

PUBLIC PROCUREMENT ACT, 2023

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PUBLIC PROCUREMENT ACT, 2023

AN ACT TO REPEAL AND REPLACE THE PUBLIC PROCUREMENT ACT; TO REVISE THE FRAMEWORK AND PROCEDURES FOR THE PUBLIC PROCUREMENT OF GOODS, WORKS AND SERVICES; TO FURTHER PROMOTE FAIR AND EQUITABLE TREATMENT OF ALL SUPPLIERS, CONSULTANTS, AND CONTRACTORS; TO FURTHER PROMOTE COMPETITION, TRANSPARENCY, SUSTAINABILITY AND INTEGRITY IN PUBLIC PROCUREMENT AND FOR CONNECTED MATTERS

ENACTED BY THE PARLIAMENT OF THE BAHAMAS

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Public Procurement Act, 2023.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation.

- (1) In this Act—
“**alternative bid**” means a response to a bid that does not meet the exact requirements of the specification but offers an alternative for

consideration, and is submitted with an intentional variation to a specification or terms and conditions;

“beneficial owner” in relation to a natural person who ultimately owns or controls a legal entity and includes, though is not restricted to —

- (a) in the case of a legal person other than a legal person whose securities are listed on a securities exchange, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more percent of the share or voting rights of the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person other than solely in the capacity of a director, advisor or professional manager;
- (c) in the case of a shareholder in the legal person who would otherwise be a beneficial owner under this subsection but is deceased, the natural person acting as an executor or personal representative of the deceased’s estate.

and the term “beneficial ownership” shall mean all such beneficial owners;

“bid” means a proposal or quotation, in accordance with the type of procurement method used, submitted by a bidder in response to an invitation by a procuring entity;

“bidder” means a person who submits a bid in response to an invitation to bid or an invitation to pre-qualify by a procuring entity;

“Board” means the Public Procurement Board constituted under section 11;

“centralised procurement” means procurement conducted by the Public Procurement Department on behalf of the procuring entities;

“Chief Procurement Officer” means the public officer appointed as the head of the Department under section 9;

“commonly used goods” shall mean any goods which are frequently used by procuring entities and includes, but is not limited to cleaning supplies, office supplies, food and such other goods as may be used by a procuring entity from time to time;

“competitive bidding” means a method of procurement that provides an equal access to all bidders without discrimination;

“complex nature” means procurement where it is not feasible to formulate detailed specifications of the goods, works or services or the specifications provide for goods made to order or for a new method and the degree of competition is restricted to a small market;

- “consultant”** means the provider of consulting services for a specific project;
- “consulting services”** means the services provided by a person or firm as a consultant that are of an intellectual, research, technical, or advisory nature;
- “contractor”** means any person who has submitted a bid, offer, or proposal or who may submit a bid, offer or proposal or who has been awarded a contract to provide works;
- “Department”** or **“Public Procurement Department”** means the Public Procurement Department established under section 6 of the repealed Act;
- “development preference”** means a margin of preference as set forth in the bidding documents which may be applied to bids which are received from businesses bidders meeting one of the following characteristics —
- (a) MSME;
 - (b) women-owned businesses;
 - (c) Family Island businesses;
 - (d) youth-owned businesses;
- “direct award”** means a method of procurement where circumstances, such as limited numbers of suppliers available or urgency, do not justify or permit the use of the competitive bidding process;
- “domestic regulatory authority”** means an authority in The Bahamas that exercises regulatory, supervisory or similar functions and includes —
- (a) authorities that regulate or supervise utilities or communications;
 - (b) governmental agencies exercising regulatory or supervisory functions;
 - (c) any other authority in The Bahamas as prescribed;
- “electronic procurement system”** means the computerized system utilized by the Department to manage the process of procurement on the internet for the acquisition of goods, works and services;
- “electronic reverse auction”** means an online real time purchasing technique utilized by the procuring entity to select the successful submission which involves the presentation by suppliers or contractors of successfully lowered bids during a scheduled period of time and the automatic evaluation of bids;
- “extreme urgency”** means—

- (a) the threat or impact of a natural disaster, catastrophe, war, or *force majeure*;
- (b) a situation where the environment may be seriously compromised;
- (c) a situation where the condition or quality of goods or works may deteriorate unless the goods or works are procured urgently to maintain the goods or works in their actual value; or
- (d) a situation where an investment project may be delayed due to the lack of the goods, works or services;

“Family Island business” means a firm or entity operating exclusively in one or more of the Family Islands and not having any branch, affiliate or headquarters in New Providence;

“Financial Secretary” has the meaning assigned to such term in the Public Finance Management Act;

“Framework Agreement” means an agreement to provide goods or services under a predetermined pricing structure and on the specified terms and conditions within the period of time specified therein;

“goods” means objects of every kind and description including —

- (a) commodities, raw materials, products, computer software, software licenses and equipment;
- (b) objects in solid, liquid or gaseous form; and
- (c) services incidental to the supply of goods where the value of such services does not exceed the value of the goods themselves;

“Government Business Enterprise” means an entity owned or controlled by the government that provides services in the market or undertakes commercial activities;

“head” in relation to a procuring entity, means, in relation to —

- (a) a Ministry, the Permanent Secretary;
- (b) a department of Government, the head of the department, however designated; and
- (c) a town committee or local council, the head of such town committee or local council, however designated;

“high value procurement” means contract or order for goods, works or services with an estimated value as prescribed;

“intellectual services” means any activity of an intellectual nature that does not lead to measurable physical output;

- “international bidding”** means a competitive bidding process that is not limited to national bidders;
- “international funding agency”** any international organization which ordinarily lends to governments for the purpose of furthering development, social, or economic aims and shall include the International Monetary Fund, the World Bank, the Inter-American Development Bank, and the Caribbean Development Bank and any other international funding agency with similar mandates;
- “invitation to bid”** means a written communication to one or more persons inviting them to submit bids for goods works or services;
- “invitation to pre-qualify”** means a written communication to one or more persons inviting them to pre-qualify for the submission of bids of goods works or services;
- “joint purchasing”** means processing by two or more procuring entities to obtain the benefits of volume purchases and a reduction in administrative expenses;
- “MSME”** means a micro, small or medium Bahamian-owned entity or firm with gross turnover as prescribed in the regulations;
- “Minister”** means the Minister of Finance;
- “national bidder”** means in the case of an individual, national of The Bahamas or in the case of an entity, an entity incorporated in The Bahamas and beneficially owned by a national of The Bahamas;
- “officer”** means any person employed in the service of the Government;
- “owned or controlled”** in relation to —
- (a) a Government Business Enterprise means holding the majority of the entity's subscribed capital, controlling the majority of the votes attaching to shares issued by the entity, or having the ability to appoint more than half of the entity's administrative, management or supervisory body;
 - (b) a bidder means a person that holds the majority of the bidder's subscribed capital, controlling the majority of the votes attaching to shares issued by the bidder; or having the ability to appoint more than half of the bidder's administrative, management or supervisory body;
- “owned and controlled”** in relation to a women-owned business or a youth-owned business means that one or more women or one or more young persons, as applicable —
- (a) hold the majority of the entity's equity interest;
 - (b) control the majority of the votes attaching to the equity interest issued by the entity and have the ability to appoint

more than half of the entity's administrative, management or supervisory body; and

- (c) manage the entity either by —
 - (i) comprising a majority of the board of directors; or
 - (ii) occupying the majority of senior management positions in the entity;

“prescribed” means prescribed by regulations made under this Act;

“procurement” means the process by which a procuring entity acquires goods, works and services from an external supplier;

“procurement contract” means a supply agreement between a procurement entity and a supplier, or contractor or consultant resulting from the procurement;

“procurement unit” means the unit within a procuring entity responsible for procurement;

“procuring entity” means —

- (a) a government ministry or department;
- (b) a public body that is the recipient of public moneys and authorized to apply those moneys to public procurement; or
- (c) a town committee or local council established under the provisions of the Local Government Act (*Ch. 37*);

“public body” means a public entity or a Government Business Enterprise;

“public entity” has the definition assigned to such term in the Public Finance Management Act, 2021.

“Public Finance Management Act” means the Public Finance Management Act, 2021 (*No. 8 of 2021*);

“public moneys” means all revenues, resources and receipts of any kind in cash or cash equivalent including financial assets of the Government;

“purchase order” means a formal written request for goods works or services by a person so authorized by the procuring entity;

“repealed Act” means the Public Procurement Act, 2021 (*No. 7 of 2021*)

“regulations” means any regulations issued pursuant to section 78 of this Act;

“research and development contracts” means contracts for goods, works or services which are —

- (a) performed solely for purposes of research, testing or development; and

- (b) not commercial in nature or performed with the aim of ensuring profitability or recovering research and development costs;

“responsive bid” means a bid that substantially complies with the conditions, requirements and specifications set out in the invitation to bid or requests for proposals of interest;

“restricted bidding” means a method of procurement that limits the request for bids to a selected number of suppliers, from which a final choice is made;

“services” means any object of procurement other than goods and works and includes consulting services;

“statutory body” means a body corporate established by an Act of Parliament over which the Government exercises control;

“supplier” means any person who has submitted a bid, offer, or proposal or who may submit a bid, offer or proposal or who has been awarded a contract to supply goods or services;

“Tax Appeal Commission Act” means the Tax Appeal Commission Act, 2020 (*No. 1 of 2020*);

“tender committee” means a tender committee of a procuring entity established under section 16;

“threshold” means a value limit of a procurement contract net of value added tax;

“Tribunal” means the Tax Appeal Commission established by the Tax Appeal Commission Act;

“women-owned business” means —

- (a) in relation to a legal entity, where the legal entity is owned and controlled by one or more women;
- (b) in relation to a sole proprietorship, where the sole proprietor is a woman;
- (c) any body of persons, corporate or unincorporate that is owned and controlled by one or more women;

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works including —

- (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and furnishing; and
- (b) services incidental to construction, such as drilling, mapping satellite, photography, seismic investigations and similar services, provided pursuant to a procurement contract;

“young person” means a person below thirty-five years of age;

“youth-owned business” means —

- (a) a legal entity that is owned and controlled by one or more young persons;
 - (b) in relation to a sole proprietorship, where the sole proprietor is owned and controlled by a young person;
 - (c) any body of persons, corporate or unincorporate, that is owned and controlled by one or more young persons.
- (2) For the purpose of this Act, thresholds shall be calculated and expressed in Bahamian dollars.

3. Application of Act.

- (1) Subject to subsection (2), this Act shall apply to all procurement carried out by a procuring entity.
- (2) This Act shall not apply to —
 - (a) procurement contracts governed by different procedural rules and awarded —
 - (i) for the direct purpose of providing international assistance, including development aid;
 - (ii) pursuant to a concluded international agreement relating to the stationing of troops;
 - (iii) pursuant to an international agreement between the Government and one or more foreign country and covering goods, works or services intended for the joint implementation or exploitation of a project by the Government and one or more third parties; or
 - (iv) in support of military forces located outside the territory of The Bahamas;
 - (b) the acquisition or rental of property, existing buildings, or other immovable property or the rights thereon;
 - (c) the procurement or acquisition of financial consultancy, fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
 - (d) employment contracts;
 - (e) the procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes, including food aid;
 - (f) legal advisory services and briefs;
 - (g) audit, actuarial, and accounting services;

- (h) the procurement of electricity, telecommunications, water and sewerage as provided for in any other law;
- (i) an agreement between the Government and an international funding agency, whose procurement rules are mandatorily applied to any procurement contracts partially or wholly funded by monies loaned or advanced pursuant to such agreement;
- (j) contracts entered into by the Government in support of or pursuant to an international treaty, accord or convention or other international multilateral agreement; and
- (k) research and development contracts.

4. Participation in procurement.

A person who is desirous of participating in the procurement of goods, works or services shall directly register or be registered by the Public Procurement Department in the electronic procurement system.

5. Procurement by public bodies.

- (1) Subject to subsection (2), this Act shall not apply to the procurement carried out by public bodies until an order has been made by the Minister pursuant to subsection (3).
- (2) Notwithstanding the provisions of subsection (1) or any other Act, public bodies shall—
 - (a) publish guidelines for procurement of goods, works and services on the official website of the public bodies and the electronic procurement system or other website as may be approved by the Chief Procurement Officer;
 - (b) ensure that guidelines for the procurement for goods, works and services comply with the principles for procurement set forth in Part II of the *Second Schedule* of this Act and any guidance issued by a domestic regulatory authority with jurisdiction over such public body;
 - (c) utilize the electronic procurement system or other system approved by the Public Procurement Department;
 - (d) publish a notice of the award of the procurement contract for all goods, works and services valued over twenty-five thousand dollars on the website of the public bodies and on the electronic procurement system within sixty days of the award of the procurement contract;
 - (e) provide a report on procurement activities of the public body to the Chief Procurement Officer at least once every two months in such form as may be approved by the Chief Procurement Officer;

- (f) provide any information on procurement activity of the public body as may be required upon demand by the Chief Procurement Officer for inclusion in the annual report and other reports prepared by the Chief Procurement Officer in pursuance of this Act; and
 - (g) comply with any regulations made by the Minister with respect to procurement by public bodies.
- (3) The Minister may by order require a public body to comply with any or all of the provisions of this Act provided that to the extent that such order conflicts with the mandatory procurement rules of any domestic regulatory authority having jurisdiction over such public body, the mandatory rules of such regulatory body shall prevail over this Act to the extent of such conflict.

PART II – PUBLIC PROCUREMENT AUTHORITIES

6. Continuation of the Public Procurement Department.

- (1) The department established under section 6 of the repealed Act, known as the Public Procurement Department is continued for the purposes of this Act.
- (2) The Department shall consist of a Chief Procurement Officer, who shall be responsible for the day to day management of the Department and other officers as may be necessary to carry out the functions of the Department.

7. Functions of Department.

The functions of the Department are —

- (a) to implement policies and standards on public procurement;
- (b) to develop, periodically update and issue in consultation with the procuring entities and with the approval of the Board, procurement manuals and guidance notes for use by procuring entities;
- (c) to conduct centralised procurement in accordance with section 8;
- (d) to develop standard bidding documents and contract documents for goods, works and services to be used by procuring entities;
- (e) to maintain and manage, for the procurement of goods, works and services, the electronic procurement system;
- (f) to ensure capacity building and human resource development for public procurement;
- (g) to promote public awareness of public procurement;

- (h) to issue appropriate instructions to procuring entities for the development of appropriate reporting formats and base line price indicators;
- (i) to establish and maintain a mechanism for the creation of a registration and classification system for suppliers, contractors, or consultant;
- (j) to establish and maintain a secretariat to support the activities of the Public Procurement Board;
- (k) to advise on certification and professional education requirements for the staff of procuring entities;
- (l) to obtain the requisite approvals for the procurement of specialised and sensitive goods and materials related to national security;
- (m) to develop issue and update guidance notes and practices designed to support, enhance and measure the participation of MSME in public procurement;
- (n) to develop sustainable procurement practices and guidance aiming to reduce the adverse environmental and social impact through better selection and improved usage of purchased goods and services;
- (o) to encourage suppliers to adopt practices that minimize their adverse environmental and social impacts in relation to their own operations and supply chains; and
- (p) to perform such other duties as are necessary, incidental or conducive to the fulfilment of the Department's objectives.

8. Centralised procurement.

- (1) The Department shall, pursuant to its functions under section 7, organise the central procurement of commonly used goods on behalf of all procuring entities, and in so doing shall —
 - (a) prepare and dispatch a consultation document to each procuring entity with a view to identifying the annual aggregated requirements for the centralization of procurement; and
 - (b) request each procuring entity to provide an indication of the goods, works or services that are required by way of centralised procurement.
- (2) The Department shall, in determining whether the aggregation of demand is appropriate, take into consideration —
 - (a) which goods are commonly used goods and likely to attract the same potential bidders;
 - (b) when the goods, works or services will be ready for bidding;

- (c) when delivery, implementation or completion of the goods, works or services are required; and
 - (d) any other special factors related to the specific goods, works or services.
- (3) A procuring entity may enter into a Framework Agreement, if the procuring entity is satisfied that —
- (a) the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time; or
 - (b) by virtue of the nature of the subject matter of the procurement, the need for that subject matter may arise on an urgent basis during a given period of time.

9. Appointment of Chief Procurement Officer.

The Chief Procurement Officer shall be appointed by the Governor-General acting on the advice of the Public Service Commission after consultation with the Minister on such terms and conditions as the Governor-General may determine.

10. Functions of Chief Procurement Officer.

The functions of the Chief Procurement Officer are —

- (a) the day to day management of the affairs of the Department;
- (b) the administration, organization and supervision of the staff of the Department;
- (c) to provide periodic reporting to the Financial Secretary of —
 - (i) procurement activities of procuring entities, statutory bodies and Government Business Enterprises;
 - (ii) any written statement of the Minister pursuant to section 12(2); and
 - (iii) all procurement contracts awarded by the direct award method of procurement and the distribution of goods obtained by the direct award method of procurement;
- (d) to prepare an annual report on procurement by procuring entities for the Financial Secretary to be transmitted to the Minister; and
- (e) to manage the funds, budget and other property of the Department.

POWER AND DUTIES OF PUBLIC PROCUREMENT BOARD

11. Constitution of Public Procurement Board.

- (1) There shall be a board to be known as the Public Procurement Board which shall have the duties as specified in section 12;
- (2) The Board shall have a maximum of seven members consisting of —
 - (a) a Chairperson appointed by the Minister who shall be competent and knowledgeable in public procurement, accounting, engineering, business or any related field;
 - (b) the Financial Secretary, ex officio or his representative;
 - (c) the Permanent Secretary of the Ministry responsible for public works;
 - (d) two persons from civil society appointed by the Minister;
 - (e) the Chief Procurement Officer; and
 - (f) a public officer appointed by the Minister to act as secretary to the Board.
- (3) Prior to appointing any person to the board, the appointer shall be satisfied that —
 - (a) the person has the skills, knowledge and integrity to carry out the required duties in a highly competent and politically neutral manner;
 - (b) the person has no financial or other interest likely to affect the exercise of the functions negatively.

12. Duties and powers of Board.

- (1) The duties and powers of the Board are —
 - (a) to establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
 - (b) to review the recommendations of a tender committee for the award of procurement contracts in excess of the sum prescribed, and —
 - (i) approve or reject the recommendation for the award of the procurement contract;
 - (ii) require the tender committee to make a fresh or further evaluation on specified grounds; or
 - (iii) defer the approval of a recommendation for award and advise the tender committee on procurement matters the Board may consider conducive to the exercise of its functions;
 - (c) to make recommendations to the Minister for the award of procurement contracts where the estimated value of such contract is

- more than four hundred thousand dollars but not exceeding two million five hundred thousand dollars;
- (d) to make recommendations to the Cabinet for the award of procurement contracts where the estimated value of such contract is more than two million five hundred thousand dollars.
- (2) Where a Minister does not accept the recommendations of the Board pursuant to subsection (1)(c), the Minister shall provide a written statement of his objection and shall —
- (a) refer the recommendation back to the Board for further advice; or
 - (b) direct that a new procurement process be carried out.

PROCURING ENTITIES AND UNITS

13. Functions of procuring entities.

- (1) The procurement of goods, works or services shall be conducted by the procuring entity in a fair, equitable and transparent manner using competitive bidding procedures —
 - (a) based on the application of objective and non-discriminatory technical specifications, selection and award criteria;
 - (b) with a view to providing the Government with value for money goods, works and services, by the most timely, cost-effective and efficient means possible; and
 - (c) in accordance with this Act any regulations made hereunder.
- (2) A procuring entity which directly purchases goods, works and services from or through the Department shall be deemed to have complied with this Act to the extent that the Department has complied with it.
- (3) A procuring entity shall utilize the electronic procurement system managed by the Department for all procurement.

14. Procurement units.

- (1) The head of each procuring entity shall establish a procurement unit to evaluate and recommend the award of all procurement contracts whose value does not exceed twenty-five thousand dollars.
- (2) Where the head of a procuring entity determines that the level of procurement does not justify the creation of a procurement unit, the head of the procuring entity shall —
 - (a) nominate a single public officer to carry out the functions of a procurement unit; or

- (b) request procurement to be carried out on the entity's behalf by the Department or by another procuring entity or procurement unit.
- (3) The head of a procuring entity shall determine the size, location and structure of its procurement unit having regard to its procurements and the number of trained and experienced staff available.
- (4) The Department may authorize a procurement unit or other procuring entity to conduct procurement on behalf of another procuring entity or procurement unit on request of the head of such procuring entity.

15. Functions of procurement units.

- (1) The functions of a procurement unit shall include —
 - (a) the planning of procurement for the procuring entity;
 - (b) the preparation of invitations to bid and of bidding documents;
 - (c) the publication and distribution of invitations to bid;
 - (d) the reception and safeguarding of bids;
 - (e) the evaluation of bids, quotes, and proposals; and
 - (f) the administration and implementation of a procurement contract.
- (2) Where the estimated value of a procurement contract does not exceed twenty-five thousand dollars, the procurement unit shall —
 - (a) open and evaluate the bids; and
 - (b) recommend the award of the procurement contract or purchase order in relation thereto.
- (3) Where the value of a procurement contract exceeds twenty-five thousand dollars, the procurement unit shall, as applicable —
 - (a) perform secretariat services for the relevant tender committee; and
 - (b) prepare the recommendations for the Board, the Minister or the Cabinet in relation to the procurement contract.
- (4) A procurement unit shall not seek procurement for goods, works or services in excess of the funds at its disposal.

TENDER COMMITTEES

16. Tender committees.

- (1) Each procuring entity shall establish a tender committee to evaluate and recommend the award of all procurement contracts whose value is more than twenty-five thousand dollars.

- (2) A tender committee shall be appointed as required by the head of the procuring entity and comprise a minimum of three and a maximum of five members including —
 - (a) the senior accounting officer of the procuring entity;
 - (b) the head of the procurement unit; and
 - (c) such other members as may be required to provide technical, legal or commercial expertise.
- (3) A tender committee may appoint technical evaluation advisers to assist the procurement unit in evaluating bids and making recommendations for the award of the procurement contract.

17. Functions and powers of tender committees.

- (1) The functions of a tender committees include —
 - (a) the opening of bids;
 - (b) subject to the provisions of this Act, the awarding of procurement contracts and rejection of unsuccessful bids; and
 - (c) the performance of any other functions specified under this Act.
- (2) A tender committee shall have power to —
 - (a) approve proposed invitations to bid, notices, requests, and other documents related to procurement;
 - (b) review and approve evaluation reports make recommendations with respect to the award of procurement contracts; and
 - (c) approve procurement contract documents.
- (3) A tender committee shall make recommendation to the Board with respect to the award of procurement contracts where the value of the proposed procurement contract exceeds four hundred thousand dollars.

18. Financial threshold for proposed contracts.

- (1) Where the estimated value of a proposed procurement contract —
 - (a) is more than twenty-five thousand dollars but does not exceed four hundred thousand dollars, the tender committee shall evaluate and recommend that the procuring entity award the procurement contract subject to the approval of the Minister responsible for the procuring entity;
 - (b) is more than four hundred thousand dollars but does not exceed two million five hundred thousand dollars, the tender committee shall forward to the Board the recommendation for award together with all necessary documentation and subsequent thereto, the tender committee shall evaluate and approve or disapprove the recommendation of the tender committee; and

- (c) is more than two million five hundred thousand dollars, the tender committee shall forward to the Board the recommendation for award together with all necessary documentation and subsequent thereto the Board shall make a recommendation to the Cabinet and seek the approval thereof.
- (2) Where an approval for a recommendation is sought from Cabinet pursuant to subsection (1)(c) is rejected, the Cabinet may —
 - (a) refer the recommendation back to the Board for further advice; or
 - (b) direct that a new procurement for goods works or services be carried out.

19. Division of procurement.

A procuring entity shall not, for the purposes of determining the appropriate procurement method, divide a procurement with the intention of avoiding the financial thresholds referred to in section 18.

20. Division into lots.

- (1) Notwithstanding section 19, a procuring entity may divide a procurement which could be procured as a single procurement contract into a package, consisting of several lots that are to be tendered together, where it is anticipated that the award of several separate procurement contracts may result in the best overall value for the procuring entity.
- (2) A procurement shall not be divided into lots —
 - (a) where the award of several separate procurement contracts would create problems of compatibility or inter-changeability between goods, works or consultancy services procured as separate lots or would unduly strain contract administration resources; and
 - (b) where the award of several separate procurement contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) A procuring entity, where a procurement which could be procured as a single procurement contract is divided into lots shall —
 - (a) permit bidders to bid for a single lot, any combination of lots, or all lots; and
 - (b) demonstrate, prior to procurement contract award, that the recommended procurement contract award or combination of procurement contract awards offers the best overall value for the procuring entity.

PART III - PROCUREMENT PLANNING AND METHODS

PROCUREMENT PLANNING

21. Procurement plans.

- (1) Every procuring entity shall prepare, in writing, a draft procurement plan for each financial year and shall revise the plan as appropriate during the course of the year.
- (2) The draft procurement plan shall be presented to the Chief Procurement Officer who shall forward the draft procurement plan to the Financial Secretary before the 31st day of March in every year.
- (3) The draft procurement plan referred to in subsection (1) shall include —
 - (a) a detailed breakdown of the goods, works and services required;
 - (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
 - (c) an indication of whether goods, works and services will be procured —
 - (i) as a single package;
 - (ii) through aggregation with another procuring entity; or
 - (iii) through centralised procurement by the Department;
 - (d) an indication of the anticipated procurement method for each procurement, including any need for pre-qualification, and the anticipated time for the procurement to be completed taking into account the applicable approval requirements;
 - (e) an estimate of the value of each package of goods, works and services required reasonably determined using market-based pricing and details of the budget available and sources of funding; and
 - (f) such other details as may be relevant to any goods works and services in the procurement plan.
- (4) Every procuring entity shall submit a final procurement plan to the Chief Procurement Officer for submission to the Financial Secretary before the 30th day of September in each year.
- (5) The procuring entity in preparation of a draft procurement plan and a final procurement plan shall take into consideration the budgeted allocated sums for that current financial year.
- (6) Notwithstanding subsection (5), every procuring entity shall ensure approved budgetary availability, prior to the commencement of each procurement process, with the exception of emergencies.

- (7) Every draft procurement plan and every final procurement plan submitted by a procuring entity shall be published on the official website of the Department and on the electronic procurement system.
- (8) A financial warrant may not be issued under the Public Finance Management Act, until a draft procurement plan has been submitted pursuant to subsection (2).
- (9) The time period for the delivery of any procurement plan required to be delivered under this section may be extended for a reasonable period at the discretion of the Financial Secretary.

METHODS OF PROCUREMENT

22. Competitive bidding process.

- (1) The procurement of goods, works and services shall be undertaken by means of a competitive bidding process using one of the following competitive methods of procurement except where it can be demonstrated that the procurement meets the criteria for the direct award method of procurement set out in section 31 —
 - (a) open competitive bidding;
 - (b) restricted bidding;
 - (c) request for quotation;
 - (d) request for proposals of interest; or
 - (e) electronic reverse auctions.
- (2) A procuring entity shall, where a procurement process other than the competitive bidding process is used, include in the record of the procurement a written justification of the decision to utilize the procurement method, including the grounds for taking such a decision.

23. Selection of procurement method.

- (1) A procuring entity shall, as part of the procurement, planning process select the most appropriate method of procurement for each procurement being one of the competitive bidding methods as specified in section 22(1).
- (2) The selection of procurement process or procurement method and the determination of whether to open the bid to national and international bidding shall take into account —
 - (a) the estimated value of the procurement, calculated in accordance with the valuation rules shown in the *Second Schedule*;
 - (b) the potential sources for the procurement including —

- d nature of the requirement; and
 - (c) the nature of the goods, works or services required.
- (3) Every procuring entity shall carry out procurement of goods and services in accordance with this Act and the principles set out in Part 2 of the *Second Schedule* shall be observed at all times by employees of public bodies and public officers involved in procurement for procuring entities.

24. Types of open competitive bidding methods.

Procurement by the open competitive bidding method of procurement may be carried out in a single stage or in two stages and subject to section 27 may be carried out by national or international bidding.

25. Single stage competitive bidding.

- (1) The single stage of the open competitive bidding process may be used for the procurement of standard goods, works and services when all the information and specifications necessary to calculate a realistic price or to develop a comprehensive scope of work are available before the bidding process.
- (2) The procuring entity shall require that prospective bidders submit their financial proposal and their technical proposal at the same time.

26. Two stage competitive bidding.

- (1) Open competitive bidding may be held in two stages where —
 - (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; or
 - (b) due to the complex nature of the goods, works or services to be procured, the procuring entity wishes to consider and discuss with bidders various technical or contractual solutions and their relative merits before deciding on the final technical or contractual specifications.
- (2) A procuring entity may, in the first stage of the two-stage bidding method, engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents in order to —
 - (a) further understand the proposals; or
 - (b) indicate to bidders the changes required to make the proposals acceptable and to seek the bidder's willingness to make such changes.
- (3) A procuring entity shall keep minutes of first-stage bidding discussions engaged in pursuant to subsection (4) and such minutes shall form part of the procurement records.

- (4) A procuring entity may, at the end of the first stage of the two-stage bidding method —
 - (a) reject those bids which are not responsive, and in respect of which bidders are unwilling or unable to change to meet the —
 - (i) basic requirements;
 - (ii) minimum performance; or
 - (iii) required completion time; and
 - (b) revise the technical specifications, evaluation criteria, and procurement contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
- (5) A procuring entity shall, in the second stage of the two-stage bidding method, invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.
- (6) A bidder who does not wish to submit a final bid may withdraw from the bidding proceedings without forfeiting the bid security that such bidder may have been required to provide and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised documents.
- (7) Any requirements, guidelines, documents, clarifications or other information generated during the discussions referred to in section (1)(b) and (2) above that is communicated by the procuring entity to a supplier or contractor shall be communicated at the same time and on an equal basis to all other participating bidders, unless such information is specific or exclusive to that supplier or contractor or such communication would be in breach of section 73.

27. National and international bidding.

- (1) Subject to paragraph (3), where the estimated contract amount in a proposed procurement is below the threshold prescribed in the *Third Schedule*, the procurement shall be by open competitive bidding limited to national bidders.
- (2) Where the estimated contract amount in a proposed procurement is equal to or higher than the threshold prescribed in the *Third Schedule*, the procurement shall be open to national bidders and international bidders and—
 - (a) all procurement notices shall be published in accordance with section 36(1);
 - (b) all invitations to bid or to pre-qualify, and bidding documents, shall be in English;
 - (c) a procuring entity shall allow sufficient time for the invitation to bid to reach potential bidders and to enable them to prepare and submit

- applications to pre-qualify and bid in accordance with the instructions given in the bidding documents;
- (d) all bidders shall express their bids in Bahamian dollars unless otherwise specifically permitted within the bidding documents;
 - (e) the general and special conditions of the procurement contract shall be as prescribed in the regulations; and
 - (f) the technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade.
- (3) Notwithstanding paragraph (1), a procuring entity may apply to the Chief Procurement Officer for approval to open any procurement with a contract value below the thresholds prescribed in the *Third Schedule* to international bidders.
 - (4) This section applies to the competitive bidding process and the restricted bidding method of procurement.

28. Pre-qualification.

- (1) Prior to an invitation to bid in a competitive process, the procuring entity may pre-qualify bidders.
- (2) The requirements and criteria for assessing the pre-qualifications of bidders shall be in accordance with section 38.
- (3) The procuring entity shall —
 - (a) provide pre-qualification documents to all bidders responding to the invitation to pre-qualify; and
 - (b) respond promptly to any request by a bidder for clarification of the pre-qualification documents received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to pre-qualify.
- (4) The pre-qualification documents shall provide bidders with the information required to prepare and submit applications for pre-qualification.
- (5) The procuring entity —
 - (a) shall make a decision with respect to each application to pre-qualify;
 - (b) shall invite all bidders who have been pre-qualified to submit bids in the procurement;
 - (c) may at any time prior to the award of contract require a pre-qualified bidder to demonstrate its qualifications in accordance with the same criteria used to pre-qualify such bidder; and

- (d) shall disqualify any bidder who fails to demonstrate its qualifications if requested to do so.

29. Electronic reverse auction.

An entity may engage in procurement by means of an electronic reverse auction under the following conditions —

- (a) it is feasible for the entity to formulate a detailed description of the subject matter of the procurement;
- (b) there is a competitive market of suppliers, contractors, or consultants and it is anticipated that the suppliers or contractors and it is anticipated that the suppliers, contractors or consultants will qualify to participate in the electronic reverse auction thereby ensuring effective competition; and
- (c) the criteria to be used by the procuring entity in determining the successful submission are quantifiable.

30. Restricted bidding.

- (1) The restricted bidding method of procurement may be used where —
 - (a) the goods, works or services are only available from a small number of suppliers; or
 - (b) the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement.
- (2) The procuring entity shall in the case of the restricted bidding method of procurement of goods, works and services invite bids from —
 - (a) all potential bidders with respect to the procurement for goods, works and services specified in subsection (1)(a);
 - (b) sufficient bidders to ensure effective competition, with respect to the nature of the procurement specified in subsection (1)(b); and
 - (c) in all cases, a minimum of three bidders.
- (3) The procuring entity may, in selecting bidders to be invited to bid, use —
 - (a) the electronic procurement system;
 - (b) the persons pre-qualified to submit bids;
 - (c) the procuring entity's own knowledge of the market; or
 - (d) any other appropriate sources of information.
- (4) The procuring entity shall, where it uses the restricted bidding method of procurement pursuant to subsection (1)(b), publish a notice in accordance with section 36 stating —
 - (a) the nature of the goods services or works to be procured;

- (b) that the procuring entity is using the restricted bidding method of procurement on the grounds that the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement;
 - (c) the proposed bidders; and
 - (d) the deadline for a request for information or participation in the procurement.
- (5) The provisions of the competitive bidding process shall apply to the restricted bidding method of procurement.

31. Direct award.

- (1) A procuring entity may award a procurement contract to a national or international person by direct award where one or more of the following circumstances are applicable —
- (a) The estimated value of the proposed procurement of goods works or services does not exceed one hundred thousand dollars;
 - (b) no suitable bids have been submitted in response to a competitive bidding process and the procuring entity makes the procurement contract subject to the condition that the requirements of the initial bid may not be substantially modified by the bidder;
 - (c) for technical or artistic reasons or for reasons connected with protection of exclusive rights, the procurement contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
 - (d) for reasons of extreme urgency provided the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part, including where —
 - (i) the country is seriously threatened or impacted by a natural disaster, catastrophe, war or an event of force majeure;
 - (ii) the life or quality of life or the environment may be seriously compromised;
 - (iii) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain the capital goods in their actual value or usefulness;
 - (iv) an investment project may be seriously delayed for want of an item of a minor nature, the goods or services could not be obtained in time by means of competitive process;
 - (e) the procurement contract is for additional deliveries of goods or services by an original supplier in circumstances where a change of supplier would —

- (i) compel the procuring entity to procure goods or services not meeting the requirements of interchangeability with already existing goods or services procured under the initial procurement; and
 - (ii) cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (f) the procuring entity procures prototypes or goods or services developed at its request in the course of and for a specific contract for research, experiment, study or original development;
- (g) additional services within the objectives of the original bid documentation but not included in the initial procurement contract have, through unforeseen circumstances, become necessary to complete the services described in such documentation and the total value of procurement contracts awarded for such additional services do not exceed twenty-five per cent of the amount of the initial procurement contract;
- (h) the procurement contract is for new services —
 - (i) consisting of the repetition of similar services which conform to a basic project for which an initial procurement contract was awarded following the competitive bidding process; and
 - (ii) for which the procuring entity has indicated in the notice of procurement that a direct award method of procurement might be used in awarding procurement contracts for such new services;
- (i) the procurement contract is for goods purchased on a commodity market;
- (j) the procurement contract is for travel services for public officers on official Government business;
- (k) the procurement contract is for purchases —
 - (i) made under exceptionally advantageous conditions of unusual disposals which arise only in the very short term such as from liquidations, receiverships or bankruptcies; and
 - (ii) which are not routine purchases from regular suppliers;
- (l) the goods or services are not competitive products or are only available from a single supplier;
- (m) the goods or services are required to —
 - (i) match an existing brand of equipment for compatibility (including where the goods are replacement parts); or
 - (ii) comply with established entity specifications and standards, and are available from only one supplier;

- (n) the goods or services are required to meet physical design or quality specifications and are available from only one supplier;
 - (o) the goods or services that are being procured are from charitable and philanthropic institutions, or are produced by the labour of persons who are inmates in the prisons or persons with disabilities;
 - (p) the goods or services that are being procured are produced by the labour of persons who are inmates in the prison provided that the quality of goods or services are commercially equivalent to goods or services available on an open market;
 - (q) the goods or services are being procured from an entity that operates an entertainment, sporting, convention or similar event in order that the procuring entity may comply with a commercial agreement containing provisions that may be in conflict with the Act.
- (2) Subject to subsection (5), approval for commencing an award process by the direct award method of procurement shall be obtained from the relevant procuring entity's tender committee and be approved as provided in the regulations.
 - (3) Subject to subsection (5), applications made pursuant to subsection (2) shall be submitted to the relevant tender committee at least twenty-one days in advance of the commencement of an award process by the direct award method of procurement.
 - (4) An application made pursuant to subsection (2) which is justified by the circumstances referred to in subsection (1)(d), shall be submitted to the relevant tender committee at least forty-eight hours prior to making a direct award and if no objection is received by the procuring entity within such time period, the contract may be awarded accordingly.
 - (5) Every request for approval to commence a direct award shall be in writing and include written justification of the decision to utilize the procurement method, including the grounds for taking such a decision and where approval is sought pursuant to subsection (1)(d), confirmation that the procured goods, works or services will be distributed in accordance with the urgent need which necessitated the procurement.
 - (6) Written evidence of the distribution in accordance with the urgent need referred to in subsection (5) shall be provided by the procuring entity to the Chief Procurement Officer.

32. Request for quotations.

- (1) The request for quotations method of procurement may be used for the procurement of goods, works and services where —

- (a) the procurement is for readily available goods that are not specially manufactured to the particular specifications of the procuring entity and its estimated value does not exceed twenty-five thousand dollars; or
 - (b) the estimated value of the procurement of works or services is does not exceed twenty-five thousand dollars.
- (2) A quotation shall, under the request for quotations method of procurement, be requested in writing from as many bidders as practicable and, in all cases, from a minimum of three bidders.
 - (3) A request for quotations shall contain a clear statement of the requirements of the procuring entity and shall provide information with respect as to quality, quantity, terms, time of delivery, and any other special requirements.
 - (4) Bidders shall be given adequate time to prepare and submit their quotations and each bidder shall be permitted one quotation only which may not be altered or negotiated.
 - (5) The procuring entity shall place a purchase order with the bidder providing the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.
 - (6) A purchase order shall include —
 - (a) the quoted price;
 - (b) the procurement contract number;
 - (c) the name of the bidder;
 - (d) the name of the officer of the bidder who signed the quotation; and
 - (e) the terms and the date of delivery.

33. Request for proposals.

- (1) A procuring entity shall, for the purpose of procuring the services of a consultant —
 - (a) prepare a list of three to six consulting firms comprising consultants of the same category and similar capacity and business objectives and who have the capacity to perform the consultancy services required as demonstrated in their submissions; and
 - (b) provide the request for proposals for services to the listed firms.
- (2) The procuring entity shall, where the estimated value of the procurement of the services of a consultant exceeds one million dollars, prepare the list referred to in subsection (1)(a) by inviting requests for proposals of interest through publication of a notice —
 - (a) where appropriate, in a relevant trade publication or technical or professional journal; or

- (b) by any other electronic means.
- (3) The procuring entity may, where the estimated value of the procurement of the services of a consultant is less than one million dollars, prepare the list referred to in subsection (1)(a) by inviting requests proposals of interest—
 - (a) from market knowledge or other sources of information; and
 - (b) in the case of procurement of the services of a consultant which have an estimated value that exceeds twenty-five thousand but is less than one million dollars, or are particularly complex, through advertisements.
- (4) The request for proposals of interest shall provide bidders short listed pursuant to subsection (1)(a) with the information necessary to enable them to participate in the procurement and to submit proposals that are responsive to the needs of the procuring entity, including —
 - (a) the name and address of the procuring entity;
 - (b) the nature, time frame and location of the services to be provided, the terms of reference, the required tasks and the outputs;
 - (c) the criteria to be used in evaluating and comparing proposals and their relative weights as compared to price;
 - (d) the contractual terms of the procurement and the manner of entry into force of the procurement contract;
 - (e) instructions for preparation and submission of proposals and the place and deadline for submission of proposals;
 - (f) the final selection procedures to be applied;
 - (g) information on conflict of interest restrictions and information with respect to anti-fraud and corruption legislation, including the grounds for potential debarment from future participation in procurement of goods, service or works that may result from the procurement under consideration; and
 - (h) such matters as may be specified in standard bidding documents issued by the Department.
- (5) Technical evaluation advisers appointed by the tender committee shall advise the procuring unit on the cost of the procurement.

34. Prohibition of multiple bids by the same bidder or beneficial owner.

- (1) A person shall not—
 - (a) submit more than one bid either individually, or as a joint venture partner in another bid; and
 - (b) own or control another bidder participating in the same bidding process as such person.

- (2) All bidders who respond to an invitation to bid or who have been pre-qualified, shall disclose the name and address of each beneficial owner of the bidder to the procuring entity.
- (3) A procuring entity in reviewing all bids shall confirm the beneficial ownership of each bidder to ensure that multiple bids from the same beneficial owner does not undermine the bidding process.
- (4) A procuring entity in ensuring that the bidding process is not undermined, may request from a bidder documentation to satisfy the procuring entity that the beneficial ownership of a bidder is independent from all other bidders.
- (5) In the event that it is discovered that —
 - (a) multiple bids have been submitted by the same person;
 - (b) there has been a breach of the code of conduct or the trade of inside information by any bidder; or
 - (c) a bidder is found to be in breach of this subsection or any other provision of this Act, the procuring entity —
 - (i) shall disqualify the bid or bids; and
 - (ii) may continue the process where there are two or more compliant bidders remaining; or
 - (iii) cancel the procurement in its entirety.
- (6) Where a bidder is in breach of subsection (1), the procuring entity may recommend to the Department that the bidder be debarred in accordance with section 66.

PART IV – BIDDING PROCESS

35. Bidding documents.

- (1) Bidding documents shall specify, with respect to the goods, works or services, the —
 - (a) quality;
 - (b) quantity;
 - (c) certification;
 - (d) testing and test methods;
 - (e) qualification criteria for potential bidders; and
 - (f) any other means, for evaluating the conformity of the performance of the contract to the requirements.
- (2) The procuring entity shall in preparing any relevant bidding documents and pre-qualification documents —

- (a) use the appropriate standard bidding documents issued by the Department;
 - (b) use the procurement manuals and guidance notes issued by the Department;
 - (c) provide descriptive information in a manner that does not favour a particular bidder unless the description of the goods, works or services is necessary to identify the goods, works or services that the procuring entity needs; and
 - (d) provide the desired performance or output requirements of the objective of the procurement.
- (3) Where bidding documents require technical specifications, the bidding documents shall include —
- (a) the purpose and objectives of the goods;
 - (b) a full description of the procurement of goods, works or services;
 - (c) a generic specification to an appropriate level of detail which specifications shall include no reference to a particular trademark or name, patent, design or type, specific original producer or service provider unless —
 - (i) there is no other practical way of describing the procurement; and
 - (iii) words such as “or equivalent” are included in the specifications;
 - (d) the functional features of the goods, including any environmental or safety features;
 - (e) where appropriate, performance parameters, including outputs, time scales and any indicators or criteria by which satisfactory performance can may be measured and judged;
 - (f) process and materials descriptions;
 - (g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
 - (h) inspection and testing requirements; and
 - (i) any applicable national or international standards of the goods, works and services.

36. Publication of procurement notice.

- (1) A notice of invitation to bid or invitation to pre-qualify in a bidding process, (hereinafter referred to as a “procurement notice”) shall be—
- (a) published in one or more national newspapers of wide circulation to reach sufficient bidders to ensure effective competition; and
 - (b) published on the electronic procurement system.

- (2) Where a procuring entity considers it is necessary to ensure wide competition the procuring entity—
 - (a) may send a procurement notice, after the date of publication of the procurement notice in subsection (1), directly to potential bidders; and
 - (b) shall keep a record of any bidders to whom a procurement notice is sent directly, which shall form part of the procurement record.
- (3) A notice published under subsection (1), shall include information on —
 - (a) the identity and address of the procuring entity and the contact details of the person from whom further information may be obtained;
 - (b) the nature and time-frame of the procurement, including the place of delivery of goods or services and the location of any works;
 - (c) the price of the bidding documents and the manner of obtaining the bidding documents or, where applicable, any pre-qualification documents required;
 - (d) the place and deadline for submission of bids or of applications to pre-qualify;
 - (e) the method of procurement; and
 - (f) such other matters as may be provided in the guidance notes issued by the Department.

37. Provision of bidding documents to bidders.

- (1) The procuring entity shall, at the same time as the publication of a procurement notice, provide the requisite bidding documents —
 - (a) to all potential bidders who respond to the invitation to bid; or
 - (b) to all bidders who have been pre-qualified.
- (2) The bidding documents shall be published on the electronic procurement system.
- (3) The procuring entity may charge a fee for the bidding documents. Such fee shall be no higher than the cost to the procuring entity of printing and distributing the bidding documents.
- (4) The bidding documents shall provide all the information required in order for bidders to submit bids that are responsive to the needs of the procuring entity, including information —
 - (a) stating the nature and time frame of the procurement, including information with respect to the contractual terms of the procurement, and the manner of entry into force of the procurement contract;

- (b) except in relation to pre-qualified bidders, providing the prescribed bidder qualification and documentation requirements in order to secure evidence that a bidder meets the necessary qualification criteria to perform the procurement contract as regards the bidder's —
 - (i) professional and technical qualifications and competence;
 - (ii) financial resources, equipment and other physical facilities;
 - (iii) managerial capability;
 - (iv) experience in the object of the procurement; and
 - (v) personnel;
- (c) on site visits and pre-bid conferences;
- (d) providing instructions for preparation and submission of bids, including the deadline for submission of bids and the time and place of bid opening;
- (e) giving the components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- (f) providing the criteria and methodology for evaluation of bids and the selection of the successful bidder —
 - (i) quantified in monetary terms;
 - (ii) expressed in the form of pass or fail requirements and, where this is not possible, expressed by relative weights; and
 - (iii) stating that the evaluation criteria for consideration by the procuring entity shall consist only of the —
 - (aa) bid price;
 - (bb) cost of operating, maintaining and repairing the goods or works;
 - (cc) time for delivery of the goods, completion of the works or provision of the services;
 - (dd) functional characteristics of the goods or works; and
 - (ee) terms of payment and of guarantees in respect of the goods, works or services;
- (g) stating the margin for development preference;
- (h) on any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
- (i) stating whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;

- (j) where suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, providing a description of the portion or portions for which bids may be submitted;
 - (k) stating the required validity period of bids;
 - (l) providing the amount and acceptable forms of any required bid, performance or other security;
 - (m) stating the conditions of the procurement contract which will be entered into with the successful bidder;
 - (n) providing notice of conflict of interest restrictions and anti-fraud and corruption rules;
 - (o) stating the manner in which bidders may obtain review of actions, omissions and decisions of the procurement entity; and
 - (p) on such other matters as may be prescribed by regulations or in procurement manuals and guidelines issued by the Department.
- (5) The procuring entity shall, for the purposes of subsequent communications with bidders, make a record of the name, postal address, telephone and fax numbers and email address of all persons to whom an invitation to bid is issued and shall file such information in the electronic procurement system.

EXPRESSION OF INTEREST

38. Pre-qualification criteria of potential bidder.

Subject to section 39(2), a procuring entity may, in order to satisfy the qualification criteria established in the bidding documents, invite potential bidders to express interest in the bidding process by providing evidence of that bidder's—

- (a) technical abilities, in relation to the nature, quantity, importance or use of the works, or services, by evidence of —
 - (i) experience and reliability;
 - (ii) financial resources, equipment and other physical facilities;
 - (iii) personnel;
 - (iv) managerial capability;
 - (v) possession of the necessary professional and technical qualifications and competence; and
 - (vi) subject to the right of the bidder to protect its intellectual property rights and trade secrets, possession of the requisite intellectual property rights or trade secrets;

- (b) legal capacity to perform the procurement contract furnished by evidence that —
 - (i) the bidder has satisfied or in relation to an international bidder, will satisfy at the time of the award of the procurement contract all the legal requirements to carry on business in The Bahamas and, where the bidder has its headquarters outside The Bahamas, is entitled to carry on business in the foreign jurisdiction;
 - (ii) the bidder is not insolvent, in bankruptcy, in receivership or under liquidation; and
 - (iii) legal proceedings have not been taken, and are not anticipated to be taken, that would materially affect the ability or the legal capacity of the bidder to carry out the procurement contract;
- (c) good standing with the Government and fulfilment of its obligations to pay taxes, licence fees and other fees or charges, including national insurance contributions, or conclusion of arrangements satisfactory to the Minister and the National Insurance Board to fulfil such obligations, if applicable;
- (d) integrity, including evidence that neither the bidder nor any beneficial owner, director, officer, manager or supervisor of the bidder has, within a period of three years preceding the date of issuance of the invitation to bid, been —
 - (i) convicted of any criminal offence, whether in The Bahamas or elsewhere —
 - (aa) relating to the bidder's or his professional conduct;
 - (bb) relating to the making of false statements or misrepresentations as to the bidder's or his qualifications to enter into a procurement contract;
 - (cc) involving dishonesty; and
 - (dd) under anti-corruption legislation; or
 - (ii) suspended or debarred by administrative or judicial proceedings from participating in procurements, whether in The Bahamas or elsewhere; or
- (e) any other documentary evidence to certify the potential bidder's eligibility.

39. Permitted criteria.

- (1) The procuring entity shall, in establishing the qualifications referred to in section 38, be limited to criteria designed to demonstrate that a bidder possesses —

- (a) the necessary professional and technical qualifications and competence;
 - (b) financial resources;
 - (c) equipment and other physical facilities;
 - (d) managerial capability; and
 - (e) experience in the procurement object of goods, works or services; and
 - (f) personnel.
- (2) The qualification criteria referred to in subsection (1) shall —
- (a) not be unduly restrictive or designed to reduce competition; and
 - (b) be prepared for each procurement taking into account the size, complexity and technical requirements of the proposed procurement contract.
- (3) The procuring entity shall not impose any requirement as to qualifications in the invitation to bid other than the qualification criteria specified in section 38.
- (4) This section shall govern entry, or the denial of entry, on or to any list or register of suppliers, consultants or contractors held by a procuring entity, and any system of pre-qualification, based on qualification criteria.

INVITATION TO BID

40. Invitation to bid.

An invitation to bid shall include —

- (a) the information required under section 37(4); and
- (b) requirements regarding —
 - (i) minimum bidding periods;
 - (ii) alternative bids;
 - (iii) development preference; and
 - (iv) provision of bid security.

41. Minimum bidding periods.

- (1) All bidding documents shall be made available upon publication of the invitation to bid.
- (2) Except for the direct award method of procurement, the bidding period shall commence on the date of the first publication and shall finish on the date of the bid submission deadline.

- (3) The minimum bidding period for each method of procurement shall be as prescribed.

42. Alternative bids.

- (1) Alternative bids shall not, except where specifically indicated in the bidding documents, be permitted.
- (2) A procuring entity may permit alternative bids where it is anticipated that bidders may be able to offer goods, works or services which, although they do not conform precisely to the description of requirements, meet the objectives of the procurement in an alternative manner.
- (3) Alternative bids may be permitted —
 - (a) in areas of rapidly changing technology or where a need could be satisfied in a number of different ways; and
 - (b) where the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.
- (4) The bidding documents shall, where alternative bids are permitted, state that the alternative bid does not need to conform precisely to the description of the procurement but the bid must —
 - (a) meet the objectives or performance of the procurement prescribed in the description of the procurement;
 - (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
 - (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of the procurement in terms of technical performance, price, operating costs or any other benefit.

43. Development preferences.

- (1) A margin of development preference may be applied to eligible bids —
 - (a) where so indicated in the bidding document; and
 - (b) strictly in accordance with any rules for development preference prescribed by regulations.
- (2) All bidding documents permitting a margin of development preference to be applied to eligible bids shall clearly state the —
 - (a) eligibility requirements for the margin of development preference in terms of ownership, location of bidder or production facilities, origin of labour, raw materials or components, extent of sub-contracting or association with local partners, or any other relevant factor;

- (b) documentation required as evidence of eligibility for the margin of development preference; and
 - (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (3) The Minister may by order specify the formula for calculating the development preference to be applied in evaluating bids.

44. Bid security.

- (1) A procuring entity —
- (a) may require a bid security in order to deter non-compliant bids and encourage bidders to fulfil the conditions of their bids; and
 - (b) shall include in the bidding documents any requirement for a bid security.
- (2) The procuring entity shall, in determining the amount of bid security required, take into account the —
- (a) cost to bidders of obtaining a bid security;
 - (b) estimated value of the procurement contract;
 - (c) risk of bidders failing to fulfil the conditions of their bids; and
 - (d) need for the amount of the bid security to be high enough to deter irresponsible bids but not so high as to discourage competition.
- (3) The bidding documents shall state that a bid security must be —
- (a) in accordance with the format and wording provided in the bidding documents;
 - (b) in a form acceptable to the procuring entity, including —
 - (i) a bank guarantee;
 - (ii) an equivalent instrument, such as a security issued by a insurance company or stand-by letter of credit;
 - (iii) property pledged by the bidder; or
 - (iv) alternative forms of bid security acceptable to the procuring entity and specified in regulations;
 - (c) from a financial institution acceptable to the procuring entity; and
 - (d) valid for a period of twenty-eight days after the expiry of the bid validity period, or for such other period as may be prescribed in the bidding documents.
- (4) A procuring entity may forfeit a bid security where there is a —
- (a) withdrawal of a bid after the deadline for submission of bids and during its period of validity;
 - (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;

- (c) failure by the successful bidder to sign a procurement contract in accordance with the terms set out in the bidding documents.
- (5) A procuring entity shall release the bid security to an unsuccessful bidder upon the earlier of the —
 - (a) expiry of the term of the security; or
 - (b) formation of a procurement contract with the successful bidder.

45. Performance security.

- (1) A procuring entity may request a performance security to secure the suppliers or contractor's obligation to fulfil the procurement contract and shall set out in the bidding documents and the procurement contract the requirements for such performance security.
- (2) The procuring entity shall, in determining the amount of performance security required, take into account —
 - (a) the cost to the supplier or contractor of obtaining a performance security;
 - (b) the value of the procurement contract;
 - (c) the risk of a contractor or supplier failing to fulfil his contractual obligations; and
 - (d) the extent of protection offered to the procuring entity through alternative means, such as payment retentions.
- (3) The value of a performance security may, where appropriate, be progressively reduced in line with the contractor's or supplier's progress in delivering or completing the goods, works or services to which the security relates.
- (4) The bidding documents and procurement contract shall state that the performance security must —
 - (a) be in accordance with the format and wording provided in the bidding documents;
 - (b) be in a form acceptable to the procuring entity;
 - (c) where the security is issued by a financial institution, be from an institution acceptable to the procuring entity; and
 - (d) be valid for the period prescribed in the procurement contract.
- (5) The conditions for forfeiture of the performance security shall be specified in the procurement contract.
- (6) The procuring entity shall authorize the release of the performance security promptly to the contractor or supplier upon —
 - (a) completion of all the contractor's or supplier's contractual obligations which are subject to the security; or

- (b) termination of the procurement contract for a reason that is not attributable to any fault of the contractor or supplier.

46. Request for proposals award, quality and cost selection.

- (1) The selection of the successful proposal in a request for proposals method of procurement shall be based on the —
 - (a) technical quality of the proposal, the consultant's relevant experience, the expertise of its staff, the proposed work methodology, and the price of the proposal;
 - (b) quality of the technical proposal submitted within a predetermined fixed budget; or
 - (c) best financial proposal submitted by the consultants that have obtained an acceptable technical score pre-disclosed in the request for proposals.
- (2) The method of selection and the criteria to be applied in the selection of the consultant shall be set out in detail in the request for proposals.
- (3) A consultant may be selected exclusively on the basis of the technical quality of the proposal where —
 - (a) the head of the procuring entity has approved the use of such method; and
 - (b) the services —
 - (i) are of a complex nature;
 - (ii) will have a considerable impact on future projects or national economy; or
 - (iii) may lead to the submission of proposals which are difficult to compare.

47. Amendment or withdrawal of bid.

- (1) A bidder may amend or withdraw a bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the date and time for the close of submission of bids.
- (2) The notice of amendment or withdrawal shall be submitted in the same manner as the original bid and clearly labelled "Amendment of Bid" or "Withdrawal of Bid" and shall comply with any additional directions, in the invitation to bid.

BID SUBMISSION AND OPENING

48. Submission of bids.

- (1) A bid shall be submitted before the deadline for submission of bids in written form, duly signed and sealed, in an envelope or electronically, whichever method has been specified.
- (2) All bids shall be accompanied by such supporting documents as may be prescribed in the bidding documents.
- (3) Bids received after the deadline for submission of bids shall be returned unopened or denied electronic access.
- (4) Invitations for pre-qualification and bidding documents shall permit the submission of applications to pre-qualify or bids by hand or mail, or by courier or electronically.
- (5) Bids shall remain valid for the period of time indicated in the bidding documents but modification or withdrawal of a bid during the bid validity period shall be subject to forfeiture of the bid security.
- (6) The procuring entity shall not extend, or be deemed to have extended, the validity period of a bid without the written agreement of the bidder concerned and, where a bidder agrees in writing to an extension of the validity period of its bid, the bid security where such security was required shall also be correspondingly extended.

49. Bid opening.

- (1) Bids shall be opened or accessed electronically, by the procurement unit or tender committee.
- (2) A bidder shall not, after the deadline for submission of bids and until the preliminary decision on award has been notified to the successful bidder, make any unsolicited communication to the procurement unit, the tender committee or the Board or attempt in any way to influence the examination and evaluation of the bids.

EXAMINATION AND EVALUATION OF BIDS

50. Examination and evaluation of bids.

- (1) The procurement unit or the tender committee shall, following the opening of bids, examine the bids in order to determine whether —
 - (a) the bids are complete and have been properly signed by the bidder or bidding entity;

- (b) the required documents to establish the legal validity of the bidder or the bidding entity and required bid security have been furnished; and
 - (c) the bids are responsive to the technical specifications, terms of reference, scope of work and contract conditions set forth in the bidding documents and other documents necessary for the procurement of goods, works and services.
- (2) A bid shall be rejected and excluded from further evaluation and comparison where the bid is —
 - (a) not complete or not properly executed;
 - (b) not accompanied by a bid security in the prescribed form where such security is required;
 - (c) not accompanied by valid supporting documents pursuant to section 48(2); or
 - (d) not responsive to the technical specifications or procurement contract conditions or to other critical requirements in the bidding documents.
- (3) If applicable, a bid received from an entity other than the pre-qualified bidders shall be rejected and excluded.
- (4) Bids not excluded from consideration pursuant to subsection (2) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (5) The procurement unit or the tender committee—
 - (a) may seek clarification in writing from any bidder to facilitate evaluation;
 - (b) subject to subsection (6) and section 51, shall not ask a bidder to change the price or any other aspect of the bid; and
 - (c) unless otherwise specified in the bidding documents, shall permit a bidder to modify or withdraw its bid prior to the deadline specified in the bidding documents without forfeiting its bid security.
- (6) The procuring entity may ask bidders to extend the period of effectiveness of bids specified in the bidding documents and to extend the period of effectiveness of their bid security.
- (7) A bidder responding to a request made pursuant to (6) above, may refuse to extend the period of effectiveness of its bid without forfeiting its bid security.
- (8) A bidder agreeing to extend the effectiveness of their bid in response to a request made pursuant to (6) above shall be required to extend the effectiveness of its bid security.

- (9) A bidder refusing to extend the effectiveness of its tender security or to provide new tender security to cover the period of extended effectiveness is considered to have refused to extend the period of effectiveness of its bid.
- (10) In a bid —
 - (a) where there is a discrepancy between the amount in words and the amount in figures, the amount in words shall prevail; and
 - (b) where a discrepancy is due to misplacement of decimal point, the mistake shall be rectified and the bidder notified.
- (11) During an evaluation, if price is a relevant factor as set forth in the bidding documents—
 - (a) minor deviations in a bid which did not merit rejection of the bid at an earlier stage, such as a minor variation, shall where possible be costed; and
 - (b) the evaluation cost of a bid referred to in paragraph (a) shall then be compared to those of other bids to determine the lowest evaluated bid.
- (12) If applicable, the qualifications of the lowest —
 - (a) evaluated bidder, shall be verified to take account of any change since the original pre-qualification;
 - (b) responsive bidder, shall be checked against the criteria specified in the bidding documents and, if that bid fails, the same check shall be applied to the next ranked bid.

51. Unsatisfactory bids.

- (1) Where the lowest responsive bid evaluated by the procurement unit or the tender committee exceeds the cost estimate or the available budget for the procurement contract the procuring entity shall investigate the cause for the excessive cost and —
 - (a) may consider requesting new bids; or
 - (b) subject to approval by the head of the procuring entity, may negotiate a satisfactory procurement contract with the highest evaluated bidder for a reduction in the scope of the goods, works or services and a reduction in the price of the procurement or an increase in the price of procurement.
- (2) Where the procuring entity is of the opinion that the price of a bid is abnormally low such that it gives rise to concerns as to the ability of the bidder to perform the procurement contract, the procuring entity shall request in writing from the bidder further details of the bid.

- (3) A procuring entity having taken into account any information provided by the bidder following a request under (2) is of the opinion that the bidder who presented the bid may lack the capacity to perform the procurement contract, the procuring entity may reject the bid.

52. Bidder debriefing.

- (1) A procurement unit or tender committee shall, upon request from any unsuccessful bidder and only following the award of the contract, advise the unsuccessful bidder of the reason for the rejection of his application to pre-qualify, or the reason for the rejection of his bid.
- (2) A debriefing shall —
 - (a) be provided in writing within fourteen days of the receipt of the request;
 - (b) state —
 - (i) at which stage of the evaluation the bid was rejected and provide brief details of any material deviation, reservation or omission leading to rejection of the bid; or
 - (ii) that a bid was responsive but was evaluated as unsuccessful based on the bidding criteria set forth in the bidding documents; and
 - (c) not provide details on any other bids, other than information that is publicly available from bid openings or published on the electronic procurement system.

CANCELLATION OF BIDS

53. Unsuccessful procurement procedures.

- (1) The procurement unit or tender committee, where no bids are received which are responsive to the procurement or the procurement is otherwise unsuccessful shall—
 - (a) investigate the failed procurement; and
 - (b) record in the procurement report the reasons why the procurement was unsuccessful and the course of action taken.
- (2) An investigation pursuant to subsection (1) shall consider all relevant issues, including whether —
 - (a) the bidding period was sufficient;
 - (b) the requirements of the bidding documents and the terms and conditions of the proposed procurement contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;

- (c) the procurement notice was published in an appropriate publication and on the required date;
 - (d) there was delay in issuing the bidding documents;
 - (e) any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
 - (f) there were other extraneous events or circumstances which may have affected the ability of bidders to respond;
 - (g) the evaluation process was conducted in accordance with this Act and the bidding documents;
 - (h) whether the tender committee had adequate skills and resources;
 - (i) there is any suspicion of collusion between potential bidders; and
 - (j) the original choice of method of procurement was appropriate.
- (3) The procurement unit or the tender committee shall, after completion of its investigation, take any appropriate action suggested by the cause or causes of failure including but not limited to —
- (a) the use of an alternative method of procurement;
 - (b) amendments to the bidding documents, including bidding requirements, the type of procurement contract, or the terms and conditions of the proposed procurement contract;
 - (c) alternative publication of any invitations to bid, procurement notices or bidding documents; and
 - (d) the introduction of international competition.

54. Disqualification.

A procurement unit or the tender committee shall disqualify a bidder if the procuring entity discovers—

- (a) that the information submitted by the bidder concerning the experience or the qualifications of the bidder is false or constitutes a misrepresentation;
- (b) that the bidder offers, gives or agrees to give, directly or indirectly, to any current or former officer, employee, or board member of an entity or other governmental authority —
 - (i) a gratuity in any form;
 - (ii) an offer of employment; or
 - (iii) any other thing of service or value,so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the procurement process;

- (c) that the bidder has an undisclosed conflict of interest that would be likely to impair the integrity of the procurement process;
- (d) the bidder engages in lobbying or communicating with anyone other than the designated contact person or otherwise violates the communication protocol established in the bidding documents while the procurement process is underway; or
- (e) the information submitted concerning the qualifications of the bidder is materially inaccurate or materially incomplete.

55. Cancellation of procurement.

- (1) A procurement shall be cancelled where the procurement unit or the tender committee makes a determination in writing that —
 - (a) the need for the procurement has ceased to exist or has changed significantly;
 - (b) insufficient funding is available for the procurement;
 - (c) there has been a significant change in the required technical details, bidding conditions, conditions of the procurement contract or other details making it necessary to commence a new procurement;
 - (d) insufficient or no responsive bids have been received;
 - (e) there is evidence of collusion among bidders; or
 - (f) cancellation is otherwise in the public interest.
- (2) Where the procurement is cancelled, all bids received, the performance security, if applicable and the bid security shall be returned.
- (3) Where a procurement is cancelled the procurement unit or the tender committee shall—
 - (a) issue a procurement cancellation notice setting out the reasons for the cancellation; and
 - (b) publish the procurement cancellation notice on the government website and on the electronic procurement system.

AWARD OF CONTRACT

56. Award of Contract.

- (1) The bidding documents in relation to a procurement shall contain the criteria that the procuring entity proposes to use to evaluate the bids received.
- (2) A procurement contract shall be awarded to the bidder who submitted the bid —

- (a) where the price is the sole evaluation criterion specified in the bidding documents, the lowest bid price;
 - (b) where the price and other evaluation criteria specified in the bidding documents are considered, the most advantageous combination on the basis of price and selected non-financial evaluation criteria or other parameters for evaluating bids as specified in the bidding documents; or
 - (c) where there are no financial criteria specified in the bidding documents, if the bid is the most advantageous bid ascertained on the basis of selected non-financial evaluation criteria or other parameters for evaluating bids as specified in the bidding documents.
- (3) The procuring entity shall, prior to the expiry of the bid validity period, give notice to the successful bidder of the proposed award of the procurement contract, specifying the time within which, subject to any intervening complaints filed,
 - (a) the procurement contract must be signed; and
 - (b) the performance security must be provided, if applicable.
- (4) The procuring entity shall, where a procurement contract is awarded by the competitive bidding process or restricted bidding, or has a value in excess of —
 - (a) five thousand dollars for goods and services; or
 - (b) ten thousand dollars for works, give notice to the other bidders specifying —
 - (i) the name and address of the proposed successful bidder;
 - (ii) the price of the procurement contract; and
 - (iii) that the procurement contract shall not be signed until at least fourteen calendar days have passed following the date of the notice.
- (5) The procurement unit or the tender committee, where the successful bidder fails to sign a procurement contract or to provide a required performance security within the time specified in the notice of award of the procurement contract, shall —
 - (a) accept the next ranked bidder from among the remaining bids that are in force; and
 - (b) in selecting the next ranked bidder, comply with the notice requirements of subsection (3).
- (6) A procurement contract that is required to be signed shall enter into force when the procurement contract is signed by the supplier, consultant, or contractor and by the procuring entity.

- (7) A procurement contract shall be signed by the head of a procuring entity or a person delegated by the head of such entity.
- (8) For the purposes of this section “bid validity period” means the period within which a bidder agrees to keep the offer binding.

57. Contract award notice.

- (1) The procuring entity shall publish within sixty days of the award of a procurement contract for goods, works and services, a notice of the award of the procurement contract in accordance with the requirements for procurement notices under section 36.
- (2) A notice published under subsection (1), shall include information on —
 - (a) the title of the bid;
 - (b) the name of the procuring entity;
 - (c) a brief description of the scope of the contract including the location of performance;
 - (d) the selection method of procurement;
 - (e) the awarded bidder's name and address;
 - (f) beneficial owners, if applicable; and
 - (g) the procurement contract price.
- (3) Any address required to be published pursuant to subsection (2), which is a private or residential address shall be redacted prior to publishing.

58. Beneficial owners of company to be published.

- (1) Subject to subsection (2), where a procurement contract awarded to a successful bidder is funded by the proceeds of any funding arrangement, loan facility, or other debt instrument between the Government and an international funding agency, the Ministry responsible for finance shall publish on its website within sixty days of the award of the procurement contract the name of each beneficial owner of the successful bidder.
- (2) At the commencement of the bidding process of a procurement contract which will be funded by the proceeds of any funding arrangement, loan facility, or other debt instrument with an international funding agency, the procuring entity shall notify all prospective bidders in the procurement notice that the names of each beneficial owner of any successful bidder will be published pursuant to subsection (1).
- (3) Notwithstanding any other laws, any successful bidder and each beneficial owner of a successful bidder shall be deemed to have consented to the publication of the name of such beneficial owner when accepting the procurement contract.

- (4) The names of each beneficial owner of any successful bidder of a procurement contract funded in the manner set forth in this section which was awarded prior to the commencement of this Act may only be published with the written consent of the successful bidder and of each beneficial owner thereof.

PART V – CHALLENGES AND APPEAL TRIBUNAL

PROCEDURE FOR COMPLAINTS

59. Complaints.

- (1) A potential bidder or actual bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act may at any stage apply by way of complaint to the procuring entity for a review of the procurement.
- (2) The procuring entity shall not process an application made pursuant to subsection (1) unless —
 - (a) the complaint which is the subject of the application is made in writing; and
 - (b) the complaint identifies the specific act of omission or commission alleged to contravene this Act and the bidding documents.
- (3) A procuring entity shall process a complaint by way of a review of the procurement where such complaint —
 - (a) concerns alleged improprieties in the solicitation of bids or applications to pre-qualify; and
 - (b) such alleged improprieties were not apparent prior to bid opening but have come to light after bid opening.

60. Procuring entity review procedure.

- (1) A complaint prior to the entry into force of a procurement contract shall be made by the bidder, in writing to the head of the procuring entity.
- (2) The head of the procuring entity shall not entertain a complaint made pursuant to subsection (1) unless the complaint was submitted within fourteen working days of the bidder becoming aware of the circumstances giving rise to the complaint.
- (3) The head of the procuring entity shall, unless the complaint is resolved by mutual agreement —
 - (a) suspend the procurement unless satisfied that urgent public interest considerations require the procurement to proceed;

- (b) review the complaint; and
- (c) within five working days after submission of the complaint, issue a written decision to the complainant stating the reasons the complaint has been rejected or, where the complaint is upheld, the corrective measures to be taken.

61. Appeal to Tribunal.

- (1) A bidder may appeal to the Tribunal where such bidder—
 - (a) has not been communicated a decision by the head of the procuring entity pursuant to section 60(3);
 - (b) is aggrieved by a decision of the head of the procuring entity made pursuant to section 60; or
 - (c) has a complaint in respect of the award of a procurement contract that has already come into force.
- (2) An appeal made to the Tribunal pursuant to subsection (1) shall be filed within ten working days of—
 - (a) the time limit for the procuring entity to render a decision and the procuring entity fails to render a decision;
 - (b) the communication to the bidder of the decision of the procuring entity; or
 - (c) the bidder becoming aware of the circumstances giving rise to the complaint.
- (3) Where a complaining bidder appeals to the Tribunal —
 - (a) the authority of the procuring entity or tenders committee to entertain his application ceases; and
 - (b) the procuring entity shall, upon receipt from the Tribunal of notice of the appeal, promptly provide the Tribunal with all documents relating to the procurement.
- (4) The President of the Tribunal shall within ten working days of receiving an appeal—
 - (a) appoint a panel to hear the matter;
 - (b) fix a date for the hearing of the appeal; and
 - (c) publish a notice of appeal on the government website and the electronic procurement system.

62. Panel decisions.

- (1) A panel of the Tribunal shall give a written decision, and shall give reasons for the decision, within ten working days after the conclusion of its deliberations.

- (2) A decision of a panel of the Tribunal shall be —
 - (a) communicated promptly to the complaining bidder, the procuring entity, and any other relevant participants in the procurement; and
 - (b) binding on all the parties.
- (3) An appeal may be dismissed for —
 - (a) failure to comply with any of the prescribed requirements;
 - (b) containing only obligations that do not —
 - (i) state a valid basis for a complaint; or
 - (ii) set out a detailed legal and factual statement;
 - (c) having been filed in an untimely manner —
 - (i) at the initial level of review by the procuring entity; or
 - (ii) with respect to deadlines for filing of an application with the Tribunal;
 - (d) being concerned with the implementation or administration of the procurement contract rather than the award of the procurement contract.
- (4) A panel of the Tribunal may, after considering the appeal dismiss the appeal or make an order—
 - (a) prohibiting the procuring entity from acting or deciding in an unauthorized manner or from following incorrect procedure;
 - (b) revoking in whole or in part any unauthorized act or decision of a procuring entity, other than an act or decision bringing the procurement contract into force;
 - (c) reversing a decision by the head of a procuring entity, or substituting its own decision for such a decision, other than a decision bringing the procurement contract into force.
- (5) Subject to subsection (6), the submission of an appeal within the time periods specified in this Act shall suspend the procurement until a decision is issued by the panel of the Tribunal.
- (6) The President of the Tribunal may upon the application of the procuring entity end the suspension of the procurement pursuant to subsection (5) where the procuring entity satisfies the President that the continuation of the suspension of the procurement would cause disproportionate harm to —
 - (a) the public interest;
 - (b) the procuring entity; or
 - (c) other suppliers, consultants and contractors.
- (7) The lifting by the President of a suspension pursuant to subsection (6) shall —

- (a) permit the procuring entity to continue with the procurement up to the award of the procurement contract; and
 - (b) not permit a contract to be concluded before a decision is made by the Tribunal panel.
- (8) The panel of the Tribunal shall in all cases ensure that all parties to a dispute are heard and given fair opportunity to make their case.

63. Appeals on a question of law to the Court of Appeal.

- (1) A bidder who is aggrieved by a decision of the Tribunal may appeal the decision of the Tribunal, on matters of law only to the Court of Appeal.
- (2) The Notice of Appeal must be filed within twenty-one days after the notice of the decision is given.
- (3) An appeal to the Court of Appeal shall be limited to grounds stated in the Notice of Appeal unless the Court in its discretion permits the grounds to be amended.

PART VI – DEBARMENT PROCEDURE

64. Interpretation of Part.

For the purposes of this Part —

“**debarment**” or “**debar**” means exclusion from eligibility to be awarded a procurement contract under this Act;

“**suspension**” means a temporary status of ineligibility for procurement transactions, pending completion of an investigation or legal proceedings.

65. Suspension.

Where the Chief Procurement Officer determines on the recommendation of a procuring entity or the Department, that immediate action is necessary to protect the interest of the Government, the Chief Procurement Officer may suspend a bidder from participating in any procurement where there is adequate evidence that there may be a cause for debarment pursuant to section 66.

66. Debarment.

- (1) The Financial Secretary may debar a bidder —
 - (a) if that bidder is convicted or has a civil judgement against them for —
 - (i) commission of fraud or a criminal offence in connection with —

- (aa) obtaining;
 - (bb) attempting to obtain; or
 - (cc) performing a public contract or subcontract;
 - (ii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, non-payment of tax, violating tax laws, or receiving stolen property; or
 - (b) commission of any other offence indicating a lack of business integrity or business honesty that seriously and directly affects the bidder's present responsibility;
 - (c) upon a preponderance of evidence for —
 - (i) violation of the terms of a procurement contract, procurement subcontract or a public agreement so serious as to justify debarment including but not limited to —
 - (aa) willful failure to perform in accordance with the terms of a procurement contract; or
 - (bb) a history of failure to perform, or of unsatisfactory performance of a procurement contract;
 - (ii) failure by an officer or director of a company, within three years after final payment on any procurement contract, to timely disclose credible evidence of —
 - (aa) commission of fraud or bribery;
 - (bb) significant overpayment on the procurement contract;
 - (d) based on a determination by the Department of Immigration or the Office of the Attorney-General that the bidder is in contravention of the Immigration Act (*Ch. 191*);
 - (e) based on any other cause of so serious or compelling a nature that it affects the present responsibility of the person; or
 - (f) submitting multiple bids in contravention of section 34.
- (2) A bidder shall not be suspended or debarred unless —
- (a) he is given written notice of the grounds for his suspension or debarment; and
 - (b) he is given a reasonable opportunity to respond to the grounds for suspension or debarment within fourteen days following the receipt of the notice.

67. Period of debarment.

- (1) Debarment shall be for a period commensurate with the seriousness of the cause but shall not exceed three years.

- (2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (3) A bidder may appeal his suspension or debarment to the Tribunal.

68. Procedure for suspension or debarment.

The procedure for suspension or debarment of a bidder shall be prescribed in regulations.

PART VII - MISCELLANEOUS

69. Confidentiality.

- (1) A procuring entity shall not disclose any information relating to the content of pre-qualification applications and bids, or the examination, clarification, evaluation or comparison of bids to —
 - (a) suppliers, consultants, or contractors; or
 - (b) any other person not involved in the examination, evaluation or comparison of a bid or in making the decision whether the bid should be accepted.
- (2) No person employed in a procuring entity, or a member of the tender committee or a member of the Board shall disclose to any other person any information obtained with respect to the procurement of goods, works or services.
- (3) A person in possession of or control over any document or information relating to any business or transaction of the procuring entity, the tender committee or the Board shall not communicate or attempt to communicate any information contained in that document or pass on the document to any person other than a person authorized under this Act to receive the document.

70. Conflicts of interest.

- (1) A person employed in a procuring entity or a member of a tender committee or a member of the Board who has any conflict of interest in any procurement, or a member of the Tribunal who has any conflict of interest in any appeal before the Tribunal shall—
 - (a) disclose his interest as soon as possible after becoming aware of the procurement or of the appeal; and
 - (b) recuse himself from the evaluation and award of the procurement contract or the appeal.

- (2) The disclosure of interest shall be recorded in the records of the procurement or the records of the appeal.
- (3) Subsections (1) and (2) shall apply to technical evaluation advisers and to employees of the Department who provide secretarial services to the Board.
- (4) For the purposes of this section “conflict of interest” means any situation where a person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure;

71. Offences.

- (1) No person shall, with intent to gaining any advantage or concession for himself or any other person —
 - (a) offer any member of the Board or a member of a tender committee or any employee of the Board or any employee of a procuring entity or any employee of the Department or any consultant or any person providing service under this Act, a gift of money or other thing;
 - (b) approach any member of the Board, the tender committee or any officer under this Act with respect to any matter that is before the Board or a tender committee or that is expected to come before the Board or tender committee;
 - (c) being employed in a procuring entity, a member of the Board, the tender committee or any officer under this Act, fail to disclose his interest in a procurement contract pursuant to section 70(1)(a) or to recuse himself pursuant to section 70(1)(b).
- (2) No person shall solicit or accept any gift of money, a benefit or other inducement which is intended directly or indirectly —
 - (a) to influence the vote at any meeting of the Board; or
 - (b) to influence the Board or any member of the Board or tender committee with respect to any matter that is before the Board or tender committee or that is expected to come before the Board or tender committee.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to a term of imprisonment for twelve months or to both.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.
- (5) Where a person who commits an offence under subsections (1) and (2) is a corporate body, every director or officer who knowingly or negligently

authorized or conspired with another person to commit the offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both such fine or imprisonment.

72. Tampering with records or other documents.

Any person who—

- (a) falsifies, destroys, injures, defaces, removes or conceals any record, or document required to be kept under this Act; or
- (b) certifies any document to be a copy or extract of any record or document knowing such document to be false in a material particular, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.

73. Offence involving collusion.

A person who—

- (a) is involved in or participates in falsifying a bid; or
- (b) directly or indirectly influences or attempts to influence a procurement in order to obtain an unfair advantage in the award of a procurement contract,
- (c) solicits or accepts a gift, benefit or inducement or an offer of a gift, benefit or inducement by a bidder or prospective bidder or an agent of a bidder or prospective bidder for any planned or ongoing procurement that may have the effect of directly or indirectly influencing a procurement, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.

74. Procurement and contract management record.

- (1) A procuring entity shall maintain for a period of seven years from the date of completion of performance under a procurement contract or from the date of the rejection of the bids or from the date of the cancellation of the bids, a record of —
 - (a) the procurement; and
 - (b) the management of the procurement contract.
- (2) A procurement record shall include —
 - (a) any request to initiate the procurement and the consistency of the request with the procurement plan;

- (b) a statement of the reasons and circumstances relied on to justify the use of the method of procurement used by the procuring entity in the procurement;
 - (c) a copy of any procurement notice published;
 - (d) a list of suppliers to whom a request for quotations or a request for expressions of interest were sent directly;
 - (e) any short list of bidders or list of pre-qualified bidders used;
 - (f) a copy of any pre-qualification document issued and any amendment or clarification to the pre-qualification document;
 - (g) a record of the submissions received;
 - (h) a record of the opening of bids;
 - (i) copies of all bids evaluated, and any clarification requested from a bidder and the response to the request for clarification;
 - (j) any evaluation report prepared, including any report prepared in respect of applications for pre-qualification;
 - (k) the minutes of any meeting held with bidders;
 - (l) a copy of the award of procurement contract notice;
 - (m) a copy of any submissions made to the tender committee;
 - (n) a copy of the decision of the procuring unit, the tender committee, the Board or Cabinet with respect to the procurement;
 - (o) any decision to cancel the procurement and the reasons for the decision to cancel the procurement;
 - (p) any decision to suspend or debar a bidder and the reason for the decision;
 - (q) any application for review of the procurement and the decision made with respect to the application for review; and
 - (r) any appeal to the Tribunal and the decision of the Tribunal.
- (3) A procurement contract management record shall include—
- (a) a copy of the executed procurement contract;
 - (b) minutes of any meeting related to the management of the procurement contract, including procurement contract progress or review meetings;
 - (c) all documents evidencing delivery of goods or completion certificates in relation to procurement contracts for works or services;
 - (d) copies of reports relating to any tests performed on the good or works;
 - (e) copies of all invoices received by the procuring entity and details of all payments made by the procuring entity;

- (f) details of any claims made, or penalties imposed by the procuring entity in accordance with the procurement contract; and
 - (g) all correspondence between the procuring entity and the bidder.
- (4) Procurement records and contract management records shall be accurately maintained and kept current and may be in electronic form.
- (5) Where procurement and contract management records are in electronic form, the procuring entity shall establish and maintain measures to safeguard the integrity and the reliability of the records.

75. Annual report.

- (1) The Financial Secretary shall cause an annual report to be prepared by the Chief Procurement Officer before the 1st day of April of each year on the overall functioning of the public procurement system and a report on all procurements.
- (2) The annual report shall contain —
- (a) a summary of all procurement contracts awarded by the procuring entities;
 - (b) the purpose of the procurement contracts;
 - (c) the value of the procurement contracts;
 - (d) the date of the award of the procurement contract;
 - (e) the aggregate value of the procurement contract awarded;
 - (f) the information contained in the periodic report by procuring entities to the Financial Secretary;
 - (g) a summary of all procurement contracts awarded by public bodies.
- (3) Where the Minister, in the interest of national defence or national security determines that the details of the award of any procurement contract shall not be contained in the annual report, the Minister shall disclose —
- (a) the number of procurement contracts awarded;
 - (b) the procuring entity awarding the procurement contracts; and
 - (c) the aggregate value of the procurement contracts.

76. Minister to lay annual report.

- (1) The Minister shall by the first sitting of the House of Assembly after the laying of the budget in the month of July of each year cause the annual report of the Department to be laid before both chambers of Parliament together with the Minister's assessment of the work of the department for the relevant financial year.
- (2) The Minister, after laying the annual report in Parliament shall, publish the annual report on the electronic procurement system.

77. Non-derogation.

Nothing in this Act shall derogate from the provisions of the Public Finance Management Act,.

78. Regulations.

The Minister may make regulations generally providing for any matter to give effect to the objectives of this Act and without prejudice to the generality of this section may make regulations including but not limited to —

- (a) a code of conduct in respect of —
 - (i) procuring entities and procurement units;
 - (ii) bidders; and
 - (iii) contractors, consultants, and suppliers;
- (b) a form of procurement plan to be utilized by procuring entities;
- (c) fees payable for the submission of bids under the Act;
- (d) the establishment, management and operation of the electronic procurement system;
- (e) the procedure for establishing and maintaining the records of procurement of goods, work and services;
- (f) prescribing the forms, the standard bidding documents, the standard procurement contracts documents, the pre-qualification documents and other documents necessary for the procurement of goods, works and services;
- (g) the form and manner for registering on the electronic procurement system;
- (h) the thresholds for the award of contracts;
- (i) the rules for development preference;
- (j) the rules for minimum bidding periods;
- (k) alternate forms of bid security;
- (l) the procedure for hearing of reviews and appeals to the Tribunal;
- (m) the procedure for procuring entities to make report of procurements to the Chief Procurement Officer;
- (n) the procedure for suspension and debarment of a bidder; and
- (o) the procedure, manner or form of procurement carried out by public bodies under section 5;
- (p) procurement practices which promote environmental sustainability.

79. Repeals.

The Public Procurement Act, 2021 (*No. 7 of 2021*) is repealed.

80. Transitional.

- (1) Where the bidding process for any goods or service commenced before the coming into force of this Act the process shall continue as if it started under this Act and where the method of procurement that was used is not provided for under this Act that bidding process shall cease and restart using the most appropriate procurement method provided for under this Act.
- (2) Where a procurement contract is executed before the coming into force of this Act and the procurement contract subsists, this Act shall apply to the procurement contract as if that procurement contract were executed under this Act, except that this Act shall not adversely affect the rights of any party to the contract.

FIRST SCHEDULE

(section 11)

(1) Procedures of the Board.

- (a) Subject to the Act and any regulations made the Act, the Board may regulate its meetings and procedure as the Board thinks fit.
- (b) The Board shall have such structures and organization as the Minister may determine necessary for the efficient performance of its functions.

(2) Tenure of members.

The Chairperson and other Board members, not being ex officio members, shall hold office for a fixed term of three years and shall be eligible for reappointment except for the appointment of the permanent secretary of a Government Ministry members appointed pursuant to section 11(2).

(3) Compensation of members.

Board members should be paid such remuneration, fee, allowance or reimbursement for expenses incurred in connection with the discharge of their functions as the Minister may determine.

(4) Quorum.

The quorum at a meeting of the Board shall be four excluding the secretary.

(5) Meetings.

- (a) The Board shall meet as needed but no less than quarterly.
- (b) The Board shall cause minutes of all its meetings to be taken by the secretary to the Board, signed by the Chairperson, and kept in the proper form as a public document.

(6) Voting.

Each Board member excluding the secretary shall have one vote but the Chairperson shall, where there is an equality of votes, have a casting vote.

SECOND SCHEDULE

(sections 5 & 23)

PART I

PROCUREMENT VALUATION RULES

- (1) For the purposes of estimating the value of a procurement, the estimated value shall —
 - (a) be cost-effective, transparent and a fair use of public moneys;
 - (b) take into account —
 - (i) published national and international prices;
 - (ii) other official indicative prices;
 - (iii) local market prices;
 - (iv) prices of previous procurement contracts; or
 - (v) prices collected through the electronic procurement system;
 - (c) be based on a comparison between the references in paragraph (1) (b), whenever they exist, with a cost analysis of the relevant technical specifications of the goods, works or services to be procured;
 - (d) include any applicable taxes, duties and other charges separate from the prices of the goods, works and services and labour; and
 - (e) include reasonably foreseeable elements of the ultimate price to be paid.
- (2) Where procurement is to be conducted in multiple lots with procurement contracts to be awarded at the same time or over a given period to one or more suppliers, the calculation of the estimated value must be based on the estimated total maximum value of all lots making up the procurement.
- (3) With regard to the procurement of works, calculation of the estimated value shall take into account both the cost of all works and the total estimated value of the goods and services necessary for executing the works.
- (4) With regard to the procurement of services, calculation of the estimated value shall take into account all forms of remuneration, including any

- premiums, fees, commissions, interest and other revenue streams that may be provided for as appropriate.
- (5) Where the procurement is by lease, including hire-purchase or rental or does not specify a total price, the basis for valuing the procurement is —
- (a) for a fixed-term contract where the term is twelve months or less, the total estimated contract value for the contract's duration;
 - (b) for a fixed-term contract where the term exceeds twelve months, the total estimated contract value including the estimated residual value that is payable at the end of the contract; or
 - (c) for a contract for an indefinite period or where there is doubt as to whether the contract is to be fixed-term, the estimated monthly instalment multiplied by forty-eight.
- (6) Where the procurement contains an option for extension of the procurement contract for additional deliveries or services for the same price and under the same conditions, the basis for calculating the estimated procurement value must be the highest possible total permitted for the purchase, lease, rental or hire purchase options included.
- (7) Procuring entities shall not use a particular method for estimating the value of a procurement for the purposes of lowering the estimated contract value below any relevant procurement threshold value in order to avoid the application of any relevant procurement procedure.

PART II PRINCIPLES OF PROCUREMENT

(1) Accountability.

Effective mechanisms must be in place in order to enable officers and tender committees responsible for procurement in the procuring entity to discharge their personal responsibility on issues of procurement risk and expenditure.

(2) Competitive Supply.

Public procurement must be carried out by competitive process unless specifically justified in accordance with this Act or Government policy.

(3) Effectiveness.

Procuring entities should maximise the contribution to the commercial, regulatory and socio-economic goals of Government in a balanced manner appropriate to the procurement requirement.

(4) Value for Money.

The procurement processes should be carried out to achieve the most advantageous combination of cost, quality and sustainability over the life cycle of the procurement contract.

(5) Fair-dealing.

Suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. public sector entities should not impose unnecessary burdens or constraints on suppliers or potential suppliers.

(6) Integration.

Procurement policy should pay due regard to its impact on the Cabinet's other economic and social policies.

(7) Integrity.

There shall be no corruption or collusion with suppliers or other persons involved in a procurement process.

(8) Informed decision-making.

Procuring entities are required to base decisions on accurate information and are required to monitor obligations to ensure that they are being met.

(9) Legality.

Procuring entities shall conform to legal requirements.

(10) Responsiveness.

Public sector entities should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.

(11) Transparency.

Public sector entities should ensure that there is openness and clarity in the conduct of the procurement policy including in the carrying out of all actions and decisions.

THIRD SCHEDULE

(section 27)

THRESHHOLDS FOR INTERNATIONAL BIDDING

In the case of a works contract	Six million, five hundred thousand dollars
In the case of a goods contract and a contract for non-consultancy services.	One hundred and fifty-five thousand dollars

