

**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. 6 of 2002

PROCUREMENT ACT 2002

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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 where appropriate, 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. 2002

Be it, therefore, enacted by the Parliament of Guyana:-

PART I - PRELIMINARYShort title
and commencement

1. This Act may be cited as the Procurement Act 2002 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, a Regional Board, a District Board, a Ministerial Board or a Departmental 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, as well as drilling, mapping, satellite photography, seismic investigations and similar activities incidental to such work if they are provided pursuant to a procurement contract:

- (d) "currency" means monetary unit of account;
- (e) "domestic supplier" means a supplier having his principal place of business in Guyana;
- (f) "goods" means, but is not limited to, raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;
- (g) "National Board" means the National Procurement and Tender Board established under section 16;
- (h) "procurement" means the acquisition by any means, including purchase, rental, lease or hire-purchase, of goods, or services, or of construction services;
- (i) "procurement contract" means a contract between the procuring entity and a supplier or contractor resulting from procurement proceedings;
- (j) "procuring entity" means any Ministry, department, organ or other unit, or any subdivision thereof, of the Government, that engages in procurement;
- (k) "regulations" except the context otherwise requires, means regulations made under this Act;
- (l) "services" means any object of procurement other than goods or construction.
- (m) "supplier or contractor" means, according to the context, any potential party or the party to a procurement

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contract with the procuring entity and includes a consultant:

- (n) "tender security" means a security provided to the procuring entity to secure the fulfilment of any obligation referred to in section 39 (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-

- (a) procurement involving national defence or national security; and
- (b) such procurements as the National Board may exempt on a case-by-case basis.

(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 relating to procurement.

4. To the extent that this Act conflicts with an international obligation of Guyana under or arising out of any -

- (i) treaty or other form of agreement to which Guyana is a party with one or more other States;
- (ii) agreement with an intergovernmental international financing institution.

the requirements of the treaty or agreement shall prevail.

Procurement regulations.

5. The National Board may, subject to the approval of the Minister, make regulations (including regulations for a Regional Board, a District Board, a Departmental Board or a Ministerial Board) to carry out the provisions of this Act.

Qualifications of suppliers and contractors.

6.(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 disbarment 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, and in the solicitation documents or other documents for request for proposals, offers or quotations, 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) The procuring entity shall, pursuant to the procedures established by this Act and the regulations, appoint an evaluation committee to evaluate the submissions of suppliers or contractors in accordance with the criteria and procedures set forth in the prequalification documents, if any and in the solicitation documents or other documents for solicitation of proposals, offers or quotations.

(5) Subject to sections 8 (1) and 41 (4)(d), 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.

(6) (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.

7.(1) The procuring entity may engage in prequalification proceedings to which section 6 shall apply in order to identify, prior to the submission of tenders, proposals or offers in procurement proceedings conducted pursuant to PART IV or V, suppliers and contractors that are qualified to participate in such proceedings.

(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 by the National Board.

(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. The review procedure referred to in subsection (8) shall apply to a decision under this subsection.

Participation by
suppliers or
contractors.

8. (1) Suppliers or contractors are permitted to participate in procurement proceedings without regard to nationality, except in cases in which the procuring entity decides, on grounds specified in the procurement regulations or any other law, to limit participation in procurement proceedings on the basis of nationality.

(2) A procuring entity that limits participation on the basis of nationality under subsection (1) shall include in the record of the procurement proceedings a statement of the grounds and circumstances on which it relied in such limitation of participation.

(3) Subject to subsection (1), when the procuring entity first solicits the participation of suppliers or contractors in procurement proceedings, it shall

declare whether or not participation in the procurement proceedings is open regardless of nationality. Any declaration that a procurement proceeding is open regarding nationality may not later be altered.

Form of
communications.

9. (1) Subject to the other provisions of this Act 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 7(4) and (6), and PART V 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.

10. 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.

Record of
procurement
proceedings.

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

- (a) a brief description of the goods, services, or construction to be procured, or of the procurement need for which the procuring entity requested proposals or offers;
- (b) the names and addresses of suppliers or contractors that submitted tenders, proposals, offers 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;
- (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 bidders or their representatives or members of the public attending the opening of tenders;
- (h) the form of tender and those pages containing the bill of quantities of the original.

(2) Subject to section 40(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 12, has been published, or after procurement proceedings have been terminated.

(3) Subject to section 40(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.

Information on
contracts where
Cabinet made
no objection or
on other
contracts.

12. The procuring entity shall make available to the public information relating to the award of a contract to which Cabinet made no objection or in respect of any other contract awarded where necessary.

Inducements from
suppliers or contractors.

13. 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, or
construction.

14.(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.

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 President 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;

(ii) 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.

(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 –

- (a) determining the responsibilities of the Administration;
- (b) in accordance with section 5 and without prejudice to the generality thereof, making regulations, governing the procurement of supplies, services, and construction to be procured by any procuring entity;
- (c) 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;
- (d) maintaining efficient record keeping and quality assurances systems;
- (e) organizing training seminars regarding procurement;
- (f) exempting from the application of this Act such procurements as it deems necessary, provided that

exemptions granted under this paragraph shall be determined on an individual case-by-case basis:

- (g) reporting annually to the Minister of Finance 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;
- (h) as provided for in section 60, upon request, reviewing decisions by the procuring entities;
- (i) appointing a pool of evaluators for such period as it may determine.

(2) Regulations may be made prescribing the value of procurement limits which procuring entities shall observe.

(3) For each procurement subject to its jurisdiction, the National Board shall select and appoint from the pool of evaluators appointed under 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.

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.

(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 prequalification requirements as may be imposed under section 31.

(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) A Regional Board shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received from contractors or suppliers for the completion of the evaluation report.

(8) An Evaluation Committee shall, using the selection criteria as outlined in the bid documents evaluate all tenders.

(9) An Evaluation Committee shall, within a reasonable period of time, but not longer than fourteen days, determine which tender best satisfies the evaluation criteria, and shall convey its determination to the Regional Board.

(10) The Regional Board shall if it agrees with the Evaluation Committee publicly disclose the successful tender, if not it may make its own selection for disclosure.

(11) 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 and
Departmental
Tender Boards.

21. (1)(a) The National Board may, at its discretion, create District Tender Boards, hereinafter referred to as District Boards, comprising part-time members as follows -

- (i) two members appointed by the Regional Board;
- (ii) two members appointed by the district administration.

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.

(2)(a) Every Ministry, Government Department or Agency shall, where necessary, establish Departmental Tender Boards.

(b) The National Board shall, with the approval of the Minister, determine the composition and functions of the Departmental Board.

Creation and
membership of
Ministerial
Tender Boards.

22.(1) Each Ministry that engages in procurement shall create a Ministerial Tender Board, hereinafter referred to as the Ministerial Board.

(2) Each Ministerial Board shall consist of five part-time members, as follows –

(a) three members shall be appointed by the Minister responsible for the Ministry;

(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 Ministerial Board shall be two years.

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

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

Functions of the
Ministerial
Boards.

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

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

(3) Each Ministerial 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 Ministerial Board with the approval of the National Board may make such minor alterations or modifications to the forms and criteria as are deemed necessary on a case-by-case basis.

(4) Each Ministerial Board shall determine whether suppliers or contractors satisfy the prequalification requirements imposed under section 31.

(5) For each procurement subject to its jurisdiction, each Ministerial 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) The Ministerial Board shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received from contractors or suppliers.

(7) An Evaluation Committee shall, using the evaluation criteria as outlined in the bid documents, evaluate all qualifying tenders.

(8) An Evaluation Committee shall, within fourteen days of the receipt of tenders, determine which tender best satisfies the evaluation criteria as outlined in the bid documents, and shall convey its determination to the Ministerial Board.

(9) The Ministerial Board shall if it agree with the Evaluation Committee publicly disclose the successful tender, if not it may make its own selection for disclosure.

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 AND
THEIR CONDITIONS FOR USE**

Methods of
procurement

25.(1) Except as otherwise provided in this PART, a procuring entity engaging in procurement shall do so by means of public tendering.

(2) A procuring entity may use a method of procurement other than tendering proceedings only in accordance with sections 26, 27, 28, or 29, and, if it does, it shall include in the record required under section 11 a statement of the grounds and circumstances on which it relied to justify the use of that particular method of procurement.

Conditions for use
of two-stage
tendering or
request for proposals.

26.(1) Subject to approval by the National Board, a procuring entity may engage in procurement by means of two-stage tendering in accordance with section 54, when -

- (a) it is not feasible for the procuring entity to formulate detailed specifications for the goods, services or construction and, in order to obtain the most satisfactory solution to its procurement needs -
 - (i) it seeks proposals as to various possible means of meeting its needs; or
 - (ii) because of the technical character of the goods, services or construction, it is necessary for the procuring entity to negotiate with the suppliers or contractors;

- (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development leading to the procurement of a prototype, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs;
- (c) the procuring entity applies section 3 (3), to procurement involving national defense or national security and determines that the selected method is the most appropriate method of procurement; or
- (d) the tendering proceedings have been engaged in but no tenders were submitted or all tenders were rejected by the procuring entity pursuant to section 13 or 42 (3), and when, in the judgment of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract.

Conditions for
use of selective
tendering.

27. Subject to approval by the National Board, the procuring entity may, where necessary for reasons of economy and efficiency, engage in procurement by means of selective tendering in accordance with this section.

when -

- (a) the goods, services or construction, by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors;

- (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods or construction to be procured;
- (c) goods, services or construction are to be procured under emergency conditions; or
- (d) procurement from a particular supplier or contractor is necessary.

Conditions for
use of request
for quotations.

28.(1) Subject to approval by the National Board, a procuring entity may engage in procurement by means of a request for quotations for the procurement of readily available goods that are not specially produced to the particular specifications of the procuring entity and for which there is an established market, provided that the estimated value of the procurement contract is less than the amount established by the National Board.

(2) A procuring entity shall not split contracts or cause to split or divide or cause to divide its procurement into separate contracts without the approval of the National Board.

Conditions for
use of single-
source procurement.

29. Subject to approval by the National Board, a procuring entity may engage in single-source procurement in accordance with section 58 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) there is an urgent need for the goods, services or construction, and engaging in tendering proceedings would be impractical;
- (d) 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;
- (e) 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;

- (f) the procuring entity seeks to enter into a contract with the supplier or contractor for the purpose of research, experiment, study or development leading to the procurement of a prototype, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs; or
- (g) the procuring entity applies section 3 (3), to procurement involving national defense or national security and determines that single-source procurement is the most appropriate method of procurement.

PART V - SECTION I SOLICITATION OF TENDERS

Procedures for soliciting tenders of applications to prequalify.

30. A procuring entity shall solicit tenders or, where applicable, applications to prequalify by causing an invitation to tender or an invitation to prequalify, as the case may be, to be published in newspapers of wide circulation and public places.

Soliciting of international tenders to be published in international journal.

31. The invitation to tender or invitation to prequalify, in the case of international tenders, 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.

Obligatory tendering
for goods,
services or
construction

32. Public tendering is obligatory for the procurement of goods, services and construction as determined by the National Board. For such tendering an invitation to tender or to prequalify is mandatory. The invitation to tender or to prequalify shall contain a brief description of the goods, services or construction to be procured and shall state where the solicitation documents may be obtained.

Provision of
solicitation documents.

33. The procuring entity shall provide the solicitation 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 subject to payment of the cost of printing them and providing them.

Contents of
bid documents.

34. The bid documents shall include, such information as may be determined by the National Board.

Clarifications and
modifications of
solicitation documents.

35.(1) A supplier or contractor may request a clarification of the solicitation 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 solicitation 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 solicitation documents by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors.

(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 solicitation 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 solicitation documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders.

SECTION II. SUBMISSION OF TENDERS -

Language of tenders.

36. Tenders must be formulated and submitted in English.

Submission of tenders

37.(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 35, the procuring entity issues a clarification or modification of the solicitation 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.

Period of
effectiveness of
tenders: modification
and withdrawal
of tenders.

38.(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.

(2) 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

39.(1) 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

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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.

SECTION III. EVALUATION AND COMPARISON OF TENDERS

Opening of tenders.

40. (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,
evaluation and comparison.

41.(1) (a) The appropriate board 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 an unresponsive 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 tender 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) The Evaluation Committee shall, using the evaluation criteria in the bid document issued by a procuring entity evaluate all tenders and within a reasonable period of time not exceeding fourteen days, determine, and inform the Board, which tender best satisfies the evaluation criteria, whereupon if the Board agree it shall publicly disclose the successful tender, if not it may make its own selection for disclosure.

(d) For all international tenders the evaluation period shall be thirty days.

(2) (a) 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.

(b) 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.

(3) The appropriate board shall reject a tender -

(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 (1)(b);

(c) in the circumstances referred to in section 13.

(4) (a) The Evaluation Committee shall evaluate and compare the tenders that have been received in order to ascertain the successful tender, as defined in paragraph (b), in accordance with the procedures and criteria set forth in the solicitation documents. No criterion shall be used that has not been set forth in the solicitation documents.

(b) The successful tender shall be -

(i) determined on the criteria outlined in the bid documents; or

(ii) if the solicitation documents have so stipulated the highest rated tender ascertained on the basis of factors specified in the solicitation documents, which factors shall, to the extent practicable be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms whenever practicable;

(c) in rating tenders in accordance with paragraph (b)(ii), the Evaluating Committee may consider only the following -

(i) the tender price, subject to any margin of preference pursuant to paragraph (d);

(ii) national defense and security considerations;

(d) if set forth in the tender solicitation documents, in evaluating and comparing tenders a procuring entity may grant a margin of preference for the benefit of tenders for construction by domestic contractors or for the benefit of tenders for domestically produced

goods. The margin of preference shall be calculated in accordance with the bid documents.

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

(6) Whether or not it has engaged in prequalification proceedings pursuant to section 7, the appropriate board may require the supplier or contractor submitting the tender that has been found to be the successful tender pursuant to subsection (4)(b) to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of section 6. 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.

(7) If the supplier or contractor submitting the successful tender is requested to demonstrate again its qualifications in accordance with subsection (6) but fails to do so, the appropriate board shall reject that tender and shall select a successful tender, in accordance with subsection (4), from among the remaining tenders, subject to the right of the appropriate board, in accordance with section 42(1), to reject all remaining tenders. In situations where the appropriate board must select another contractor or supplier because the previously selected one failed to again demonstrate its qualifications, the subsequently selected contractor or supplier shall also be required to again demonstrate its qualifications.

Rejection of
all tenders

42.(1) Subject to approval by the National Board, if so specified in the solicitation documents, the appropriate board concerned 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
between the
procuring entities.

43. Prior to the identification of the successful tenderer there shall be no negotiation between any of the procuring entities.

Acceptance of
tender and entry into
force of
procurement contract.

44.(1) Subject to sections 41 (7) and 42, the tender that has been ascertained to be the successful tender pursuant to section 41 (4)(b) 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 approval by a higher authority, the contract shall not enter into force before the approval is given. The solicitation documents shall specify the estimated period of time following dispatch of the notice of acceptance of the tender that will be required to obtain the approval. A failure to obtain the approval within the time specified in the solicitation documents shall not extend the period of effectiveness of tenders specified in the solicitation documents pursuant to section 38(1) or the period of effectiveness of tender security that may be required pursuant to section 39.

(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 9.

(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 select a successful tender in accordance with section 41(4) from among the remaining tenders that are in force, subject to the right of the appropriate board, in accordance with section 42(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.

(6) Upon the entry into force of the contract and, if required, 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 OF SERVICES

45.(1) Subject to the approval of the appropriate board, a procuring entity shall solicit proposals for services or, where applicable, applications to prequalify by causing a notice seeking expression of interest in submitting a proposal or in prequalifying, as the case may be, to be published in the newspapers of wide circulation. The notice shall contain particulars, including, the name and address of the procuring entity, a brief description of the services to be procured, the means of obtaining the request for proposals or prequalification documents and

Notice of
solicitation
of proposals.

the price, if any, charged for the request for proposals or for the prequalification documents.

(2) In the case of international procurements for goods, services or construction, the notice shall also be published, in a newspaper of wide circulation or in an appropriate trade or professional publication of wide international circulation.

(3) Subject to approval by the National Board, where direct solicitation is necessary for reasons of economy and efficiency, the procuring entity need not apply the provisions of subsections (1) and (2) in a case where -

- (a) the services to be procured are available only from a limited number of suppliers or contractors, provided that it solicits proposals from all those suppliers or contractors; or
- (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be procured, provided that it solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition; or
- (c) direct solicitation is the only means of ensuring confidentiality or is required by reason of the national interest, provided that it solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition.

(4) The procuring entity shall provide the request for proposals, or the prequalification documents, to suppliers or contractors in accordance with the procedures and requirements specified in the notice or, in cases in which subsection (3) applies, directly to participating suppliers or contractors. The price that the procuring entity may charge for the request for proposals or the prequalification documents shall reflect only the cost of printing and providing them to suppliers or contractors. If prequalification proceedings have been engaged in, the procuring entity shall provide the request for proposals to each supplier or contractor that has been prequalified and that pays the price charged, if any.

Contents of
requests for
proposals,
for services.

46. The request for proposals shall include the following information -

- (a) the name and address of the procuring entity;
- (b) the language or languages in which proposals are to be prepared;
- (c) the manner, place and deadline for the submission of proposals;
- (d) if the procuring entity reserves the right to reject all proposals, a statement to that effect;
- (e) the criteria and procedures, in conformity with the provisions of section 6, relative to the evaluation of the qualifications of suppliers or contractors and relative to the further demonstration of qualifications pursuant to section 7 (8);

- (f) such other information as may be determined by the procuring entity, subject to the approval of the appropriate board.

Criteria for the evaluation of proposals.

47.(1) The National Board shall establish criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of proposals. Those criteria shall be notified to suppliers or contractors in the request for proposals and may concern only the following -

- (a) the qualifications, experience, reputation, reliability and professional and managerial competence of the supplier or contractor and of the personnel to be involved in providing the services;
- (b) the effectiveness of the proposal submitted by the supplier or contractor in meeting the needs of the procuring entity;
- (c) the proposal price, subject to any margin of preference applied pursuant to paragraph (2), including any ancillary or related costs;
- (d) such other information as may be determined by the procuring entity, subject to the approval of the appropriate board.

Clarification and
modification of
requests
for proposals.

48.(1) A supplier or contractor may request a clarification of the request for proposals from the procuring entity. The procuring entity shall respond to any request by a supplier or contractor 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 supplier or contractor to make a timely submission of its proposal and shall, without identifying the source of the request, communicate the clarification to all suppliers or contractors 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 a supplier or contractor, modify the request for proposals by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the request for proposals and shall be binding on those suppliers or contractors.

(3) If the procuring entity convenes a meeting of suppliers or contractors, 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 suppliers or contractors participating in the procurement proceedings, so as to enable those suppliers or contractors to take the minutes into account in preparing their proposals.

Choice of
selection
procedure

49. (1) The Evaluation Committee, in ascertaining the successful proposal, shall use the procedure provided for in this Part that has been notified to suppliers or contractors in the request for proposals.

(2) Nothing in this Part shall prevent the appropriate board from resorting to an impartial panel of external experts not locally available in the selection procedure.

(3) In the evaluation of services the appropriate board shall indicate the evaluation method that is appropriate to the particular procurement.

Selection
procedure
without negotiation.

50.(1) Where the Evaluation Committee, in accordance with section 49 (1), uses the procedure provided for therein, it shall state that a threshold shall be determined by the procuring entity and approved by the National Board with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of those criteria as set forth in the request for proposals. The procuring entity shall then compare the proposals as outlined in the solicitation documents.

(2) The Evaluation Committee in its consideration of the financial proposal shall utilise the approved criteria provided by the appropriate board and set out in the solicitation document and rate each proposal in accordance with such criteria.

(3) The successful proposal shall then be the proposal with the best combined evaluation in terms of the criteria other than price referred to in subsection (1) and the price.

Selection
procedure with
negotiations

51.(1) Where the Evaluation Committee, in accordance with section 49 (1), uses the procedure provided for therein, engages in negotiations with suppliers or contractors that have submitted acceptable proposals it may seek or permit revisions of such proposals, provided that the opportunity to participate in negotiations is extended to all such suppliers or contractors after the evaluation of the technical proposals based on a ranking.

(2) In the evaluation of proposals, the price of a proposal shall be considered separately and only after completion of the technical evaluation as specified in the solicitation document.

(3) Following completion of the evaluation process, the appropriate board shall request all preferred bidders to submit, by a specified date, the final offer or the agreed upon negotiated offer.

(4) Any award by the appropriate board shall be made to the supplier or contractor whose proposal best meets the needs of the procuring entity and who has successfully completed the negotiation as determined in accordance with the criteria for evaluating the proposals as well as with the relative weight and manner of application of those criteria as set forth in the request for proposals.

(5) The Evaluation Committee shall negotiate with the ranked bidder subject to the approval of the appropriate board.

(6) Where the negotiations fail the Evaluation Committee may with the approval of the appropriate board proceed to negotiate with the second and other tenderers.

Selection
procedure with
consecutive
negotiations

52.(1) Where the procuring entity, in accordance with section 49 (1), uses the procedure provided for therein, it shall engage in negotiations with suppliers and contractors in accordance with the following procedure -

- (a) establish a threshold for the evaluation of technical proposals in accordance with section 50 (1);
- (b) all bidders shall be ranked in accordance with the criteria spelt out in the bid documents;
- (c) the financial proposals of all bidders who have attained the threshold shall be opened with a view of making an award;
- (d) inform the other suppliers or contractors that they did not attain the required threshold;
- (e) if it becomes apparent to the appropriate board that an award cannot be concluded with the lowest price supplier or contractor, then bidders will be so informed and the board shall negotiate with the other bidders in order of rank with a view to making an award if possible, failing which, the process will be aborted.

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

Confidentiality: 53. A Body shall treat financial proposals in such a manner as to avoid the disclosure of their contents. Any negotiations pursuant to section 51 or 52 shall be confidential and, subject to section 11, one party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party; in this section the words "a Body" has the same meaning as in section 64.

PART VII – OTHER PROCEDURES FOR PROCUREMENT

Restricted tendering. 54. (1) When the procuring entity engages in restricted tendering on the grounds referred to in section 27(a), it shall solicit tenders from the restricted suppliers and contractors from whom the goods or construction to be procured is available.

(2) When the procuring entity engages in restricted tendering on the grounds referred to in section 27(b), it shall select suppliers or contractors from whom to solicit tenders in a non-discriminatory manner and it shall select a sufficient number of suppliers or contractors being not less than three to ensure effective competition.

Evaluation
award:
restricted
tendering.

55. The evaluation and award in restricted tendering shall be done in and accordance with the bid documents.

Request for
quotations
under
section 27(a).

56.(1) Requests for quotations under section 27 (a) shall be addressed to as many suppliers or contractors as practicable, but to at least three, if possible.

(2) The procuring entity shall establish the criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of the proposals.

The criteria shall concern -

- (a) the relative managerial and technical competence of the supplier or contractor;
- (b) the effectiveness of the proposal submitted by the supplier or contractor in meeting the needs of the procuring entity including after-sale services, time frame and warranty; and
- (c) the price submitted by the supplier or contractor for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods or construction.

(3) A request for quotations issued by a procuring entity shall include the following information -

- (a) the name and address of the procuring entity;
- (b) a description of the procurement need including the technical and other parameters to which the quotation must conform, as well as, in the case of procurement of construction, the location of any construction to be effected;
- (c) the criteria for evaluating the quotation, expressed in monetary terms to the extent practicable, the relative

weight to be given to each such criterion, and the manner in which they will be applied in the evaluation of the proposal; and

- (d) the desired format and any instructions, including any relevant time-frames, applicable in respect of the quotation.

(4) Any modification or clarification of the request for quotations, including modification of the criteria for evaluating proposals referred to in subsection (3), shall be communicated to all suppliers or contractors participating in the proceedings regarding request for proposals.

(5) The procuring entity shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing suppliers or contractors.

(6) The procuring entity may engage in negotiations with restricted suppliers or contractors with respect to their quotations and may seek or permit revisions of such proposals, provided that the following conditions are satisfied -

- (a) any negotiations between the procuring entity and a supplier or contractor shall be confidential;
- (b) subject to section 11, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party;
- (c) the opportunity to participate in negotiations is extended to all suppliers or contractors that have submitted proposals and whose proposals have not been rejected.

(7) Following completion of negotiations, the appropriate board shall request all suppliers or contractors remaining in the proceedings to submit, by a specified date, a final offer with respect to all aspects of their proposals.

(8) The Evaluation Committee shall employ the following procedures in the evaluation of proposals -

- (a) only the criteria referred to in subsection (3) as set forth in the request for proposals shall be considered;
- (b) the effectiveness of a proposal in meeting the needs of the procuring entity shall be evaluated separately from the price;
- (c) the price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

(9) Any award by the appropriate board shall be made to the supplier or contractor whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the quotations set forth in the request for proposals, as well as with the relative weight and manner of application of those criteria indicated in the request for proposals.

Request for quotations
under section
27(b).

57.(1) In pursuance of section 27(b) the procuring entity shall request quotations from as many suppliers or contractors as practicable, but from at least three, if possible. Each supplier or contractor from whom a quotation is requested shall be informed of the items required and their specifications.

(2) 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.

(3) The procurement contract shall be awarded to the supplier or contractor that gave the lowest-priced quotation meeting the needs of the procuring entity.

(4) All quotations shall be opened by a date and time as specified in the request for quotations.

Single-source procurement. 58. The procuring entity may award a contract without competition when, after reasonable investigation, the procuring entity determines in writing that due to the specialized and technical nature of the goods, service or construction being procured, only one practicable source for the required goods, service or construction exists.

PART VIII - REVIEW

Right to review. 59.(1) Subject to subsection (2), any supplier or contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Act may seek review under this Part.

(2) The matters that are not subject to the review provided for in subsection (1) include -

- (a) the selection of a method of procurement pursuant to Part IV;
- (b) the limitation of procurement proceedings in accordance with section 8 on the basis of nationality;
- (c) a decision by the procuring entity under section 42 (1) to reject all tenders;
- (d) a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals.

Review by the
National Board.

60.(1) A supplier or contractor entitled to seek review may submit a request for review to the National Board where the National Board in no manner whatsoever participated in the procurement proceedings or any review thereof.

(2) Upon receipt of a request for review, the National Board shall give notice of the request for review promptly to the procuring entity.

(3) The procuring entity shall make its records in respect of the review available to the National Board.

(4) The National Board may grant one or more of the following remedies, unless it dismisses the request for review –

- (a) declare the principles that govern the subject-matter of the request for review;
- (b) require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting the request for review in connection with the procurement proceedings;

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(c) order that the procurement proceedings be terminated.

(5) The National Board shall within thirty days issue a written decision concerning the request for review, stating the reasons for the decision and the remedies granted, if any.

(6) The decision of the National Board shall be subject to appeal to the Public Procurement Commission or to the High Court.

Review
by a
Committee.

61.(1) Where the National Board in its original jurisdiction has made a decision in relation to a matter within its purview an appeal from the decision of the National Board shall lie to a Committee.

(2) The Committee referred to in subsection (1) shall comprise three persons with the requisite expertise appointed by the Minister for a period of two years.

(3) An appeal shall lie from a decision of the Committee to the Public Procurement Commission or to the High Court.

Suspension of
procurement
proceedings.

62. The timely submission of a request for review suspends the procurement proceedings for a period of seven days, provided that the request for review is not frivolous and alleges that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the request for review will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to the other suppliers or contractors; the procuring entity may seek compensation if wrongfully delayed.

No objection
by
Cabinet.

63 (1) Cabinet may issue a no objection to a proposed award including an award under section 24(1) the value of which is greater than an amount specified by regulations.

(2) Cabinet may not offer a no objection to the award of a procurement contract where -

- (a) for reasons of policy the procurement will not proceed, regardless of which supplier or contractor is ultimately awarded the tender; or
- (b) the supplier or contractor that was recommend for the award of the tender by the procuring entity manifestly fails to satisfy the objectives of the project, in which case it shall remit the question to the National Board for further proceedings.

(3) If Cabinet does not offer a no objection the proposed award shall be remitted to the National Board for further consideration.

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

PART IX MISCELLANEOUS

Information
to be
confidential.

64.(1) It shall be an offence for the National Board, a Regional Board, a District Board, a Ministerial Board, a Departmental Board, a procurement entity, 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;
- (ii) 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 of this Act shall not be personally liable for any act or omission done or committed in good faith in the course of such administration.

General or special directions of the Minister.

65. 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.

66. Except as otherwise provided in this Act, the staff required to administer this Act shall be made available by the Minister of Finance.

Funds and resources of the Administration.

67. 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 by members of a Body of interest in bidding process.

68.(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.

Saving.

Cap. 73:01

69. 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 sections 5 and 17 of this Act to the extent that their continuance is necessary for the administration of this Act, subject to amendment or revocation by this Act.

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, the power to make regulations, 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 of public procurement. It sets up the National Procurement and Tender Administration to be managed by the National Board with power, with the approval of the Minister, 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 Departmental Boards that may be established by a Ministry or a Government Department. There are also the Ministerial Boards created by the Ministries. 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 Ministerial Boards shall oversee the administration of procurement in the Ministries.

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 two stage tendering or request for proposals. In selective tendering the National Board 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 1 deals with solicitation of tenders including international tenders. Public tendering for goods, services or construction as determined by the National Board shall be the main method of procurement. 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.

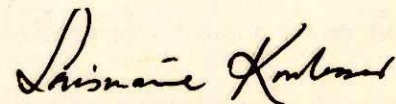
Part VI deals with the method for procurement of services. There has to be a notice of solicitation followed by the request for proposals which shall include such information as the name and address of the procuring entity, the right of the procuring entity to reject all proposals and the criteria and procedures relative to the evaluation of qualification of suppliers or contractors. A supplier or contractor may ask for a clarification of the request for proposal from the procuring entity. The selection procedures may involve no negotiation or it may be conducted with negotiations or with consecutive negotiations.

Part VII deals with other procedures for procurement involving restricted tendering wherein the procuring entity under section 27(a) shall solicit tenders from suppliers or contractors from whom the goods or construction is available. Requests for quotation under 27(b) shall be from as many suppliers or contractors as practicable, but from at least three.

Part VIII deals with review. A supplier or contractor who has suffered loss or injury may seek review under this Part. The National Board may review a matter where the Board never participated in any previous proceedings relating to that matter. An appeal from the National Board lies to the Public Procurement Commission or to the High Court. An appeal from the National Board in its original jurisdiction lies to a Committee appointed by the Minister and thereafter to the Public Procurement Commission or to the High Court.

Part IX 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.