) If the procuring entity convenes a pre-bid meeting, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests,

without identifying the sources of the requests. The minutes shall be provided promptly to all consultants participating in the procurement proceedings, so as to enable those consultants to take the minutes into account in preparing their proposals.

(4) In addition to this Part, the other relevant provisions of this Act shall, as they apply to the procurement of goods or construction, apply mutatis mutandis to the procurement of services.

Single source procurement.

49. The procuring entity may engage in single source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

Cost verification.

50. Contracts may be awarded following the procedures set forth in sections 47 and 49 only if the selected contractor agrees to be subjected to cost verification during the performance of the services. The contract shall indicate the accounting obligations of the contractor including the obligation to present appropriate accounts or documents allowing the determination of the cost of the services.

Negotiations.

51. The procuring entity may negotiate the terms of the contract with the selected consultant. Under no circumstances may the procuring entity engage in negotiations with more than one candidate simultaneously.

PART VII – ADMINISTRATIVE REVIEW

Review by the procuring entity.

52. (1) A bidder whose tender or proposal has been rejected may submit a written protest to the procuring entity.

(2) The protest may pertain to the pre-qualification or tendering proceedings or to the method of procurement selected by the procuring entity.

(3) The protest must be submitted within five business days following publication of the contract award decision.

Review by an
independent
authority.

53.(1) If the protest is not reviewed by the procuring entity within five business days from the date of the protest's submission, the bidder may submit a request for review to the authority specified in section 17(2).

(2) Upon receipt of a request for review, the authority specified in section 17(2) shall give prompt notice of the request for review to the procuring entity.

(3) The procuring entity shall make its records in respect of the review available to the authority specified in section 17(2).

(4) The authority specified in section 17(2) shall conduct bid protest reviews through an independent, three person Bid Protest Committee comprising one member appointed by the Minister, one by the Association appearing to the Minister to represent contractors, and one by the Attorney General. The members shall be appointed from among professionals who are particularly competent in the field of procurement. The conditions for appointment of the committee's members and its functioning shall be prescribed by the regulations.

(5) The committee shall issue a written decision within fifteen business days of the conclusion of a review, stating the reasons for the decision and the remedies granted, if any. Damages may include only compensation to

recover the cost of the bid preparation. Final contract award is suspended during this period.

(6) The decision of the Bid Protest Committee shall be final and immediately binding upon the procuring entity.

Review by Cabinet.

54.(1) The Cabinet shall have the right to review all procurements the value of which exceeds fifteen million Guyana dollars. The Cabinet shall conduct its review on the basis of a streamlined tender evaluation report to be adopted by the authority mentioned in section 17(2). The Cabinet and, upon its establishment, the Public Procurement Commission, shall review annually the Cabinet's threshold for review of procurements, with the objective of increasing that threshold over time so as to promote the goal of progressively phasing out Cabinet involvement and decentralising the procurement process.

(2) In conducting a review under subsection (1), the Cabinet may object to the award of the procurement contract only if it determines that the procuring entity failed to comply with applicable procurement procedures.

(3) If the Cabinet objects to an award, the matter shall be referred to the procuring entity for further review.

(4) This section shall not be construed as authorizing the Cabinet to award a tender to any other supplier or contractor.

(5) The Cabinet may not object later than twenty-one days after an award.

PART VIII – MISCELLANEOUS

Information to
be
confidential.

55. (1) It shall be an offence for the National Board, a Ministerial Board, a Regional Board, a District Board, a Departmental Board, an Agency Board, an Evaluation Committee (each hereinafter in this Part to referred to as a Body), or a person concerned with the administration of this Act, not to regard as secret and confidential all documents, information and things disclosed to them in the execution of any provisions of this Act or to divulge such information or the contents of any document to any person except to the extent necessary to discharge its or his functions under this Act or any other written law or for the purpose of prosecution for any offence or other legal proceedings.

(2) A Body or person referred to in subsection (1) who violates subsection (1) commits an offence and shall on summary conviction be liable -

- (i) in the case of a Body, to a fine of five hundred thousand dollars and to imprisonment for six months and every member of such Body who participated in the commission of such offence shall be liable to be removed therefrom;
- (iii) in the case of a person, to a fine of two hundred thousand dollars and to imprisonment for three months.

(3) Any person who receives any information or anything contained in

a document, knowing or having reasonable ground to believe at the time he receives it, that it is communicated to him in contravention of this section shall, unless he proves that the communication to him of the information or anything contained in the document was contrary to his desire, be guilty of an offence and shall be liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for six months.

(4) Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers -

- (a) a member of a Body or an officer thereof; or
- (b) a person referred to in subsection (1),

a gift of money or other thing with respect to a matter that is, or that is expected to come, before the Body or person commits an offence and shall, in addition to being disqualified from being awarded a contract, be liable to a fine of five hundred thousand dollars and to imprisonment for six months.

(5) Notwithstanding 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 subsection (4) shall, in addition to being disqualified from being awarded a contract, be liable to be charged, tried, convicted

and punished in all respects as if he were a principal offender.

(6) A member of a Body shall not be personally liable for any act or omission of the Body done or omitted in good faith in the course of the operations of the Body; a person concerned with the administration shall not be personally liable for any act or omission done or committed in good faith in the course of such administration.

Payment for
construction
contracts.

56.(a) Contracts for construction works shall be paid in installments at least monthly, as certified in accordance with the contract, except for contracts providing an execution period of less than three months, in which case payment of installments is optional.

(b) The amount of the installment shall not exceed the value of the services for which the contract is awarded, once the sum required for the reimbursement of advance payments, if any, is deducted.

(c) Where the installments are paid according to pre-determined execution phases and not according to material execution, the contract may determine, in the form of a percentage of its initial price, the amount of each installment.

(d) The specification of general administrative terms determine the periods of technical phases of the execution according to which the installments shall be paid.

(e) The contractor may not use the supplies for which any advance payments or installments have been paid for any work other than those provided in the contract. Any breach of this provision may lead to the termination of the contract fully and entirely.

General or
special directions
of the Minister.

57. In the exercise of its powers and the performance of its duties, the

Administration shall conform with any general or special directions given to it by the Minister.

Staff. 58. (1) Except as otherwise provided in this Act, the staff required to administer this Act shall be made available by the Minister.

Funds and resources of the Administration.

59.(1) The Funds and resources of the Administration shall comprise -

- (a) all moneys appropriated from time to time by the National Assembly for the purposes of the Administration;
- (b) all moneys paid to the Administration by way of grants or donations.

Disclosure members of a Body of interest in bidding process.

60.(1) It shall be the duty of a member of a Body who is in any way whether directly or indirectly interested in any deliberations of that Body regarding the bidding process to declare the nature of his interest at a meeting of the Body.

(2) The declaration required to be made by this section shall be made by a member of the Body at the meeting of the Body at which the matters referred to in subsection (1) are being considered or at the earliest opportunity thereafter.

(3) A member of a Body shall not vote in respect of any of the matters referred to in subsection (1) in which he is interested either directly or indirectly and if he shall so vote his vote shall not be counted nor shall it be counted in the quorum at the meeting.

(4) Any member of a Body who fails to comply with or contravenes this section shall on summary conviction be liable to a fine of two hundred thousand dollars and to imprisonment for six months.

Regulations.

61. The Minister shall, with the advice of the National Board or the Procurement Commission, make any regulation that may be necessary for the administration of this Act.

**Saving
Cap. 73:01**

62. Subsidiary legislation in relation to procurement, continued in operation by the Financial Administration and Audit Act and not inconsistent with this Act or any regulations made under this Act, shall continue in force as if they were regulations made under this Act to the extent that their continuance is necessary for the administration of this Act, subject to amendment or revocation by this Act.

**Repeal
No. 6 of 2002**

63. The Procurement Act 2002 is hereby repealed.

EXPLANATORY MEMORANDUM

This Bill seeks to introduce new and comprehensive legislation on the subject of procurement. The Bill is informed by the principles embodied in Commonwealth Caribbean law on the subject and that of international organisations. It is an attempt in the regulation of the procurement of goods, services and construction to pay heed to competition among suppliers and to promote fairness and transparency, bearing in mind the ethical considerations involved in public procurement.

Part I of the Bill is the Preliminary Part dealing mainly with the definitions of certain words used in the Act, including goods, National Board, procurement contract, procuring entity and tender security.

Part II deals with the general provisions regarding international obligations relating to procurement, qualifications of suppliers and contractors. Every supplier or contractor has to qualify by meeting the requisite criteria regarding its competence and its past performance. This Part stipulates the form of communications to be used, prohibits inducements from suppliers or contractors, lays down the rules concerning description of goods, services or construction and states that the language of solicitation documents should be English.

Part III spells out the administrative structure for public procurement. It sets up the National Procurement and Tender Administration to be managed by the National Board with power, to make regulations; the Board has a secretariat. Other Boards established are the Regional Boards, the District Boards that may be created by the National Board and the Ministerial, Departmental

and Agency Boards that may be established by a Ministry, Department or Agency. The National Board has the power to review decisions of the procuring entities. The Regional Boards shall oversee the administration of procurement in the administrative regions. The Departmental Boards shall oversee the administration of procurement in the Departments.

Part IV sets out the methods of procurement and the conditions under which such methods may be used. A procuring entity shall engage in procurement by means of public tendering. It provides the conditions for use of restrictive tendering or request for proposals. In single-source procurement a procuring entity may engage therein, where for instance, goods, services or construction are to be procured under emergency conditions or where procurement from a particular supplier or contractor is necessary.

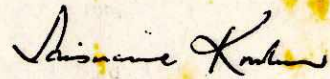
Part V Section I deals with solicitation of tenders including international tenders. An invitation to tender shall be published in newspapers of wide circulation. A supplier or contractor may request a clarification of the solicitation documents from the procuring entity. Section 11 deals with submission of tenders. A procuring entity shall fix a place for, and a specific date and time for the submission of tenders and such tender shall remain in effect during the period of time specified in the solicitation documents. Where tender security is required the requirement shall apply to all suppliers and contractors. Section III deals with evaluation and comparison of tenders, how and when tenders shall be opened for their examination, evaluation and comparison. A Board with the approval of the National Board may reject all tenders prior to their acceptance, if so, specified in the solicitation documents. But where a tender has been accepted, notice of the acceptance thereof shall be given to the supplier or contractor submitting the tender.

Part VI deals with the method for procurement for consulting services. The procuring entity shall request proposals for consulting services from consulting firms. This Part stipulates the contents of the request for proposals and provides the criteria for the evaluation proposals. A consultant may ask for a clarification or modification of the request for proposal from the procuring entity. The procuring entity may engage in single source procurement.

PART VII deals with administrative review. There may be a review by the procuring entity, by an independent authority or by the Cabinet.

Part VIII deals with miscellaneous matters. It penalises a breach of confidentiality by a member of a Board, a Procurement Entity or an Evaluation Committee. It provides for the Minister to issue general or special directions to the National Procurement and Tender Administration.

This Part further provides for such matters as staff and funds. It penalises non-disclosure by for instance, members of a Board of their interest in transactions with that Board and such conduct shall result in disqualification from voting. Subsidiary legislation continued in operation by the Financial Administration and Audit Act will continue in force, to the extent that their continuance is necessary, for the administration of this Act.


Minister of Finance.