

COMMONWEALTH OF DOMINICA

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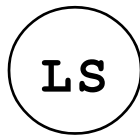
SIXTH SCHEDULE Challenge and Review Procedure

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COMMONWEALTH OF DOMINICA

ACT NO. 14 OF 2021.

I assent



CHARLES A. SAVARIN

President

8th December, 2021

AN ACT TO MODERNISE PUBLIC PROCUREMENT IN DOMINICA AND TO PROVIDE FOR THE RETENTION AND DISPOSAL OF PUBLIC PROPERTY, IN ACCORDANCE WITH THE PRINCIPLES OF GOOD GOVERNANCE, TO ESTABLISH THE PUBLIC PROCUREMENT BOARD AND THE PROCUREMENT REVIEW COUNCIL AND FOR RELATED MATTERS; AND TO REPEAL THE PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT, CHAP. 63:06.

(Gazetted 9th December, 2021.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PRELIMINARY

1. (1) This Act may be cited as the –

Short title and
commencement.

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(2) This Act shall come into force on such day as the Minister may appoint by Order published in the *Gazette*.

Interpretation.

2. In this Act –

“bid” means an offer submitted by a bidder to a procuring entity in response to an invitation and includes any bid, quotation or proposal;

“bidder” means a natural or legal person or a consortium or joint venture of several legal persons who participate in procurement proceedings conducted by a procuring entity ;

“bidding documents” means a document issued by a procuring entity, including the invitation to bid, bidding documents, request for quotations or request for proposals and any amendments thereto, that set out the terms and conditions of the given procurement;

“bid security” means a security required to be submitted by a bidder, in an acceptable form as prescribed, to a procuring entity to secure the fulfilment of the bidder’s obligations under its bid;

“Board” means the Public Procurement Board established under section 9;

“Chief Procurement Compliance Officer” means the public officer appointed under section 8;

“coercion” means impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence the actions of a party improperly;

“collusion” means an arrangement among two or more parties, before or at any stage during the procurement proceedings, designed to manipulate the procurement proceedings, establish bid prices at artificial, non-

competitive levels or deny the procuring entity of the benefits of free and open competition;

“consultant” means a natural or legal person who provides consulting services to a procuring entity;

“consulting services” means services of an advisory or intellectual nature provided by individuals or firms using their professional or technical skills in advising procuring entities, typically providing expert policy, management or strategic advice, conducting design services, feasibility studies, project management, engineering services, communications, finance and accounting services, training and development or the transfer of knowledge;

“contractor” means a person who concludes a procurement contract with a procuring entity for the provision of works or services;

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value, whether tangible or intangible, to influence or attempt to influence improperly the actions or decisions of another person in the prequalification, registration, procurement proceedings, or procurement contract execution, or the disposal of public property;

“day” means a calendar day;

“disposal of public property” includes the sale, lease, concession, transfer without value or other alienation of public property;

“domestic bidder” means a bidder that is a legal entity that is registered in Dominica or a natural person who is a citizen of Dominica;

“electronic means of communication” means the use of electronic equipment, including digital compression and storage of

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data, which are transmitted, conveyed and received by wire, wirelessly, radio or by optical or other electromagnetic means;

“electronic reverse auction” means the procurement method referred to in section 55;

“framework agreement” means an agreement between one or more procuring entities and one or more suppliers, contractors or consultants, valid for a specified period of time, which establishes the terms and

conditions under which specific procurements can be made during the term of the agreement at prices which may either be predetermined at the time of award of the framework agreement or determined at the stage of the actual procurement through competition;

“fraudulent practice” means any act or omission or misrepresentation of fact that knowingly or recklessly misleads or attempts to mislead another party to influence procurement proceedings or the execution of a procurement contract to the detriment of a procuring entity or to obtain financial or other benefit or avoid an obligation;

“goods” means objects of every kind and description, including commodities, raw materials, agricultural crops, computer software, software licences, products and equipment and objects in solid, liquid or gaseous form, as well as services and works incidental to the supply of goods, if the value of these incidental services and works does not exceed the value of the goods themselves;

“head” in relation to a procuring entity means in the case of –

(a) a Ministry, the Permanent Secretary;

(b) a department of Government, the head of the

department; and

(c) a statutory corporation or other public body, the head of the statutory corporation or public body;

“ineligibility list of bidders” means the list maintained by the Financial Secretary under section 7(1(d));

“intra-government procurement” means the acquisition by one procuring entity from another procuring entity of any goods, works, services or consulting services;

“invitation” means an invitation to bid, a request for quotations or a request for proposals;

“limited competitive bidding” means the procurement method referred to in section 52;

“local content” means labour, goods, works and services or consulting services, originating in Dominica;

“micro, small and medium-sized bidders” has the meaning prescribed;

“Minister” means the Minister responsible for finance;

“municipal authority” means a city council, town council, urban council, village council or the Kalinago Territory Council established by written law for local Government purposes;

“Oath of Confidentiality” means the Oath of Confidentiality required to be taken under section 22 and set out in the First Schedule;

First Schedule.

“open competitive bidding” means the procurement method referred to in section 51;

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“performance security” means a security required to be submitted by a successful bidder, in a prescribed form, to a procuring entity as a condition of the award of a procurement contract to secure the fulfilment of the bidder’s performance of obligations under such procurement contract in accordance with section 44(9);

“prescribed” means prescribed in Regulations;

“prescribed procurement method threshold” means the prescribed financial limit or limits which govern the use of the procurement methods specified in Part III;

“procurement and property disposal officer” means a person who has the functions referred to in section 17;

“procurement contract” means a written agreement between a procuring entity and a supplier, consultant or contractor with respect to public procurement resulting from procurement proceedings and includes an agreement evidenced by the issue of a purchase order or a call-off order under a framework agreement;

“procuring entity” means a public body charged with the responsibility to procure goods, works, services or consulting services;

“Procurement Procedures Manual” means the manual prescribed under section 86 (2)(b);

“procurement proceedings” means all activities relating to the invitation of prequalification applications, assessment of prequalification applications, prequalification of bidders, invitation to participate in procurement, submission, opening and evaluation of bids, quotations or proposals and the award by a procuring entity of a procurement contract for goods, works, services or consulting services;

“prohibited practice” means a practice or conduct that is prohibited under section 78;

“public body” means a ministry, department of Government, statutory corporation or municipal authority;

“public officer” has the meaning assigned in section 2 of the Public Service Act or any Act replacing it;

Chap. 23:01.

“public procurement” means the purchase, lease, rental of goods, works, services or consulting services by a procuring entity;

“public procurement website” means the dedicated website to be established and maintained by the Ministry of Finance in accordance with section 7(1)(j);

“public property” means property owned by the State but does not include real property;

“Regulations” means regulations made under this Act;

“request for proposals” means the procurement method referred to in section 54;

“request for quotations” means the procurement method referred to in section 53;

“Review Council” means the Procurement Review Council established under section 61;

“services” means services of a physical or technical nature resulting in the production of measurable outputs for which performance standards can be clearly defined and consistently applied;

“single source procurement” means the procurement method referred to in section 56;

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“standard bidding documents” means the prescribed standardised documents;

“standstill period” means a period of no less than fourteen days, starting from the date of issuance of a notice of intention to award a procurement contract, as required by section 44(4);

“supplier” means a person that provides goods or services to a procuring entity;

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, road or other structure, such as site preparation, excavation, erection, building, installation of equipment or materials, as well as services incidental to construction, such as drilling, mapping, satellite, photography, seismic investigations and similar services, which do not exceed the value of the construction; and

“written” or “in writing” means any expression consisting of words, figures or drawings which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

Purposes.

3. (1) The purposes of this Act are –

- (a)* to clarify and modernise public procurement;
- (b)* to maximize economy, efficiency and value for money in public procurement;
- (c)* to promote competition in public procurement;
- (d)* to encourage broad participation of suppliers, contractors and consultants in public procurement proceedings;

- (e) to provide for the fair and equitable treatment of all bidders participating in public procurement procedures;
- (f) to promote economically, environmentally and socially sustainable public procurement;
- (g) to ensure transparency in the procedures relating to public procurement;
- (h) to promote integrity and fairness in public procurement and thus increase public confidence in public procurement;
- (i) to ensure accountability in the conduct of public procurement proceedings; and
- (j) to promote the long-term industrial development of Dominica.

4. (1) Subject to subsection (4), this Act applies to – Application.

- (a) every public body; and
- (b) the procurement of goods, works, services or consulting services financed in whole or in part from public funds.

(2) Where there is a conflict between this Act or regulations made under this Act and any other law of Dominica in matters relating to public procurement, this Act shall prevail.

(3) Where the procurement of goods, works, services or consulting services is funded in whole or in part by a donor on the condition or on the understanding that Dominica uses or causes to be used the procurement procedures of the donor or the

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procurement procedures approved or agreed to by the donor, the procurement shall be conducted in accordance with the procurement procedures of the donor or, as the case may be, the procurement procedures approved or agreed to by the donor.

(4) Every procuring entity shall ensure that its procurement activities and decisions comply with this Act and Regulations.

Exemptions.

5. (1) This Act does not apply to –

- (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
- (b) the procurement of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the procurement or acquisition of fiscal agency or depositary 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;
- (c) the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time;
- (d) arbitration and conciliation services;
- (e) public employment contracts;
- (f) research and development services the purpose of which is to create a prototype product not intended for commercial exploitation;

- (g) works of art and cultural performances or products associated with creative expressions, for the express purposes of official functions;
- (h) goods and services relating to the staging of official national productions in support of or associated with creative expressions and cultural events, including, but not limited to artistic co-ordination, direction and management; the management of artistic works or events; the management of intellectual property rights; venue rental; infrastructure and technical effects; design and technical direction of cultural performances; and the engagement of artistes and performers;
- (i) services by medical professionals;
- (j) hospitality or catering services;
- (k) medallions and insignias to be used pursuant to the Meritorious Service Honours Act;
- (l) goods, works or services of a type involving security considerations for the President or the Prime Minister;
- (m) goods, works, services or consulting services of a type involving national defence or national security considerations;
- (n) services relating to the management of employee pension funds;
- (o) postal services;
- (p) procurement of utility services, i.e., electricity, telecommunications and piped water where such

Chap. 19:09.

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services are supplied by a public monopoly as legislated under national law;

- (q) goods, services and works by embassies and consulates overseas;
- (r) intra-government procurement; and
- (s) legal services.

PART I

ADMINISTRATION

Division 1 Minister of Finance

Responsibilities of the
Minister of Finance.

6. (1) The Minister of Finance is responsible for –

- (a) formulating policy relating to public procurement;
- (b) formulating and making regulations, directives, procedures and guidance for the implementation of this Act.

(2) The Minister shall approve or, as the case may require, deny applications from procuring entities for authorisation to proceed with the award of a procurement contract without a standstill period on the basis of urgent public interest considerations, in accordance with section 44 (7).

Division 2 Financial Secretary

Responsibilities of the
Financial Secretary.

7. (1) The Financial Secretary is responsible for –

- (a) informing and proposing policy formulation, legislative and regulatory actions, revisions and amendments thereto for the better implementation

of public procurement, retention and disposal of public property;

- (b) proposing thresholds to govern the use of procurement methods for prescription in Regulations;
- (c) providing policy guidance, advice and interpretation to procuring entities, the Board, the Review Council, procurement and property disposal officers and Bid Evaluation Committees, as the case may require, to facilitate the effective implementation of their functions and discharge of their responsibilities in accordance with this Act and Regulations;
- (d) preparing and maintaining a public access ineligibility list of bidders, suppliers, consultants and contractors who have been suspended or debarred from participation in procurement proceedings by the Board under section 10(2)(d);
- (e) establishing and maintaining a public access register of eligible, qualified bidders, in accordance with section 30;
- (f) creating and maintaining a register of qualified mediators and arbitrators for the purposes of alternative dispute resolution under this Act;
- (g) creating and maintaining a register of qualified independent valuers in relation to the disposal of public property;
- (h) preparing a Procurement Procedures Manual setting out detailed guidance and procedures for the performance of procurement and disposal of

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public property, for the purposes of section 86(2)(b);

- (i) preparing handbooks, rules of procedure, directives and other mandates governing procurement and disposal of public property, procedural forms and formats and other documents for use in public procurement and the disposal of public property, for the purposes of section 86(2)(c);
- (j) disseminating, by means of a dedicated, public-access public procurement website, information about the functioning of the public procurement and property disposal system, as may be prescribed, to procuring entities, bidders and the general public;
- (k) providing a designated electronic government procurement system for use by procuring entities;
- (l) monitoring and reviewing the functioning of the public procurement system to ensure compliance with this Act.

(2) The Financial Secretary may charge a fee for accessing the registers referred to in subsection (1)(e), (f) and (g).

(3) A fee charged under subsection (2) shall reflect only the cost of providing the relevant service.

(4) The Financial Secretary may require any procuring entity, procurement and property disposal officer or member of a Bid Evaluation Committee to furnish him or her with any information or documentation that the Financial Secretary considers necessary for the purposes of subsection (1).

Division 3 Chief Procurement Compliance Officer

8. (1) There shall be a Chief Procurement Compliance Officer who shall be a public officer.

Responsibilities of Chief Procurement Compliance Officer.

(2) Except in the case of procurement proceedings conducted by a statutory corporation, the Chief Procurement Compliance Officer has the following responsibilities in respect of procurement proceedings for contracts with an estimated cost, calculated in accordance with section 25, fall within Thresholds B and C, as specified in the Second Schedule –

Second Schedule.

- (a) undertaking a review of the documentary record of the procurement proceedings conducted by a procuring entity prior to the procuring entity's issuing a notice of intention to award a procurement contract under section 44(4) or, where no standstill period applies, prior to the procuring entity's award of the procurement contract;
- (b) where the Chief Procurement Compliance Officer determines that the procurement proceedings as conducted by a procuring entity comply with the relevant provisions of this Act or Regulations and no standstill period applies the Officer shall –
 - (i) in the case of a public procurement within Threshold B indicate in writing that he confirms the compliance of the procurement proceedings with this Act and the Regulations and approve the procuring entity's recommendations for the award of the procurement contract in accordance with this Act and the Regulations; or
 - (ii) in the case of a public procurement within

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Threshold C indicate in writing that he confirms the compliance of the procurement proceedings with this Act and the Regulations and refer the matter to the Board; or

- (c) where the Chief Procurement Compliance Officer determines that the procurement proceedings conducted by the procuring entity do not comply with the relevant provisions of this Act or Regulations and where a standstill period applies, decline to indicate his confirmation of compliance to the procuring entity's issuance of the intention to award the procurement contract or, where no standstill period applies, to the award of the procurement contract and advise the procuring entity in writing of the measures to be taken by the procuring entity to bring the procurement proceedings into compliance with this Act or Regulations.

(3) Except in the case of procurement proceedings conducted by a statutory corporation, the Chief Procurement Compliance Officer may require any procuring entity, procurement and property disposal officer or a member of a Bid Evaluation Committee to furnish him with any information or documentation that the Chief Procurement Compliance Officer considers necessary for the purposes of subsection (2).

(4) The Chief Procurement Compliance Officer may, in relation to any matter or class of matters, delegate in writing to any other person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed on the Chief Procurement Compliance Officer by this Act other than the power of delegation conferred by this subsection.

Division 4 Public Procurement Board

9. (1) There is hereby established a Public Procurement Board.

Establishment of Public Procurement Board.

(2) The Board shall consist of the following members, appointed by the Minister, by instrument in writing:

- (a) a Chairperson, who shall be a person competent and knowledgeable in public procurement whether from within or outside of the public service,
- (b) a legal officer from the Ministry responsible for legal affairs nominated by the Attorney General;
- (c) a public officer from the Ministry of Finance nominated by the Financial Secretary;
- (d) a public officer from the Ministry responsible for public works, nominated by the Permanent Secretary of the Ministry; and
- (e) no more than two public officers from other Ministries which undertake significant procurement activity.

(3) The Chairperson shall preside at all meetings of the Board and, if the Chairperson is absent from a meeting, the members present shall elect another member to preside at the meeting.

(4) The Chairperson and other members of the Board shall hold office for a period of three years and are eligible for reappointment.

(5) The office of a member of the Board becomes vacant if the member –

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- (a)* dies;
- (b)* resigns by instrument in writing addressed to the Minister and transmitted through the Chairperson;
- (c)* is absent from meetings of the Board for a continuous period exceeding three months;
- (d)* is unable to perform the functions of the office due to illness;
- (e)* ceases to become a member by reason of revocation of membership under subsection (7);
or
- (f)* ceases to be a public officer.

(6) A vacancy on the Board shall be filled in the same manner as set out in subsection (2).

(7) The Minister shall revoke the membership of a member of the Board if the member –

- (a)* becomes bankrupt;
- (b)* is convicted of an offence under this Act;
- (c)* has engaged in or is engaging in conduct which, in the opinion of the Minister, disqualifies the member from holding office, including conduct reasonably considered to be prejudicial to the interest of the Board; or
- (d)* otherwise fails to carry out the functions of the office in accordance with this Act and Regulations.

(8) The quorum at a meeting of the Board shall be three

members and decisions shall be taken by majority vote.

(9) The Board shall meet as often as may be necessary for the performance of its functions, but at least twice every month, and such meetings shall be held at such place, subject to subsection (13), and at such times and on such days as the Board may determine.

(10) The Board shall cause minutes of all its meetings to be taken by the Secretariat, and signed by the Chairperson and kept in a proper form; and the Board shall submit a copy of meeting minutes to the Financial Secretary within three working days of the conclusion of each meeting.

(11) Each member of the Board shall have one vote in the decision-making processes of the Board but, in the event of an equality of votes, the Chairperson shall have the casting vote.

(12) The Board may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Board.

(13) Any proposal circulated among all members of the Board and agreed to in writing by a majority of the members shall be of the same force or effect as a decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board.

(14) The Board shall communicate its decisions in writing, together with the reasons for its decisions, with respect to the approval of the award of procurement contracts and disposal of public property to the relevant procuring entity through the Secretariat within three working days of the conclusion of the meeting at which the decision of the Board is taken.

(15) The Ministry of Finance is responsible for providing an appropriate meeting venue, equipment and machinery and

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other supplies necessary for the performance of the functions of the Board.

(16) In addition to the signature of the Chairperson and any other member authorised by decision of the Board to act on behalf of the Chairperson, the seal of the Board shall be used to authenticate documents and decisions of the Board, and the seal shall be kept in the custody of the Chairperson or any other member authorised by the Chairperson.

Responsibilities of the Board.

10. (1) The Board shall promote and facilitate the attainment of the purposes of this Act specified in section 3.

(2) Without limiting the generality of subsection (1), the Board shall –

- (a) assess the functioning of public procurement and disposal of public property and make proposals to the Minister, through the Financial Secretary, for improving its efficiency and effectiveness, as necessary;
- (b) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold C, as specified in the Second Schedule, following confirmation of compliance provided by the Chief Procurement Compliance Officer under section 8(2), examine recommendations made to it by a procuring entity for the award of procurement contracts or disposal of public property;
- (c) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold C, as specified in the Second Schedule, following confirmation of compliance provided by the Chief Procurement

Second Schedule.

Compliance Officer under section 8(2), approve or, as the case may require, deny or endorse recommendation made by procuring entities for the award of procurement contracts or the disposal of public property;

(d) examine and decide on the suspension or debarment of bidders based on applications made to the Board under the procedure established in section 80;

(e) review appeals against debarment decisions, in accordance with the Fifth Schedule;

Fifth Schedule.

(f) not later than three months after the end of each financial year, submit an annual report on the functioning of public procurement and disposal of public property under this Act to the Minister, through the Financial Secretary, in the manner prescribed; and

(g) perform any other functions assigned to it under this Act or Regulations.

(3) The Board may co-opt expertise on an ad-hoc basis, from the private or public sector, as it sees fit, in the performance of its functions and remuneration for such expertise shall be as approved by the Minister.

(4) In the performance of its functions, the Board shall have the power to –

(a) call for and examine such records, documents or information and take and retain copies or extracts of them as it may require from any procuring entity;

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(b) perform all other acts as it may consider incidental or conducive to the exercise of its functions.

Secretariat.

11. The Financial Secretary shall designate a secretary from the Ministry of Finance to perform any administrative duties that may be necessary or desirable in the performance of the functions of the Board.

Remuneration.

12. The Chairperson and the other members of the Board shall be paid a stipend in connection with the discharge of their functions as the Minister determines.

Procedure.

13. The Board shall regulate its meetings and procedure as it considers appropriate.

Seal.

14. There shall be a common seal of Board which shall –

(a) be in a form determined by the Board;

(b) be kept in custody as directed by the Board; and

(c) not be used except as authorised by the Board.

*Division 5
Procuring Entities*

Responsibilities of
procuring entities.

15. Except where otherwise specifically provided for in this Act, procuring entities shall conduct public procurement of goods, works, services and consulting services and disposal of public property in accordance with this Act and Regulations.

Responsibilities of head
of procuring entity.

16. (1) The head of a procuring entity has overall responsibility for the conduct of all public procurement and disposal of public

property by the procuring entity in compliance with this Act and Regulations.

(2) Without limiting the generality of subsection (1), the head of a procuring entity shall –

- (a) ensure that all public procurement and property disposals are conducted in accordance with this Act and Regulations;
- (b) set up Bid Evaluation Committees under section 18(1);
- (c) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Second Schedule, approve the recommendation for the award of procurement contracts as made by a procurement and property disposal officer under section 17(3)(h);
- (d) in respect of procurement contracts whose estimated value, calculated in accordance with section 25, fall within Thresholds B or C, as specified in the Second Schedule, endorse the recommendation for the award of procurement contracts as made by Bid Evaluation Committee under section 19(2) and submit to the Chief Procurement Compliance Officer for review in accordance with section 8(2);
- (e) sign all procurement contracts awarded by a procuring entity in accordance with section 44.

Second Schedule.

Second Schedule.

17. (1) A procuring entity shall be adequately staffed with one or more public procurement and property disposal officers whose

Procurement and property disposal officers.

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qualifications, competence and professional certification shall meet the prescribed standards.

(2) A procurement and property disposal officer shall perform –

- (a) the day-to-day public procurement and property disposal activities of the procuring entity in compliance with this Act and Regulations; and
- (b) any other function required under this Act.

(3) Without prejudice to the generality of subsection (2), a procurement and property disposal officer is responsible for carrying out the following public procurement and property disposal activities:

- (a) preparation of a procurement plan in accordance with the requirements of section 24;
- (b) publish invitations to participate in procurement in accordance with the requirements of section 31;
- (c) prepare and distribute bidding documents, requests for quotation, and requests for proposals in accordance with section 32;
- (d) respond to requests for clarification of invitations to bid, bidding documents, requests for quotation and requests for proposals documents in accordance with section 34;
- (e) receive and safeguard bids, quotations and proposals;

- (f) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Second Schedule, conduct the opening of bids, quotations and proposals, in accordance with section 38;

Second Schedule.
- (g) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Second Schedule, carry out the evaluation of bids, quotations and proposals in accordance with section 39;

Second Schedule.
- (h) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Second Schedule, prepare and submit procurement contract award recommendations for approval by the head of the procuring entity;

Second Schedule.
- (i) ensure that procurement contracts are performed in accordance with procurement contract terms and conditions;
- (j) debrief unsuccessful bidders in accordance with section 47;
- (k) initiate suspension or debarment proceedings in accordance with section 80;
- (l) prepare and submit to the Financial Secretary,

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through the head of the procuring entity, quarterly reports on the procuring entity's procurement and property disposal activities no less than two weeks after the end of each quarter;

(m) undertake procurement contract administration with appropriate technical input and support from the staff of the procuring entity;

(n) manage the performance of suppliers, contractors and consultants under procurement contracts awarded by the procuring entity;

(o) maintain Inventory Registers in accordance with the Part XIV of the Finance and Audit Act; and

(p) undertake disposal of public property in accordance with this Act.

Chap. 63:01.

Bid Evaluation Committees.

18. (1) A procuring entity shall, in order to evaluate bids, quotations and proposals, set up an ad hoc bid evaluation committee consisting of at least three persons, who, except in the case of a statutory corporation, shall be public officers, selected on the basis of their relevant procurement, technical, financial or legal expertise.

(2) A procuring entity may engage the services of an external technical expert in the subject matter of the procurement to support the bid evaluation committee.

Functions of Bid Evaluation Committees.

19. (1) In respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold B or C, as specified in the Second Schedule, the bid evaluation committee shall evaluate bids, proposals or quotations applying only those criteria that are specified in the bidding documents, in accordance with section 39, and in the manner set

out in the bidding documents.

(2) The bid evaluation committee shall prepare and submit to the head of the procuring entity an evaluation report –

(a) detailing the examination and evaluation of bids;
and

(b) making recommendations for the award of procurement contracts.

(3) The bid evaluation committee shall arrive at its recommendations by consensus.

(4) The Minister may issue guidance governing the functioning of bid evaluation committees.

Division 6 Miscellaneous

20. All procurement related functions shall be carried out by trained and knowledgeable staff in accordance with the prescribed standards and qualification requirements.

Qualifications.

21. (1) A procurement and property disposal officer or other staff of a procuring entity is not personally liable for any act done or default, in good faith, in the performance of their functions under this Act.

Protection of staff of procuring entity.

(2) A procurement and property disposal officer or other staff of a procuring entity shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because –

(a) the officer, acting in good faith and on the basis of a reasonable belief, has:

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- (i) notified the Director of Audit, the Police, the Financial Secretary or other authority that his employer or any other person has contravened or is about to contravene this Act; or
- (ii) done or stated the intention of doing anything that is required to be done in order to prevent a person from contravening this Act; or
- (iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or
- (b) the officer's employer or any other person believes that the officer will do something described in paragraph (a).

Confidentiality.

22. All public officers, members of the Board and any committee established under section 18 and the Review Council and any other person conducting procurement proceedings on behalf of the Government shall take the Oath of Confidentiality.

Declaration of interest.

23. (1) A procurement and property disposal officer, member of the Board or a bid evaluation committee or any public officer who is involved in the conduct of the procurement proceedings or may influence the outcome of the proceedings and who has a direct or indirect financial, economic or personal interest in a matter under consideration by the procuring entity or the Board which might compromise or be perceived to compromise their impartiality and independence in the context of the procurement proceedings, such that it might damage the integrity or fairness of the procurement proceedings as required under section 3(h), shall disclose the fact of his or her interest in writing to the Financial Secretary without delay and shall not participate in the consideration of, or vote on, any question relating to the matter.

(2) A procurement and property disposal officer, member of the Board or a committee or any person who fails to disclose

his or her interest in accordance with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars and imprisonment for three months.

PART II

GENERAL PROCUREMENT PROVISIONS

24. (1) A procuring entity shall, before the beginning of each financial year, prepare an annual procurement plan in the prescribed form for all its forecast public procurement during the financial year for the purpose of determining the entity's annual procurement requirements with reference to –

Procurement planning.

- (a) its operational requirements for goods, works, services and consulting services;
- (b) its available financial resources;
- (c) the required delivery times for goods and completion times for works, services and consulting services; and
- (d) the benefits which are planned to accrue to the procuring entity from the planned procurement.

(2) Without limiting the generality of subsection (1), a procuring entity shall, before commencing the procurement of goods, works, services or consulting services –

- (a) plan the quantity and quality of its procurement requirements to meet but not to exceed its operational requirements;
- (b) prepare a detailed cost estimate for each procurement in accordance with the rules on procurement contract valuation in section 25;

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Chap. 63:02.

- (c) other than in the case of public procurement conducted by a statutory corporation, commit the amount of the total estimated cost of its procurement requirements in the budget of the procuring entity in accordance with the Finance (Administration) Act and Finance Regulations;
- (d) plan to procure its requirements using the most appropriate procurement method as specified in Part III;
- (e) record the justification for each use of a procurement method other than open competitive bidding in the record of procurement proceedings; and
- (f) record its justification for the use of prequalification or two-stage bidding.

(3) A procuring entity shall retain all documents relating to the determination of its annual procurement requirements and its annual procurement plan in its record of procurement proceedings.

(4) A procuring entity shall, not less than fourteen days after the beginning of each financial year arrange for the publication of its annual procurement plan on the public procurement website in the prescribed form.

(5) A procuring entity shall ensure that, to the fullest extent practicable, all public procurement is conducted in accordance with its annual procurement plan.

Procurement contract valuation.

25. (1) A procuring entity shall neither package nor divide its procurement requirements nor use a particular valuation method to limit competition among bidders or otherwise avoid its obligations under this Act.

(2) A procuring entity shall, in estimating the value of procurement, include the estimated maximum total value of the procurement contract, or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

(3) Notwithstanding subsection (1), a procuring entity may divide a procurement requirement into lots within a single procurement transaction in the interests of promoting social sustainability in accordance with any measures prescribed under section 86(2)(a)(xiii) or in the interests of promoting the participation of domestic micro, small and medium-sized bidders in public procurement in accordance with any measures prescribed under section 86(2)(a)(xv).

26. (1) A procuring entity shall, in the procurement of goods, works or services, set out in the bidding documents a detailed description of the subject matter of the procurement that it will use in the evaluation of bids, including the minimum requirements that bids must meet in order to be considered responsive and the manner in which those minimum requirements will be applied in the evaluation of bids.

Description of
procurement
requirements.

(2) The description of the subject matter of the procurement shall –

- (a) meet the essential operational needs of the procuring entity;
- (b) define the required technical and performance characteristics of the requirement; and
- (c) to the fullest extent practicable, be objective, functional, generic and measurable.

(3) A procuring entity may include in the description of

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the subject matter of the procurement the specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labelling or conformity certification which may be based on appropriate national standards or building codes where such standards exist or, in their absence, on appropriate regional or international standards.

(4) A procuring entity shall not include in the description of the subject matter of the procurement a particular brand name, trademark, trade name, patent, design or type, process offered by a specific bidder, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as “or equivalent” are included in the description of the requirement.

(5) A procuring entity may, in furtherance of the objective of promoting economically, environmentally and socially sustainable public procurement in accordance with section 3(f), require goods, works or services to conform with appropriate national, regional or international sustainability standards, certifications or accreditations, including materials or manufacturing processes used in the production of the goods, works or services.

(6) A procuring entity shall, in the procurement of consulting services, set out in the bidding documents a detailed description of the services, including their scope and objectives, the terms of reference, which shall be compatible with the available budget, and the expected outputs. The bidding documents shall also clearly define the respective responsibilities of the procuring entity and the consultant in the performance of the consulting services.

Participation of bidders.

27. (1) A procuring entity shall not deny the participation of a bidder in the procurement proceedings on the basis of their nationality, except where the procuring entity decides to limit participation to domestic bidders within the threshold prescribed under section 86(2)(a)(xvi).

(2) A procuring entity shall not establish any requirement aimed at limiting participation of bidders in procurement proceedings that discriminates against or among bidders or against any category of bidders, except when so authorised or required under this Act or Regulations.

(3) A procuring entity shall, at the time of inviting bidders to participate in procurement proceedings, declare whether participation of bidders is limited and shall disclose the grounds for the limitation.

(4) Where a procuring entity makes a declaration under subsection (3), the procuring entity shall not alter the declaration later.

(5) A procuring entity that decides to limit the participation of bidders in the procurement proceedings under this section shall include a statement of the reasons and circumstances on which it relied in the record of procurement proceedings.

(6) A procuring entity shall make available to any person, on request, its reasons for limiting the participation of bidders in procurement proceedings under this section.

28. (1) A procuring entity may specify such of the following qualification criteria as it considers appropriate and relevant to the circumstances of the particular procurement contract in evaluating the qualifications of bidders:

Qualifications of
Bidders.

- (a) that the bidder has the legal capacity to enter into a procurement contract;
- (b) that the bidder has the necessary professional, technical and environmental qualifications and competence, financial resources, equipment and other physical facilities, personnel, managerial

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capability, reliability, successful general and specific experience relevant to the procurement contract;

- (c) that the bidder is not insolvent, in receivership, bankrupt, having its business activities suspended or under winding-up or administration by a court or judicial officer; and is not subject to any legal proceedings for any of the foregoing reasons;
- (d) that the bidder has fulfilled all its obligations to pay all applicable taxes, duties and social contributions, rates or payments due to the Government as at the time of submission of its bid; and
- (e) that neither the bidder nor any of its directors or officers have been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations with respect to their qualifications to enter into a procurement contract within a period of two years preceding the commencement of procurement proceedings, or have not been otherwise been suspended or debarred under section 80.

(2) A bidder shall meet all of the qualification criteria specified by the procuring entity in order to be evaluated as qualified.

(3) A procuring entity may require a bidder to provide information or documentary evidence, including records of past performance, which is necessary for the procuring entity to satisfy itself that the bidder is qualified, in accordance with the qualification requirements referred to in subsection (1), to perform the procurement contract successfully.

(4) A procuring entity shall ensure that all qualification criteria to be applied to assessing the qualifications of bidders are set out in the prequalification documents or bidding documents and are applied equally to all bidders.

(5) A procuring entity shall not impose a criterion, requirement or procedure with respect to the qualifications of bidders other than those provided for in this Act.

(6) A procuring entity shall evaluate the qualifications of bidders in accordance with the qualification criteria, requirements and procedures set out in the prequalification documents or bidding documents.

(7) A procuring entity shall require a bidder that was prequalified under section 29 to demonstrate its qualifications again, in accordance with the same criteria used to prequalify the bidder, prior to the award of procurement contract.

(8) A procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again if requested to do so under subsection (7).

(9) The procuring entity shall promptly notify each bidder requested to demonstrate its qualifications again under subsection (7) as to whether or not the bidder has done so to the satisfaction of the procuring entity.

29. (1) A procuring entity may, in the procurement of goods, works or services, prior to the invitation to bid, conduct prequalification of bidders to identify qualified bidders in the case of –

Prequalification of bidders.

(a) large or complex procurement contracts;

(b) custom-designed equipment or plant;

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- (c)* specialized services;
- (d)* complex information technology systems;
- (e)* procurement under turnkey design and build procurement contracts; or
- (f)* management contracting.

(2) Section 28 applies to the prequalification of bidders.

(3) When the procuring entity undertakes prequalification of bidders, it shall cause an invitation to prequalify to be published in accordance with the requirements of section 31.

(4) A procuring entity shall ensure that an invitation to prequalify includes the following information:

- (a)* the name and address of the procuring entity;
- (b)* a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, the required time for the supply of the goods, the completion of the construction or the provision of the services;
- (c)* the criteria, requirements and procedures to be used for establishing the qualifications of bidders, in conformity with section 28;
- (d)* the means and location by which interested bidders may obtain the prequalification documents;

- (e) the fee, if any, to be charged by the procuring entity for the prequalification documents, as well as the currency and means of payment of the fee; and
- (f) the manner, place and deadline for submitting applications to prequalify and, if already known, the manner, place and deadline for submitting bids, in conformity with section 38.

(5) A procuring entity shall provide a set of prequalification documents to every bidder that requests them in response to the invitation to prequalify and that pays the fee, if any, charged by the procuring entity for those documents.

(6) A fee charged under subsection (5) shall reflect only the cost of producing the documents and providing them to bidders.

(7) A procuring entity shall ensure that the prequalification documents include the following information:

- (a) instructions for preparing and presenting prequalification applications;
- (b) any documentary evidence or other information that bidders must present to demonstrate their qualifications;
- (c) the name, functional title and address of one or more officers or employees of the procuring entity who are authorised to communicate directly with and to receive communications directly from bidders in connection with the prequalification proceedings without the intervention of an intermediary;

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(d) references to this Act and Regulations and other laws and regulations directly pertinent to the prequalification of bidders, and the place where those laws and regulations may be found; and

(e) any other requirements that may be established by the procuring entity in conformity with this Act and Regulations relating to the preparation and presentation of applications to prequalify and to the prequalification of bidders.

(8) A procuring entity shall not, when assessing the qualifications of a bidder, take into consideration the qualifications of other firms such as its subsidiaries, parent entities, affiliates, subcontractors or any other firm that is different from the firm that submitted the prequalification application.

(9) Notwithstanding subsection (8), a procuring entity may consider the qualifications of specialised subcontractors in the assessment of the qualifications of a bidder, if this consideration is specifically permitted in the prequalification documents.

(10) A procuring entity shall specify the deadline for bidders to request clarification of the prequalification documents and for the procuring entity to respond to bidders' requests for such clarifications in the prequalification documents.

(11) The procuring entity shall respond to any requests received from a bidder for clarification of the prequalification documents within a reasonable time prior to the deadline for the submission of applications to prequalify and the time period provided shall be sufficient to enable the bidder to present its application to prequalify in a timely manner.

(12) Where a procuring entity provides a response to a request for clarification under subsection (10), the procuring

entity shall, without identifying the source of the request, communicate the response simultaneously and in writing to all bidders to which the procuring entity has provided the prequalification documents.

(13) The procuring entity shall take a decision with respect to the qualifications of each bidder presenting an application to prequalify.

(14) A procuring entity shall apply only the criteria and procedures set out in the invitation to prequalify and in the prequalification documents in making a decision under subsection (13).

(15) All bidders that fully meet the qualification criteria shall be prequalified.

(16) A procuring entity shall promptly notify each bidder that submitted an application to prequalify whether or not it has been prequalified and, in so doing, shall communicate to each bidder that has not been prequalified the reasons for its failure to prequalify.

(17) A procuring entity shall make available to any person, upon request, the names of all bidders that have been prequalified.

(18) A procuring entity shall invite all prequalified bidders to submit a bid in the subsequent procurement proceedings.

30. (1) The Financial Secretary may establish and maintain a register of qualified bidders that qualify for different categories of procurement that may commonly be required by multiple procuring entities.

Register of Bidders.

(2) The Financial Secretary shall, in the operation of a register established under subsection (1), invite applications to register from bidders by giving wide publicity in accordance with

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section 31 and shall register all bidders who meet the qualification requirements in the prescribed manner and in compliance with the criteria set out in the bidder registration document.

(3) The Financial Secretary shall update the register by allowing bidders to apply for registration on a continuous basis and by publicly inviting applications to register, in accordance with section 31 at least once a year.

(4) The Financial Secretary shall maintain continuous publication of the updated register of qualified bidders on the public procurement website as prescribed.

Publication of
invitations to participate
in public procurement.

31. (1) A procuring entity shall publish an invitation to prequalify or to bid under open competitive bidding, request for proposals or electronic reverse auction on the public procurement website, in the *Gazette* and in a national newspaper of wide circulation in Dominica and in any other prescribed publications.

(2) Where the estimated cost of a procurement contract, calculated in accordance with section 25, exceeds the prescribed procurement method threshold below which participation may be limited to domestic bidders, the procuring entity shall, in addition to publication in accordance with subsection (1), publish an invitation to participate in the procurement internationally in the prescribed manner.

(3) A procuring entity shall not be required to publish an invitation under subsection (2) in procurement proceedings where the estimated cost of the procurement falls below the prescribed thresholds at which participation in public procurement may be limited to domestic bidders or where, due to the low estimated cost of the procurement, only domestic bidders are likely to be interested in participating.

(4) Where a procuring entity uses the limited competitive bidding procurement method to conduct the procurement proceedings, the procuring entity shall directly invite bids from all

bidders from which the subject matter of the procurement requirement is available.

(5) Where a procuring entity uses the request for quotations procurement method to conduct the procurement proceedings, the procuring entity shall directly request quotations from as many bidders as practicable, but no fewer than three.

(6) Notwithstanding subsection (5), where a procuring entity is unable to identify a minimum of three bidders to invite to submit quotations, it shall seek approval from the Chief Procurement Compliance Officer before issuing the request for quotations to fewer than three bidders.

(7) Where a procuring entity uses the single source procurement method to conduct the procurement proceedings, the procurement entity shall invite a proposal or price quotation directly from a single bidder.

(8) A procuring entity shall extend an invitation to participate in procurement proceedings in the prescribed form.

32. (1) A procuring entity shall ensure that bidding documents contain the following information:

Contents of bidding documents.

- (a) a description of the procurement requirement in accordance with section 26, in the case of the procurement of –
 - (i) goods, the quantity, technical specifications, required time and place of delivery;
 - (ii) works, the scope and nature of the works, bills of quantities and materials or schedule of activities, location and work programme and schedule for the completion of the works;

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- (iii)* consulting services, the scope and objective of the services, terms of reference, definition of the range of skills to be provided by the consultant and proposed number of staff months or the estimated cost of the procurement contract;
- (b)* the procedure and time limits for submission by bidders of a request for clarification of the bidding documents;
- (c)* the time, date, place and manner for the submission of bids;
- (d)* the required form, amount and principal terms and conditions of any required bid security;
- (e)* the criteria to be used in the evaluation of bids and the manner in which the criteria will be applied, including any proposed margin of domestic preference, in accordance with section 39(3);
- (f)* the terms and conditions of the procurement contract; and
- (g)* any other prescribed information.

Single-envelope and
two-envelope bids.

33. (1) Where a procuring entity has determined that it is essential to evaluate the technical and commercial aspects of the bids before evaluating prices, the procuring entity may invite bids in two envelopes as follows:

- (a)* the first envelope shall form the technical component of the bid, containing the technical, performance and quality components of the bid, as well as the commercial terms and conditions; and

(b) the second envelope shall form the financial component of the bid, containing the bid price and other financial information.

(2) Where the procuring entity has determined that all the components of the bids should be evaluated together, the procuring entity shall invite bids containing the technical, commercial and financial components of the bid in one envelope.

(3) Where a procuring entity invites bids under subsection (1), the procuring entity shall ensure that the technical and commercial components of the bids are opened and evaluated first and, followed by the opening and evaluation of the financial component of the bids that have been evaluated as technically responsive to the requirements of the bidding documents.

34. (1) A bidder may, in writing, seek clarification of the bidding documents from the procuring entity prior to the deadline for submission of bids.

Clarification of bidding documents.

(2) A procuring entity shall ensure that the time limits within which a bidder may seek clarification of the bidding documents and within which the procuring entity must respond to the request for clarification are specified in the bidding documents.

(3) A procuring entity shall ensure that the response to a request for clarification of bidding documents is communicated in writing simultaneously to all bidders without identifying the source of the request for clarification.

35. (1) A procuring entity may issue a modification to the bidding documents in writing at any time prior to the deadline for submission of bids.

Modification of bidding documents.

(2) If a procuring entity considers it necessary, the procuring entity shall postpone the deadline for submission of bids

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in order to provide bidders with adequate time to take into account the contents of a modification under subsection (1) in the preparation of their bids.

Bid securities.

36. (1) Where, in the procurement of goods, works or services, a procuring entity requires bidders to provide a bid security, the procuring entity shall ensure that –

- (a) the requirement to provide a bid security applies equally to all bidders; and
- (b) the required form, amount and principal terms and conditions of the bid security are specified in the bidding documents.

(2) When a procuring entity requires bidders to provide a bid security, the procuring entity may, in the bidding documents, require that the issuer of the bid security shall be acceptable to the procuring entity.

Time limits for submission of bids.

37. (1) A procuring entity shall take the following matters into account when fixing the period of time provided to bidders to submit their bids:

- (a) the time reasonably required by bidders to prepare and submit their bids;
- (b) the complexity and estimated cost of the procurement requirement; and
- (c) the objective of promoting competition in accordance with section 3(c).

(2) A procuring entity shall calculate the period of time provided to bidders to submit their bids from the date of publication of the invitation to bid or, where no invitation to bid is published,

from the date of issuance of the bidding documents.

(3) A procuring entity shall provide all bidders with the same period of time to submit their bids.

(4) A procuring entity shall ensure that the minimum time period provided to bidders for submission of their bids is not less than the minimum periods specified in the Third Schedule.

Third Schedule.

38. (1) A procuring entity shall open all bids at the time and date and in the specified location for the submission of bids, which shall be specified in the bidding documents.

Bid submission and opening.

(2) A procuring entity shall open bids in public and all bidders have the right to attend the public opening of the bids.

(3) A procuring entity shall -

(a) open in public all bids received by the deadline for submission of bids;

(b) read aloud and record the name of each bidder that submitted a bid, the total bid price of each bid, any discounts offered in the bid, the presence and amount of any required bid security and the same information relating to any alternative bid offered if such has been requested or permitted by the bidding documents; and

(c) record the information disclosed under (a) and (b) in the record of public opening in the prescribed form.

(4) A procuring entity shall not discuss the merits of any bid or reject any bid that has been received by the deadline for submission of bids during the public opening of the bids.

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(5) A procuring entity shall not consider bids submitted after the deadline for submission of bids and shall return such bids unopened to the submitting bidder.

(6) A procuring entity shall promptly send a copy of the record of public bid opening to all bidders whose bids were opened during the public opening of bids.

(7) When a procuring entity is procuring consulting services the procuring entity shall –

(a) use a single-stage procedure in accordance with section 57(1) and invite two-envelope bids in accordance with section 33(1);

(b) require bidders to submit the technical and financial components of their bids simultaneously by the deadline stipulated in the bidding documents in accordance with subsection (1);

(c) during the public opening of bids, open only the envelope containing the technical component of each duly submitted bid; and

(d) following the evaluation of the technical components of the bids, conduct a second public bid opening, at which it shall publicly open the envelopes containing the financial components of those bids that have been evaluated as technically response, read aloud the technical scores of those bids, open the envelopes containing the financial components of those bids and read aloud the prices of those bids and record them in the record of public opening.

(8) Notwithstanding subsection (2), a procuring entity is not required to open bids in public if the procurement contract is

awarded as a result of the use of the request for quotations procurement method or the single source procurement method.

39. (1) A procuring entity shall ensure that the evaluation criteria used in the evaluation of bids, quotations or proposals relate to the subject matter of the procurement.

Evaluation criteria.

(2) Evaluation criteria may include the following:

- (a) price;
- (b) the cost of operating, maintaining and repairing goods or works;
- (c) the time for delivery of goods, completion of works or provision of services;
- (d) the characteristics of the subject matter of the procurement, such as the functional characteristics, environmental or sustainability characteristics of the goods, works or services;
- (e) the terms of payment and of guarantees in respect of the subject matter of the procurement;
- (f) in the procurement of consulting services, the experience of the bidder relative to the procurement requirement, the technical quality of its proposed methodology and the qualifications of its key staff, such requirement being evaluated using rated criteria; and
- (g) where relevant, the experience, reliability and professional and managerial competence of the bidder and of the personnel to be involved in providing the subject matter of the procurement.

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(3) Where a procuring entity considers it necessary the procuring entity may specify trials, the testing of samples or other additional methods of evaluation of the technical aspects of a bid, if the additional methods are disclosed in the bidding documents and the procuring entity shall maintain a written record of the trials or testing of samples in the procurement records in the prescribed manner.

(4) Where a procuring entity uses the open competitive bidding procurement method internationally –

(a) the procuring entity may afford a margin of preference for the benefit of bids offering to supply domestically-produced goods or using domestic labour or service; and

(b) the margin of preference must be calculated in the prescribed manner; and the procuring entity shall disclose the margin of preference in the bidding documents and record it in the record of the procurement proceedings.

(5) A procuring entity shall ensure that, as far as practicable, all non-price evaluation criteria are objective and quantifiable.

(6) A procuring entity shall all disclose criteria to be used in the evaluation of bids and the manner in which they are to be applied in the bidding documents.

(7) Where applied, a procuring entity shall disclose the relative weights to be attached to each evaluation criterion in the bidding documents.

(8) A procuring entity shall use only those evaluation criteria disclosed in the bidding documents in the evaluation of bids and shall apply them strictly in accordance with the method of

application specified in the bidding documents.

40. A procuring entity shall reject a bid if –

Rejection of bids.

- (a) the bidder is not qualified;
- (b) the bid is not substantially responsive in that it contains a material deviation from or reservation to the terms, conditions, specifications or requirements of the bidding documents as prescribed;
- (c) the bidder is suspended or debarred under section 80.
- (d) the bidder or any director, principal officer of the bidder or any agent acting on behalf of the bidder has engaged in coercion, collusion, corrupt practice or fraudulent practice;
- (e) the bid has been determined to be abnormally low in accordance with section 41;
- (f) the bidder has a conflict of interest, in accordance with the Regulations, that materially affects fair competition or impedes the bidder's diligent performance of the procurement contract or framework agreement or is prejudicial to the interests of the procuring entity; or
- (g) in the procurement of consulting services, the technical component of the bid fails to achieve the minimum technical evaluation score specified in the bidding documents or if it is not responsive to a critical requirement set out in the bidding documents.

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Rejection of abnormally
low bids.

41. (1) Subject to subsection (2), a procuring entity may, in the procurement of goods, works and services, reject a bid if it has determined that the price, in combination with other constituent elements of the bid, is abnormally low in relation to the subject matter of the procurement such that it raises material concerns on the part of the procuring entity as to the ability of the bidder to perform the procurement contract satisfactorily for the offered price.

(2) A procuring entity shall not reject a bid as abnormally low under subsection (1) unless the procuring entity –

- (a) requested in writing from the bidder a written clarification of its bid, including a detailed price analysis of its bid price in relation to the subject matter of the procurement contract, scope, methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding documents; and
- (b) having taken account the information provided by the bidder in response to a request under paragraph (a) and the information included in the bid,

the procuring entity determines that the bidder has failed to demonstrate its ability to perform the procurement contract satisfactorily for the offered price.

(3) The procuring entity shall promptly communicate to the bidder concerned the decision of the procuring entity to reject the bid, including the reasons for the decision.

(4) The procuring entity shall include all communications with the bidder under this section in the record of the procurement proceedings.

42. A procuring entity shall not engage in negotiations of price with the bidder with respect to the bidder's bid as submitted except when the procuring entity conducts a procurement using single source procurement or a request for proposals with evaluation based on quality alone in accordance with subsection 54 (2)(a).

Price negotiations.

43. (1) A procuring entity may cancel the procurement –

Cancellation of procurement.

(a) at any time prior to the issuance of a notice of intention to award a procurement contract under section 44(4); or

(b) after the publication of a notice of award of procurement contract under section 46 if –

(i) the supplier whose bid has been accepted fails to meet the prescribed conditions for signature of the procurement contract, or fails to sign the procurement contract as required; and

(ii) the procuring entity's attempt to award the procurement contract to the next- ranked substantially responsive bidder proves unsuccessful or no other substantially responsive bid has been submitted.

(2) A procuring entity shall not open any bids after taking a decision to cancel the procurement and shall promptly return any bids that remain unopened at the time of the procuring entity's decision to cancel the procurement to the bidders that submitted them.

(3) A procuring entity shall include the decision of the procuring entity to cancel the procurement and the reasons for its decision in the record of the procurement proceedings and

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promptly communicate the decision to all bidders that submitted a bid.

(4) A procuring entity shall promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published.

(5) A procuring entity is not liable to any bidder that has submitted a bid solely on the ground that the procuring entity has cancelled a procurement under this section.

Award of procurement contract.

44. (1) Subject to subsections (2) and (3), a procuring entity shall accept a bid that meets the requirements specified in subsection (2) as the successful bid.

(2) A bid is the successful bid –

- (a) where price is the only evaluation criterion applied in the evaluation of bids and the bid offers the lowest bid price and is materially responsive to all the terms, conditions, specifications and requirements of the bidding documents;
- (b) where price and other non-price evaluation criteria are applied in the evaluation of bids and the bid is the most advantageous bid ascertained on the basis of the criteria and procedure for bid evaluation as specified in the bidding documents; or
- (c) where no price criteria are applied in the evaluation of bids the bid is the most advantageous bid ascertained on the basis of the non-price criteria and the procedure for bid evaluation as specified in the bidding documents.

(3) Before awarding a procurement contract, a procuring entity shall ensure that the following endorsements have been obtained –

(a) where the estimated value of a procurement contract, calculated in accordance with section 25, falls within Threshold A as specified in the Second Schedule, the head of the procuring entity has endorsed the procurement and property disposal officer's recommendation for the award of the contract in accordance with section 16(2)(c);

Second Schedule.

(b) where the estimated value of a procurement contract, calculated in accordance with section 25, falls within Threshold B as specified in the Second Schedule, the head of the procuring entity has endorsed the recommendation of the Bid Evaluation Committee for the award of the contract in accordance with section 16(2)(d) and the Chief Procurement Compliance Officer has provided his confirmation of compliance in accordance with section 8(2);

Second Schedule

(c) where the estimated value of a procurement contract, calculated in accordance with section 25, falls within Threshold C as specified in the Second Schedule, the head of the procuring entity has endorsed the recommendation of the Bid Evaluation Committee for the award of the contract in accordance with section 16(2)(d), the Chief Procurement Compliance Officer has provided his confirmation of compliance in accordance with section 8(2) and the Board has provided its endorsement of the award of the contract in accordance with section 10(2)(c).

Second Schedule.

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(4) Subject to subsection (6), when a procuring entity identifies a successful bid the procuring entity shall promptly seek approval of the expenditure from the Ministry of Finance and issue a notice to all bidders that submitted a bid of its intention to award a procurement contract at the end of the standstill period.

(5) A notice issued under subsection (4) shall contain the following information:

- (a) the name and address of the bidder that submitted the successful bid;
- (b) in respect of each bidder whose bid was evaluated as unsuccessful, a brief explanation of the reasons for the bid being evaluated as unsuccessful;
- (c) a brief description of the goods, works, services or consulting services;
- (d) the procurement contract price or, where the successful bid was determined on the basis of price and other non-price criteria, the procurement contract price and a summary of other characteristics and relative advantages of the successful bid; and
- (e) the duration and specific end date of the standstill period specified in the bidding documents and in accordance with the prescribed requirements and the standstill period runs from the date of the issuance of the notice under subsection (4).

(6) Subsection (5) does not apply if –

- (a) the procurement contract price is less than the prescribed threshold;

- (b) the procuring entity used the single source procurement method;
- (c) the procuring entity awards a call-off procurement contract under a framework agreement that has already been awarded in accordance with section 58; or
- (d) the procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period.

(7) Notwithstanding subsection (6)(d), a procuring entity shall not proceed without a standstill period under subsection (6)(d) unless the procuring entity has obtained the prior written approval of the Minister in accordance with subsection 6(2) and the procuring entity shall record its reasons for proceeding without a standstill period in the record of the procurement proceedings.

(8) Where there is no challenge of the decision of the procuring entity under section 70 or where there is no standstill period, the procuring entity may dispatch a notice of acceptance to the successful bidder.

(9) When dispatching a notice of acceptance to the successful bidder, the procuring entity shall instruct the successful bidder to complete the requirements within a specified period of time, including the submission of any performance security that may be required in the procurement of goods, works or services, as may be specified in the bidding documents, and the signing of the procurement contract.

(10) The procuring entity shall dispatch the notice of acceptance to the successful bidder while the successful bid is still in effect.

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Terms and conditions of procurement contract.

45. (1) A procuring entity shall ensure that the terms and conditions of a procurement contract are in accordance with this Act, Regulations and the terms and conditions specified in the bidding documents.

(2) The Minister shall make Regulations on the acceptable forms of contract to be signed by procuring entities under this Act.

Publication of notice of award of procurement contract or framework agreement.

46. (1) A procuring entity shall publish notice of the award of a procurement contract or a framework agreement within fourteen days of the signature of the contract or agreement on the public procurement website in the prescribed form and manner.

(2) A notice under subsection (1) shall include –

- (a) the name and reference number of the contract, in accordance with the procurement plan;
- (b) the name of each supplier, contractor or consultant to which a procurement contract was awarded;
- (c) the procurement contract price;
- (d) a summary of the scope of the procurement contract and its duration.

(3) Subsection (1) does not apply to a procurement if the procurement contract price is less than the prescribed threshold and the procuring entity shall publish a notice of all procurement contracts to which this subsection applies at least once a year.

Debriefing of unsuccessful bidders.

47. (1) A procuring entity shall, upon request, debrief an unsuccessful bidder in accordance with the prescribed procedures.

(2) A procuring entity shall ensure that only the bid submitted by the bidder is discussed, including its merits and demerits and the reason that it was unsuccessful, in a debriefing.

- (3) The discussions at a debriefing must not include –
- (a) any reference to or comparison with a bid submitted by another bidder; or
 - (b) information that is confidential or commercially sensitive to any other bidder.

(4) A procuring entity shall include a written summary of each debriefing in the record of the procurement proceedings.

48. (1) A procuring entity shall maintain a record of the procurement proceedings that includes the following:

Record of procurement proceedings.

- (a) a brief description of the subject matter of the procurement;
- (b) the names and addresses of every supplier, contractor or consultant who presented bids, the name and address of the supplier, contractor or consultant who entered the procurement contract and the procurement contract price;
- (c) copies of published invitations to prequalify or bid;
- (d) the prequalification documents and bidding documents used in the conduct of the procurement proceedings, as well as all modifications and clarifications thereto;
- (e) in procurement proceedings in which the procuring entity limits the participation of suppliers, contractors or consultants, a statement of the reasons and circumstances relied upon by the procuring entity for imposing such a limit;
- (f) if the procuring entity uses a method of procurement other than Open competitive bidding,

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a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of such other method;

- (g) in the case of procurement by means of an electronic reverse auction, a statement of the reasons and circumstances relied upon by the procuring entity for the use of the auction and information about the date and time of the opening and closing of the auction;
- (h) in the case of a framework agreement, a statement of the reasons and circumstances upon which the procuring entity relied to justify the use of a framework agreement procedure and the type of framework agreement selected;
- (i) if the procurement is cancelled under section 43, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision to cancel the procurement;
- (j) if no standstill period was applied, a statement of the reasons and circumstances relied upon by the procuring entity in deciding not to apply a standstill period;
- (k) in the case of a challenge or appeal, a copy of the application for reconsideration or review and the appeal, as applicable, and a copy of all decisions taken by the procuring entity, the Review Council in the relevant challenge and review proceedings and the reasons therefor;
- (l) information relating to the qualifications, or lack thereof, of suppliers, contractors or consultants that presented applications to pre-qualify or bids;

- (m) if a submission is rejected on the basis of an abnormally low bid, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (n) if a supplier or contractor is excluded from the procurement proceedings on the basis of coercion, collusion, fraudulent or corrupt practice, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (o) a copy of the notice of the standstill period given under section 44(4);
- (q) the procurement contract or, in the case of a framework agreement procedure, a summary of the principal terms and conditions of the framework agreement or a copy of any written framework agreement that was concluded;
- (r) for each bid, proposal or quotation submitted, the price and a summary of the other principal terms and conditions;
- (s) a report of the evaluation of bids, including the application of any domestic preference, and the reasons on which the procuring entity relied to justify any rejection of bids submitted during the bidding or auction;
- (t) a declaration of interests disclosed by a procurement and property disposal officer, member of the Board or Bid Evaluation Committee disclosed under section 23 and by members of the Review Council in accordance with section 63;

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(*u*) bids, proposals and quotations submitted;

(*v*) copies of contract award notices published; and

(*w*) other prescribed information.

(2) The period of time during which the record of procurement proceedings shall be maintained shall be in accordance with the applicable legislation of Dominica.

Electronic government
procurement.

49. (1) All public procurement conducted under this Act may be undertaken using electronic means by use of an electronic government procurement system.

(2) A procuring entity may use electronic government procurement to conduct all stages of the procurement proceedings, including publication of invitations to participate in public procurement, distributing the prequalification or bidding documents to bidders by free-of-charge download, inviting bidders to submit their applications to prequalify, expressions of interest, bids, quotations or proposals electronically; opening of bids and proposals, evaluation of bids, quotations and proposals and awarding procurement contracts.

(3) The Minister shall make Regulations to give effect to subsections (1) and (2).

PART III

PROCUREMENT METHODS

Procurement methods.

50. (1) A procuring entity may conduct public procurement by one of the following procurement methods:

(*a*) open competitive bidding;

(*b*) limited competitive bidding;

- (c) request for quotations;
- (d) request for proposals;
- (e) electronic reverse auction;
- (f) single source procurement.

(2) A procuring entity may conduct public procurement of goods, works or services by using one of following procurement methods:

- (a) open competitive bidding;
- (b) limited competitive bidding;
- (c) request for quotations;
- (d) electronic reverse auction; or
- (e) single source procurement.

(3) A procuring entity may conduct public procurement of consulting services, by using one of the following procurement methods:

- (a) request for proposals; or
- (b) single source procurement.

(4) A procuring entity shall, to the extent practicable, seek to promote competition irrespective of the procurement method used.

(5) When a procuring entity uses a procurement method other than open competitive bidding to conduct public procurement

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of goods, works or services, the procuring entity shall –

- (a) ensure that one or more of the conditions for use of the procurement method are met; and
- (b) record the choice of and grounds for the procurement method in writing in the annual procurement plan and in the record of procurement proceedings.

Open Competitive Bidding.

51. (1) Except as otherwise provided in sections 52 to 56, a procuring entity shall use open competitive bidding for the public procurement of goods, works, or services.

(2) When a procuring entity uses open competitive bidding, the procuring entity shall invite bids by advertising and an invitation for bids in accordance with section 31.

(3) When the estimated cost of procurement exceeds the prescribed threshold a procuring entity shall advertise the procurement internationally in the prescribed manner.

(4) A procuring entity may carry out open competitive bidding in one or two stages, in accordance with section 57.

(5) A procuring entity may conduct open competitive bidding with or without pre-qualification of bidders under section 29.

Limited Competitive Bidding.

52. (1) A procuring entity may use the limited competitive bidding procurement method for the public procurement of goods, works or services when –

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

- (b) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement.

53. A procuring entity may use the request for quotations procurement method for the public procurement of goods, works or services when –

Requests for Quotations.

- (a) procuring readily available goods, works or services, that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market; and

- (b) when the estimated value of the procurement contract is less than the prescribed threshold.

54. (1) A procuring entity shall use the request for proposals procurement method for the procurement of consulting services from consulting firms or individual consultants.

Request for Proposals.

(2) Without limiting the generality of subsection (1), a procuring entity may procure consulting services on the basis of:

- (a) quality alone;
- (b) quality and cost;
- (c) quality within a fixed budget; or
- (d) least cost that meets a specified minimum level of quality.

(3) Where a procuring entity uses the request for proposals for the procurement of consulting services from consulting firms, it shall –

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- (a) invite expressions of interest by publishing an invitation to participate in public procurement in accordance with section 31;
- (b) prepare a shortlist of no fewer than three and no more than eight fully-qualified consulting firms from among those firms that expressed interest;
- (c) ensure that all shortlisted firms have the necessary staffing, managerial and organisational capabilities and relevant specific experience required to perform the services satisfactorily;
- (d) issue a request for proposals to all shortlisted firms, using a single-stage, two-envelope procedure under section 33, inviting them to submit technical only or technical and financial proposals, as required according to subsection (2);
- (e) evaluate each submitted technical proposal on the basis of the evaluation criteria specified in the request for proposals, including:
 - (i) the consultant's specific experience relevant to the assignment;
 - (ii) the quality of the consultant's proposed technical methodology for the delivery of the assignments; and
 - (iii) the qualifications, experience and expertise of the key staff proposed by the consultant for the assignment.

(4) Notwithstanding subsection (3)(b), where a procuring entity is unable to identify a minimum of three qualified firms to

invite to submit proposals, it shall seek approval from the Chief Procurement Compliance Officer before issuing the request for proposals to fewer than three firms.

55. Where the Financial Secretary has established an appropriate electronic platform for the conduct of reverse auctions, a procuring entity may, in the procurement of goods, works or services, conduct reverse auctions electronically in the prescribed manner where –

Electronic Reverse Auction.

- (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
- (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured; and
- (c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

56. A procuring entity may use the single source procurement method where, in the procurement of –

Single Source Procurement.

- (a) goods, works or services:
 - (i) the goods, works and services to be procured are available from a particular supplier only, or a particular supplier holds exclusive rights in respect of such goods, services and works, such that no reasonable alternative or substitute exists and, as a result, the use of any other procurement method would not be possible;

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- (ii) the procuring entity, having procured goods, works or services from a supplier, determines that additional goods, works or services must be procured from that supplier for reasons of standardisation or a need for compatibility with previously procured goods, works or services;
 - (iii) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security and defence interests of the State and its citizens; or
 - (iv) a catastrophic event has occurred and the circumstance of the procurement is one of extreme urgency that has not been caused by the action or omission of the procuring entity, and engaging in any other method of procurement may be detrimental to the procuring entity or other beneficiaries of the procurement.
- (b) consulting services:
- (i) only one consultant is qualified or one consultant has experience of exceptional worth for the assignment;
 - (ii) an existing procurement contract for consulting services may be extended to provide additional consulting services of a similar nature where such extension is properly justified, the performance of the consultant is satisfactory and no advantage may be obtained by competition;

- (iii)* for a task that represents a natural continuation of previous work recently carried out by a consultant, where continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the original consultant preferable to a new competition and the performance of the consultant in the original assignment is satisfactory; or
- (iv)* a catastrophic event has occurred and the circumstance of the procurement is one of extreme urgency that has not been caused by the action or omission of the procuring entity, and engaging in any other method of procurement may be detrimental to the procuring entity or other beneficiaries of the procurement.

57. (1) A procuring entity shall use single-stage bidding when the procurement requirements and technical specifications can be defined in sufficient detail to enable bidders to submit complete bids.

Single-stage and Two-stage Bidding.

(2) A procuring entity may use two-stage bidding by means of the open competitive bidding procurement method or limited competitive bidding when it is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement in accordance with section 26 including procurements of –

- (a)* large complex facilities for which a turnkey procurement contract will be awarded for the design and build of a plant;
- (b)* works of a complex and specialised nature; or

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(c) complex information and communication technology that is subject to rapid technological advances.

(3) A procuring entity shall, in the first stage of a two-stage bidding procedure, ensure that the bidding documents invite bidders to submit unpriced technical bids containing information about the technical, quality or performance characteristics of the subject matter of the procurement, contractual terms and conditions of supply, as well as the qualifications of the bidder.

(4) A procuring entity shall, in the second stage of a two-stage bidding procedure, invite all suppliers or contractors whose first-stage technical bids were not rejected to submit a final, priced bid in response to a final, detailed description of the subject matter of the procurement, including final technical specifications.

(5) A procuring entity shall evaluate priced bids in accordance with section 39.

Framework Agreements.

58. (1) A procuring entity may enter into a framework agreement where the procuring entity determines that –

(a) the need for the subject matter of the 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 procurement requirement, the need for that procurement requirement may arise on an urgent basis during a given period of time.

(2) A procuring entity shall include a statement of the reasons and circumstances on which it relied to justify the use of a framework agreement and the type of framework agreement selected in the record of the procurement of proceedings.

PART IV

DISPOSAL OF PUBLIC PROPERTY

59. (1) Subject to subsection (2), this Part applies to the retention and disposal of stores, equipment and other public property that are unserviceable, obsolete or surplus.

Application.

(2) This Part does not apply to the strategic disposal of public property for the express purposes of investment gains through privatisation or other divestment, in whole or in part, whether domestic or foreign.

60. A procuring entity shall not dispose of unserviceable, obsolete or surplus stores, equipment or other public property to an employee of the Government or a member of a board or committee of a procuring entity, the Board or the Review Council, except as expressly prescribed.

Prohibition of disposal within Government.

PART V

CHALLENGE AND REVIEW

Division 1 Procurement Review Council

61. (1) There is hereby established a Council to be known as the Procurement Review Council.

Establishment of Procurement Review Council.

(2) The Fourth Schedule applies with respect to the constitution of the Review Council and the other matters specified in the schedule.

Fourth Schedule.

(3) The Minister shall make Regulations regarding the proceedings of the Review Council.

62. The Review Council shall hear and review the challenges of bidders under this part.

Functions of Procurement Review Council.

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Declaration of interest.

63. (1) A member of the Review Council who has a direct or indirect interest in a matter under consideration by the Review Council shall disclose the fact of his interest to the Financial Secretary without delay and shall not participate in the consideration of, or vote on, any question relating to the matter.

(2) A member of the Review Council who fails to disclose his interest in accordance with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of five hundred thousand dollars and imprisonment for three years.

Remuneration.

64. (1) The Chairperson and the other members of the Review Council shall be paid such stipend in connection with the discharge of their functions as the Minister shall determine.

Reporting.

65. The Review Council shall, not later than two months after the close of each financial year, prepare an annual report of its activities for that financial year and submit said report to the Minister through the Financial Secretary.

Secretariat.

66. (1) The Financial Secretary shall provide a secretariat to the Review Council.

(2) The Secretariat of the Review Council shall perform the functions prescribed.

Seal.

67. There shall be a common seal of the Review Council which shall –

- (a) be in a form determined by the Review Council;
- (b) be kept in custody as directed by the Review Council; and
- (c) not be used except as authorised by the Review Council.

Division 2 Review Process

68. (1) Subject to subsection (3), a bidder that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of a procuring entity or the Board with the provisions of this Act may challenge the decision or action concerned in accordance with this Part.

Right to challenge and review

(2) The aggrieved bidder shall first initiate challenge proceedings by making a written application for reconsideration, in the prescribed form to the procuring entity.

(3) A decision by a procuring entity to cancel a procurement under section 43 is not subject to challenge under this section.

69. (1) Subject to subsection (3), the procuring entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned.

Effect of a challenge.

(2) The procuring entity may at any time request the Review Council to authorise it to enter into the procurement contract or framework agreement on the ground that urgent public interest considerations so justify.

(3) The Review Council, on consideration of a request made under subsection (2), may authorise the procuring entity to enter into the procurement contract or framework agreement if it is satisfied that urgent public interest considerations so justify.

(4) The decision of the Review Council under subsection (3) and the reasons for the decision shall be made part of the record of the procurement proceedings and shall promptly be communicated to the procuring entity and to the applicant.

70. (1) A bidder who wishes to exercise his right to challenge

Review by procuring entity.

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a decision or action under section 67(1) shall in the first instance make an application for reconsideration in writing in the prescribed form to the procuring entity in the case of an application for reconsideration of -

- (a) the terms and conditions of the prequalification documents or decisions or actions taken by the procuring entity in prequalification of bidders, prior to the deadline for submissions of prequalification applications;
- (b) the terms and conditions of the bidding documents or decisions or actions taken by the procuring entity in procurement proceedings, prior to the deadline for submissions of bids;
- (c) other decisions or actions taken by the procuring entity in the procurement proceedings within the standstill period applied under section 44(4), or, where no standstill period has been applied, prior to the entry into force of the procurement contract or the framework agreement.

(2) Within ten days of receipt of an application for reconsideration, a procuring entity shall –

- (a) decide whether to accept the application for reconsideration or dismiss the application for reconsideration on the basis that the application for reconsideration is manifestly without merit, the application for reconsideration was not submitted within the prescribed time limits or is without standing;
- (b) notify the applicant in writing of its decision.

(3) If a procuring entity accepts an application for reconsideration made under this section, the procuring entity shall inform the applicant of the corrective measure to be taken by the procuring entity, which may include a decision to overturn, correct, vary or uphold any decision or action taken by the procuring entity in the procurement proceedings to which the application for reconsideration relates.

(4) If a procuring entity dismisses an application for reconsideration made under this section, the procuring entity shall inform the applicant of the reasons for its decision.

(5) The decision of the procuring entity shall form part of the written record of the procurement proceedings.

(6) The applicant may, within ten days from the date by which the procuring entity is due to respond to the applicant's application for reconsideration under section 70(2), commence proceedings in the Review Council under section 71 if –

- (a) the application for reconsideration has been dismissed by the procuring entity;
- (b) the procuring entity has failed to notify the applicant of its decision in accordance with subsection (2)(b); or
- (c) the applicant is dissatisfied with the decision of the procuring entity of which it is notified.

(7) When such proceedings before the Review Council are commenced, the competence of the procuring entity to entertain the application for reconsideration ceases.

71. (1). A bidder may apply in writing to the Review Council for reconsideration of any decision or action taken by the procuring entity under section 70.

Review by the Review Council.

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(2) Where an application for reconsideration is filed, the Review Council shall promptly serve a copy of the application for reconsideration and supporting documents on the procuring entity conducting the procurement proceedings, on any governmental authorities whose interests are affected or likely to be affected by it, on any bidder, supplier, contractor or consultant whose interests are affected or likely to be affected by it and shall furnish a copy of the application for reconsideration to the Financial Secretary.

(3) A bidder, supplier, contractor, consultant or governmental authority whose interests are affected or likely to be affected by the review proceedings has a right to participate in such proceedings.

(4) A bidder, supplier, contractor or consultant that fails to participate in the review proceedings is not entitled to file a subsequent application for reconsideration on the same facts and grounds in respect of the same matter.

(5) The Review Council shall conduct its review in accordance with the Sixth Schedule.

Sixth Schedule.

Remedies.

72. (1) Where an application for reconsideration is determined in favour of the applicant, the Review Council may –

- (a) prohibit the procuring entity from acting or making a decision in an unauthorised manner or from following an incorrect procedure;
- (b) annul in whole or in part any unauthorised act or decision of the procuring entity;
- (c) order the procuring entity to carry out new procurement proceedings; or
- (d) award the successful applicant compensation limited to recovery of the costs incurred by the

applicant in the preparation of its prequalification application or bid and participation in the procurement proceedings.

73. This Part does not restrict the right of a bidder to seek judicial review following the decision of the Review Council.

PART VI

ETHICAL STANDARDS AND PROCUREMENT INTEGRITY

74. (1) In this Part –

Interpretation

“conflict of interest” includes any circumstance in which a person –

- (a) is in decision-making position; and
- (b) has a direct or indirect interest which affects or influences or is likely to affect or influence the ability of the person to perform his or her job duties or fulfil his or her responsibilities;

“financial interest” includes a financial liability;

“procurement official” means a public official with procurement functions;

“procurement functions means involvement in relation to a procurement through –

- (a) planning or conducting public procurement proceedings or contract administration;
- (b) a decision, approval, determination or recommendation;
- (c) the preparation of any bidding document;

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- (d)* the exercise of influence;
- (e)* giving any advice; or
- (f)* conducting an investigation or audit;

“public official” means –

- (a)* a member of the Board, the Review Council or a Bid Evaluation Committee;
- (b)* a Procurement and Property Disposal Officer; or
- (c)* a public officer or other person employed by a procuring entity.

(2) For the purposes of this Part a person has financial interest in a business entity if the person functions in any of the following capacities –

- (a)* as a director, officer or employee of the business entity;
- (b)* as a partner in the business entity;
- (c)* as a shareholder of the business entity;
- (d)* as a trustee of the business entity; or
- (e)* in any other capacity as may be prescribed, other than a financial interest or class of financial interest excluded by the Regulations.

(3) For the purposes of this Part a person has a substantial financial interest in a business entity if the person –

- (a) owns or has under his or her control –
 - (i) equity in the business entity which represents ten percent or more of the stock, shares, fair market value or other interest in the business entity, or
 - (ii) real property used for the business entity, if the interest is an equitable or legal ownership with a fair market value in excess of fifty thousand dollars;
- (b) in any year, receives funds from the business entity that exceed ten percent of the person's gross income for the previous year;
- (c) is a compensated member of the board of directors or other governing board of the business entity; or
- (d) serves as an elected officer of the business entity.

75. Without prejudice to any proceedings which may be instituted under this Act or any other enactment a person who breaches an ethical standard set out in this Part is liable –

Effect of breach of ethical standard.

- (a) to suspension or debarment under section 80; or
- (b) to disciplinary action under the applicable law, if the person is a public officer.

76. Every person involved with public procurement, whether as members of the Board, a procuring entity, supplier, contractor or consultant, are at all times governed by principles of honesty, accountability, transparency, fairness and equity.

General duty.

77. (1) A procurement official shall –

Conduct of procurement officials.

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- (a) exercise his public procurement functions –
 - (i) diligently, impartially, conscientiously and fairly in accordance with the procedures set out in this Act and the Regulations; or
 - (ii) in a manner so as to promote the purposes set out in section 3;
- (b) discharge his duties impartially so as to ensure participation in public procurement by bidders in accordance with section 27;
- (c) at all times in the execution of his duties, act in the public interest;
- (d) in carrying out his duties and conducting himself or herself, avoid conflicts of interest, whether actual, perceived or potential;
- (e) not commit or abet any act of coercion, collusion, corrupt or fraudulent practice;
- (f) subject to this Act, not disclose any information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information; and
- (g) where applicable, declare his assets in accordance with the Integrity in Public Office Act.

Chap. 23:04.

(2) In the discharge of his public procurement functions, a procurement official shall –

- (a) keep up-to-date with advances and changes in his or her area of expertise;
- (b) comply with the legislative or administrative

requirements related and relevant to the proper exercise of his or her functions;

- (c) treat members of the public and other staff members with courtesy and sensitivity to their rights;
- (d) provide all necessary and appropriate assistance to members of the public;
- (e) make decisions objectively on the basis of the relevant criteria and information;
- (f) maintain adequate documentation to support any decision that he or she makes in accordance with section 48;
- (g) at all times in the discharge of his or her procurement functions, behave in such a way so as not –
 - (i) to discredit his or her position, and
 - (ii) to reflect adversely on the Public Service or, as the case may be, the relevant procuring entity;
- (h) strive to obtain value for public money spent;
- (i) strive to avoid waste and extravagance in the use of public resources;
- (j) not take or seek to take improper advantage of any official information gained in the course of employment;
- (k) not wilfully supply incorrect or misleading information to bidders, suppliers, contractors, consultants or other members of the public and to staff; and

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(l) not indulge in favouritism or nepotism.

(3) It is expected that every procurement official is –

(a) is efficient and economical in the use and management of public resources;

(b) is scrupulous in the use of public property and services; and

(c) will not permit abuse of such property and services by other persons.

Conduct of bidders,
suppliers and
contractors.

78. (1) A bidder or a supplier, contractor or consultant shall not engage in or abet any corrupt practice or fraudulent practice, in order to –

(a) influence any procurement proceedings or the execution of any procurement contract; or

(b) interfere in the ability of any other person to participate in procurement proceedings.

(2) A bidder or a supplier, contractor or consultant shall not engage in coercion or collusion.

(3) A procuring entity shall –

(a) reject a bid if the procuring entity determines that the bidder has engaged in a corrupt practice, fraudulent practice, coercion or collusion ; and

(b) promptly, notify the bidder concerned and the Board of the rejection of the bid.

Conflicts of interest.

79. (1) A conflict of interest, in relation to a procurement official includes, but is not limited to, any circumstance where the procurement official –

- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of the Government or the relevant procuring entity;
- (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or consultant that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the ability of the procurement official to influence dealings;
- (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the business judgments of the procurement official;
- (d) places, by acts or omissions, the Government or the procuring entity in an equivocal, embarrassing or ethically questionable position;
- (e) entertains relationships compromising the reputation or integrity of the Government or the procuring entity;
- (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the Government or the procuring entity;
- (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise;
or
- (h) discloses to any unauthorised person confidential information being the property of –

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(i) the Government or the procuring entity, or

(ii) a bidder, supplier, contractor or consultant.

(2) A procurement official shall avoid any financial or other interest or undertaking that is likely, directly or indirectly, to compromise the performance of his duties.

(3) A procurement official who is exposed to an actual, perceived or potential conflict of interest, in relation to an actual or proposed procurement, shall disclose the matter to the head of the procuring entity or, as the case may be, the contract administrator.

(4) The disclosure referred to in subsection (3) includes the notification of all relevant personal, financial, business or other interests of the procurement official, in particular –

(a) any directorship, partnership, agency or any shareholding in any business entity;

(b) any interest in any activity or business in which or with which the business entity is engaged; or

(c) any interest in goods, services, consulting services or works recommended or supplied by the business entity under this Act.

(5) The head of the procuring entity shall investigate, review and resolve every suspected or reported conflict of interest in relation to any procurement officer employed in or assigned to the procuring entity.

(6) Where, after a review or an investigation, it is determined that there is a conflict of interest, the procurement official concerned shall –

(a) immediately cease to exercise his public

procurement functions in relation to the procurement;

- (b) without delay, give notice of disqualification from public procurement functions to any prescribed person.

80. (1) Where a procuring entity has grounds to believe that a bidder has engaged in a prohibited practice, the head of the procuring entity may initiate debarment proceedings under this section.

Suspension and debarment.

(2) The Director of Audit or the Accountant General may initiate debarment proceedings by referring a procurement proceeding to the Board.

(3) When the Board initiates debarment proceedings against a bidder by establishing a Debarment Committee in accordance with sections 2 and 3 of the Fifth Schedule, the bidder that is subject to such debarment proceedings shall be automatically suspended from participation in the procurement proceedings and the procuring entity shall –

Fifth Schedule.

- (a) reject the bidder's bid; and
- (b) not entertain any bid from the bidder that is subject to debarment proceedings in any procurement proceedings for which that procuring entity is responsible until such time as the debarment proceedings have been concluded.

(4) The Board shall in all cases inform the Financial Secretary before initiating debarment proceedings.

(5) The name of the bidder that is subject to such debarment proceedings shall be promptly published on the ineligibility list maintained in accordance with subsection 7(1)(d)

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and such suspended bidder shall immediately be ineligible to participate in any procurement proceedings conducted by any procuring entity under this Act until such time as the debarment proceedings have been concluded.

Fifth Schedule.

(6) After determination, by way of debarment proceedings in accordance with the Fifth Schedule that a bidder participating in the procurement proceedings or a supplier, contractor or consultant engaged in the execution of a procurement contract awarded in accordance with section 44 has engaged in a prohibited practice, the bidder, its directors or affiliates may:

- (a) be required to reimburse that portion of the contract price that has already been disbursed under the contract at the time of the suspension of the bidder;
- (b) be declared ineligible for the period prescribed in the debarment proceedings to be awarded any procurement contract awarded under this Act.

(7) No procuring entity shall award a procurement contract to a bidder which has been debarred.

PART VII

MISCELLANEOUS

Language of documents.

81. Prequalification and bidding documents, applications to prequalify, bids, proposals and quotations, procurement contracts, correspondence related to procurement proceedings and any other document required for the purposes of this Act shall be in the English language.

Publication of legal texts.

82. (1) The Financial Secretary shall promptly publish and systematically maintain on the public procurement website this Act, Regulations, standard bidding documents and standard forms

of procurement contract and all other standard documents of general application to public procurement.

(2) The Financial Secretary shall promptly publish and systematically maintain all decisions of the Review Council and judicial decisions with precedent value related to public procurement.

83. Nothing in this Act shall be construed –

Non-disclosure of information.

- (a) to prevent a procuring entity, the Financial Secretary, the Board or the Review Council from taking any action or not disclosing any information that it considers necessary for the protection of the essential security interests of the State relating to, inter alia, the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or defence purposes; or
- (b) as a requirement to release confidential information where release –
 - (i) would impede law enforcement;
 - (ii) might prejudice fair competition among suppliers;
 - (iii) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
 - (iv) would otherwise be contrary to the public interest.

84. (1) A person who –

Offences.

- (a) is involved in or participates in collusion; or
- (b) submits fraudulent documentation or otherwise

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directly or indirectly influences or attempts to influence in any manner or attempts to influence in any manner any supplier registration proceedings in order to obtain an unfair advantage;
or

(c) directly or indirectly influences in any manner or attempts to influence in any manner any procurement proceedings in order to obtain an unfair advantage in the award of a procurement contract; or

(d) alters any procurement document with intent to influence the outcome of procurement proceedings;

(e) breaches the Oath of Confidentiality,

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1)(a), (b) or (c) is liable on conviction to a fine of two million dollars and imprisonment for a term of seven years.

(3) A person who is guilty of an offence under subsection (1)(d) is liable on conviction to a fine of five hundred thousand dollars.

(4) A person who is guilty of an offence under subsection (1)(e) is liable on conviction to a fine of fifty thousand dollars and imprisonment for three months.

Review of procurement
and public property
disposal system.

85. The Minister shall cause an independent review of the procurement and public property disposal systems, with a view to identification of challenges and recommendations for optimization, no later than three years after the entry into force of this Act and at regular intervals, as prescribed.

86. (1) The Minister may, after consultation with the Board, make regulations generally for giving effect to the provisions of this Act. Regulations.

(2) Without limiting the generality of subsection (1), the Minister may make regulations:

- (a) respecting:
 - (i) procurement planning;
 - (ii) methods of procurement;
 - (iii) electronic government procurement;
 - (iv) acceptable forms of bid security and performance security;
 - (v) recordkeeping, including record of public bid opening;
 - (vi) reporting;
 - (vii) domestic preferences;
 - (viii) procurement contract administration;
 - (ix) procedural rules governing the disposal of public property;
 - (x) inventory and disposal of stores;
 - (xi) suspension and debarment;
 - (xii) measures in the area of the promotion of economic sustainability, including the development of domestic industry, through

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public procurement;

(xiii) measures in the area of the promotion of social sustainability, including gender equality, through public procurement;

(xiv) measures in the area of the promotion of environmental sustainability through public procurement;

(xv) measures intended to promote the participation of domestic micro, small and medium-sized bidders;

(xvi) thresholds within which participation in procurement proceedings may be limited to domestic bidders;

(xvii) thresholds governing the use of the procurement methods specified in Part III;

(xviii) form of publication of invitations to participate in public procurement; and

(xix) evaluation of bids for goods, works, services and consulting services.

(b) prescribing a Procurement Procedures Manual;

(c) prescribing handbooks, rules of procedure, directives and other mandates governing procurement, retention and disposal of public property, standard bidding documents, forms of contract, procedural forms and formats;

(d) prescribing a code of conduct; and

(e) prescribing anything that is required or authorised

to be prescribed by this Act.

87. The Finance Regulations apply to the procurement of goods, works, services and consulting services and the disposal of public property under this Act with such modifications, adaptations and qualifications as the circumstances require.

Finance Regulations to apply.

88. The Minister may amend the Schedules by Order published in the *Gazette*.

Amendment of Schedules.

89. (1) A procuring entity may continue any procurement proceedings in respect of the procurement of goods, services or works –

Savings and transitional.

(a) commenced before the coming into operation of this Act; and

(b) which have not been determined, terminated or completed,

as if this Act were not enacted, but the provisions of this Act shall apply to any procurement contract that is awarded or executed as a consequence of such proceedings.

(2) Where –

(a) a procurement contract is executed before the commencement of this Act; and

(b) the procurement contract is still subsisting,

this Act applies to the procurement contract, as if that procurement contract, were executed under this Act.

(3) The Financial (Stores) Regulations continue in force until repealed or replaced by regulations made under this Act.

Chap. 63:02.
Subsidiary.

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Repeal.
Chap. 63:06.

90. (1) The Public Procurement and Contract Administration Act is repealed.

FIRST SCHEDULE

(Section 2, 22)

OATH OF CONFIDENTIALITY

I,.....do swear that I will faithfully perform any functions assigned to me under the Public Procurement and Disposal of Public Property Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of this Act authorise, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

So help me God.

Name:
Signature:
Date:

.....

SECOND SCHEDULE

(Sections 8(2), 10(2), 16(2), 17(3), 19(1) 44(3))

**CONFIRMATION OF COMPLIANCE AND APPROVAL OF
RECOMMENDATION FOR AWARD OF CONTRACTS**

Where the estimated value of a procurement contract, calculated in accordance with section 25, falls within one of the following thresholds, the procuring entity shall seek confirmation of compliance of the recommendation for award of contract with this Act and Regulations and, as the case may require, endorsement of the recommendation for award of the contract from the following public officials or institutions.

		Confirmation of Compliance of Recommendation for Award of Contract with Act and Regulations	Approval of Recommendation for Award of Contract
	Estimated cost of procurement EC dollars	Provided by	Provided by
Threshold A	0–4,999.99	Head of Procuring Entity	Head of Procuring Entity
Threshold B	5,000.00–999,999.99	Chief Procurement Compliance Officer	Head of Procuring Entity
Threshold C	1,000,000.00 and above	Chief Procurement Compliance Officer	Public Procurement Board

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THIRD SCHEDULE

(Section 37(4))

MINIMUM BID SUBMISSION PERIODS

1. Procuring entities shall set a minimum time period for submission of bids, proposals or quotations in order to allow sufficient time for bidders to prepare and submit their bids, proposals or quotations so as to promote competition in public procurement.

2. The minimum periods are:
 - (a) For applications to prequalify in advance of Open competitive bidding: twenty-one days.

 - (b) For Open competitive bidding and Request for Proposals limited to domestic bidders: twenty-one days.

 - (c) For Open competitive bidding and Request for Proposals advertised internationally: thirty days.

 - (d) For Limited competitive bidding: twenty-one days.

 - (e) For Request for Quotations: fourteen days.

.....

FOURTH SCHEDULE
(Section 61(2))

PROCUREMENT REVIEW COUNCIL

Constitution of the Procurement Review Council

1. Subject to paragraphs 2, 3 and 4, the Procurement Review Council shall be appointed by the Minister by instrument in writing, after consultation with the Financial Secretary, and shall consist of three members sitting together.

2. The membership of the Review Council shall consist of persons with experience, expertise or professional qualifications that the Minister considers relevant to exercising the jurisdiction of the Review Council and may include economists, lawyers, surveyors accountants, engineers or persons with substantial and relevant experience in public procurement and related fields of expertise, which may include procurement, public administration, finance and economics, engineering or related disciplines.

3. A person who has been convicted of an offence involving dishonesty, fraud, corruption or moral turpitude is not eligible for membership of the Review Council.

Chairperson of the Review Council

4. (1) The Chairperson shall be either an attorney-at-law who has practiced for a period of not less than ten years or a retired Judge.

(2) The Chairperson shall preside at all meetings of the Review Council and, if the Chairperson is absent from a meeting, the members present shall elect another member to preside at the meeting.

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Tenure of membership

5. The Chairperson and other members shall hold office for a period of five years and shall be eligible for reappointment for one additional term.

Vacancy on the Procurement Review Council

6. (1) The office of a member of the Review Council shall become vacant if the member dies, resigns by instrument in writing addressed to the Minister and transmitted through the Chairperson, the member's appointment is revoked in accordance with paragraph 7.

(2) A vacancy on the Review Council shall be filled in the same manner as set out in paragraph 1.

Revocation of appointment.

7. The membership of a member of the Review Council shall be revoked by the Minister if the member:

- (a) becomes bankrupt;
- (b) is convicted of an offence under the Act;
- (c) has engaged in or is engaging in conduct which, in the opinion of the Minister, disqualifies the member from holding office, including conduct reasonably considered to be prejudicial to the interest of the Board; or
- (d) otherwise fails to carry out the functions of the office in accordance with this Act and Regulations.

Quorum.

8. The quorum at a sitting of the Review Council shall be three members and decisions shall be taken by majority vote.

Expert Assistance.

9. The Review Council may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Review Council.

Secretariat

10. The Financial Secretary shall provide Secretariat services to the Review Council.

Minutes

11. The Review Council shall cause minutes of all its meetings to be taken and signed by the Chairperson and kept in a proper form.

Decisions of the Review Council

12. Decisions of the Review Council, together with the reasons for such decisions, with respect to the award of procurement contracts and disposal of public property shall be communicated in writing to the relevant procuring entity, and the relevant bidder and the Financial Secretary within fourteen days of the conclusion of the meeting at which such decision of the Review Council is taken.

Meetings

13. The Review Council shall meet as often as may be necessary for the performance of its functions, such meetings to

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be held at such place subject to consultation with the Financial Secretary, and at such times and on such days as the Review Council may determine.

Venue

14. The Ministry of Finance shall provide an appropriate meeting venue, equipment and machinery and other supplies necessary for the performance of the functions of the Review Council.

Authentication of Review Council documents

15. In addition to the signature of the Chairperson and any other member authorised by decision of the Review Council to act on behalf of the Chairperson, the seal of the Procurement Review Council shall be used to authenticate documents and decisions of the Review Council, such seal to be kept in the custody of the Chairperson or any other member authorised by the Chairperson.

.....

FIFTH SCHEDULE

(Sections 10(2), 80(3), (6))

SUSPENSION AND DEBARMENT PROCEDURE

Debarment Officer

1. The head of every procuring entity shall appoint a Debarment Officer to investigate allegations of prohibited practices and to recommend whether to apply to the Board for a bidder to be debarred.

(2) The Debarment Officer should ordinarily be a senior public officer of the procuring entity.

Initiating the debarment proceedings

2. (1) If any officer of a procuring entity suspects that a bidder participating in any procurement proceedings or an affiliate of such bidder has committed a prohibited practice or has been the subject of a civil judgment or criminal conviction in respect of a prohibited practice, he may, following consultation with the head of the procuring entity, bring this to the attention of the relevant Debarment Officer together with any documentary evidence at his disposal.

(2) The Debarment Officer shall consider or investigate allegations of the commission of prohibited practices.

(3) If, as a result of the information provided or of his own investigation, the Debarment Officer is satisfied that there is sufficient evidence to support a finding of a prohibited practice, he shall prepare a Draft Notice of Proposed Debarment and submit the same to the Board.

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(4) Within ten working days of receiving the Draft Notice of Proposed Debarment, the Chairman of the Board shall convene a meeting of the Board to review the Draft Notice of Proposed Debarment and decide whether or not to proceed with debarment.

(5) If the Board determines that the Draft Notice of Proposed Debarment does not contain sufficient evidence to support the proposed debarment, it will notify the Debarment Officer of its decision and of the reasons for the decision.

(6) If new facts or evidence come to light following the Board's decision under subparagraph (5), the Debarment Officer may, at his discretion and having informed the head of the procuring entity, amend and resubmit a revised Draft Notice of Proposed Debarment for consideration by the Board.

(7) If the Board agrees with the conclusions of the Debarment Officer as set out in the revised Draft Notice of Proposed Debarment, it will, having informed the head of the procuring entity, initiate debarment proceedings by establishing a Debarment Committee in accordance with section 3 and immediately enter the name of the accused bidder in the ineligible list maintained by the Ministry of Finance under section 7(1)(d).

(8) The Board may also constitute a Debarment Committee where it considers that there are grounds for investigation of the allegations.

Debarment Committee

3. (1) The Debarment Committee shall consist of three members as follows:

(a) the Chief Procurement Compliance Officer who shall also be the chairman of the Debarment Committee;

(b) a legal officer of the Attorney General's Chambers;

and

(c) the head of a procuring entity other than that which proposes the debarment.

(2) The decision of the Debarment Committee shall be by majority vote, the Chairman having the casting vote.

(3) The Debarment Committee shall have the task, on the basis of a referral from the Board, of determining whether there is sufficient evidence in each case to debar a bidder accused of a prohibited practice and to issue a Notice of Debarment.

Notice of Proposed Debarment

4. (1) Where the Debarment Committee is established under paragraph 2(8), the Debarment Committee shall send to the bidder (known as the 'Respondent') a Notice of Proposed Debarment in the same terms as the Proposal submitted by the Debarment Officer. If an accusation is made against an affiliate of a bidder, such affiliate shall also be named.

(2) The Notice of Proposed Debarment will be communicated to the named Respondent and any affiliate specifically named therein by registered mail and will inform the Respondent of the details of the proposed debarment, the evidence to be relied upon and the applicable procedure.

(3) If, within ten working days, the Respondent does not inform the Debarment Committee of its intention to contest the allegations or responds to the Notice admitting all or part of the allegations, the Debarment Committee will, without need of a hearing, issue a decision imposing the sanction recommended in the Notice of Proposed Debarment, taking into account any mitigating factors disclosed by virtue of paragraph 6(3).

(4) If the Respondent informs the Debarment Committee that it intends to contest the allegations contained in the Notice of

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Proposed Debarment, the Committee shall, within five working days, inform the Respondent of the procedure to be followed, including any hearing proposed.

Hearings and evidence

5. (1) The hearing shall take place in the manner provided for by the Debarment Committee.

(2) A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Debarment Committee as suitable for the purposes of such representation.

(3) The hearing shall be closed to the public save that, with the consent of the Debarment Committee, persons having a justifiable interest in the proceedings may be admitted.

(4) The Debarment Committee shall, for each hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or hearing.

(5) Formal rules of evidence shall not apply and any type of evidence may form the basis of arguments presented; and the Debarment Committee retains the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

Recommendation of the Debarment Committee

6. (1) At the conclusion of the hearing, the Debarment Committee shall recommend to the Board whether the proposed debarment is in the interests of the procuring entity and the Government on the basis of the evidence presented.

(2) The existence of a proven cause for debarment does

not necessarily require that the bidder be debarred or receive the sanction proposed in the Notice of Proposed Debarment.

(3) The Debarment Committee shall consider the seriousness of the bidder's acts or omissions and any remedial measures or mitigating factors in making any debarment decision.

(4) The burden rests on the Respondent to provide evidence of mitigating factors which might tend to reduce or remove the desirability for debarment.

(5) Before arriving at any debarment recommendation, the Debarment Committee should consider factors such as the following:

- (a) the severity of the Respondent's conduct;
- (b) the degree of involvement of the Respondent in the prohibited practice (including whether the conduct involved was "active" or "passive");
- (c) the magnitude of any losses caused by the Respondent and damage caused by the Respondent to the credibility of the procurement proceedings;
- (d) the past conduct of the Respondent involving a prohibited practice;
- (e) the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the procuring entity;
- (f) whether the bidder has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Debarment

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Committee and taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(g) whether the bidder's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has instituted or agreed to institute new or revised review and control procedures and ethics training programs or other programmes to prevent recurrence;

(h) any other factor that the Debarment Committee deems relevant.

(6) Where the Debarment Committee determines that there is insufficient evidence to support the proposed debarment sanction, it shall recommend to the Board that no debarment sanction be imposed.

(7) Based on the recommendation of the Debarment Committee, the Board shall –

(a) notify the bidder and any affiliate of the decision not to impose any debarment sanction, and

(b) immediately lift the automatic suspension imposed under section 79(2).

Debarment sanction

7. (1) The Board shall, on the basis of the recommendations of the Debarment Committee impose one of the following debarment sanctions:

(a) **Reprimand:** a formal "Letter of Reprimand" based on the Respondent's conduct but which

falls short of debarment.

A Letter of Reprimand may be used where it is the Respondent's first offence and where the offence is relatively minor or where there are sufficiently compelling mitigating factors. It shall not be used for a second or subsequent offence.

- (b) **Conditional Non-Debarment:** a sanction which threatens debarment where certain conditions are not met.

Based on the gravity of the offence and the existence of mitigating factors, the Debarment Committee may decide that the Respondent be required to comply with certain remedial, preventative or other measures as a condition to avoid debarment. In the event the Respondent fails to demonstrate compliance with the defined conditions within the time period established by the Debarment Committee, a debarment shall automatically become effective for a period of time established by the Debarment Committee and shall be converted into a Temporary Debarment.

- (c) **Temporary Debarment:** the primary sanction which debars the Respondent from participation in all procurement proceedings conducted under this Act for a specific period of time not to exceed five years.

Based on the gravity of the offence and of any mitigating factors, the Debarment Committee may impose a temporary debarment of one, three or five years. Whilst the duration of the temporary debarment is dependent on the circumstances of the case, it is expected that a first offence would

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attract the shortest duration while subsequent offences attracting longer periods of debarment. Sufficiently serious offences may, however, and in the absence of mitigating factors, be met with longer periods of debarment, even where they are first offences.

- (d) **Permanent Debarment:** this is the most serious sanction and shall be used rarely.

It is appropriate only in cases of particularly egregious offences where the Respondent has consistently failed to correct its practices following at least two orders of temporary debarment, at least one of which must have been accompanied by a compliance programme of remedial, preventative or other measures intended to assist the Respondent in overcoming any institutional impediments to improvement.

(2) Other than in the case of permanent debarment, the debarment decision of the Board shall be final and shall take effect immediately, without prejudice to any other action taken by any other government organisation under applicable law.

(3) In the case of permanent debarment, the decision shall automatically be referred to a Debarment Adjudicator to be appointed on an *ad hoc* basis with the concurrence of the Attorney-General's Chambers who shall review the facts and evidence presented during the investigation and hearings before confirming or rejecting the proposed Notice of Debarment.

(4) The Debarment Adjudicator shall –

- (a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;

- (b) reject the proposed notice only where, in his opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

Scope and consequences of debarment

8. (1) The Board may extend the effect of the Notice of Debarment to include any affiliates of the bidder provided they are –

- (a) specifically named in the Notice of Proposed Debarment; and
- (b) given an opportunity to respond.

(2) Following debarment, the name of the debarred bidder, affiliates, joint venture partner, officer, director, shareholder, partner, employee or other individual, as appropriate, shall be included in the ineligibility list maintained by the Ministry of Finance under section 7(1)(d).

(3) In respect of bidders and other persons properly included in the ineligibility list, all government agencies shall:

- (a) exclude such bidders and other persons from being awarded procurement contracts awarded by them;
- (b) not solicit bids from, award contracts to, or consent to subcontracts with them;
- (c) reject any bids received from them in response to an invitation for bids;
- (d) not evaluate any bids received from them or enter into discussions with them during the period of ineligibility;

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(e) not consent to their appointment as a sub-contractor to a supplier, contractor or consultant which has not been debarred.

(4) If the period of ineligibility expires or is terminated prior to award, the procuring officer may, but is not required to, consider such bids.

(5) Notwithstanding the debarment of a bidder or other person, procuring entities may continue contracts or subcontracts in existence at the time of the debarment unless the head of the procuring entity directs otherwise.

Review and appeals

9. (1) A debarred bidder may seek review of a debarment by the Board at any time when –

- (a) newly discovered material evidence or facts come to light which tend to exculpate the debarred bidder;
- (b) a conviction or civil judgment upon which the debarment was based has been reversed;
- (c) there has been a *bona fide* change in ownership or management of the bidder;
- (d) the bidder has successfully complied with any remedial, preventative or other measures imposed by the Board in the context of a Conditional Non-Debarment or Temporary Debarment.

(2) A bidder shall make a request for review to the Board in writing and the procedure for review shall be determined by the Board at its discretion.

(3) Where a bidder is not satisfied with the decision of the Board in respect of a Conditional Non-Debarment or Temporary

Debarment, he may apply in writing to the Board and the Board shall refer the case to the Debarment Adjudicator within five working days of the receipt of the request.

(4) The procedure for the appeal shall be determined by the Debarment Adjudicator at his discretion but a decision must be finalised within a reasonable period of time and, in no case, more than thirty days after the request has been received by the Debarment Adjudicator.

(5) The Debarment Adjudicator shall review the facts and evidence presented during the investigation and hearings before confirming or rejecting the Notice of Debarment adopted by the Board; and the Debarment Adjudicator shall –

- (a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;
- (b) reject the proposed Notice only where, in his opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

SIXTH SCHEDULE*(section 71(5))***CHALLENGE AND REVIEW PROCEDURE****Procedure for Review**

1. (1) Where, following review by the procuring entity under section 70 (1), a bidder decides to seek review by the Review Council in accordance with section 71(1), the bidder may submit an application for reconsideration to the Review Council; and the application for reconsideration shall be in writing and in the manner specified in paragraph 5, setting out _

(a) the grounds of the challenge; and

(b) whether the procuring entity has notified the bidder of any steps it has taken or proposes to take to rectify the breach alleged in the application for reconsideration, and if it has done so, the reasons why the bidder is dissatisfied with them.

(2) Within five days after receiving an application under section 71(1) of this Act, the Review Council shall register the application for reconsideration in accordance with section 7.

(3) The submission of an application for reconsideration to the Review Council in terms of subsection (1), within the ten-day period specified in section 70(6), shall suspend the challenged procurement proceedings until the Review Council –

(a) makes its final decision; or

(b) upon hearing the parties, decides to cancel the suspension on the grounds that it is satisfied that urgent public interest considerations require the

procurement to proceed.

(4) The decision of the Review Council shall be binding on the bidder that lodged the application for reconsideration and the procuring entity whose procurement proceeding are the subject of the application for reconsideration.

(5) The Review Council shall dismiss the application where –

(a) the grounds for review do not constitute a valid basis for the review; or

(b) the bidder that lodged the application has failed to establish the grounds for review.

(6) Where the Review Council finds that a bidder that lodged an application for reconsideration has established valid grounds for the review, the Review Council may, as appropriate, apply the remedies of section 72.

(7) The decision of the Review Council is subject to judicial review only on a question of law.

Duties of the Review Council

2. (1) Once appointed, members of the Review Council shall conduct the review independently and impartially in accordance with this Procedure and shall, in all respects relating to their status and ethical standards, be bound by the rules applicable to public servants.

(2) A member of the Review Council who has a direct or indirect personal interest in a matter being considered or to be considered shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Secretariat which shall apply to the Minister to appoint an

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alternative member in accordance with paragraph 1 of the Fourth Schedule.

(3) The obligation under subparagraph (2) is a continuing obligation on members of the Review Council. They are required to disclose immediately to the Secretariat their interest as soon as such interest arises.

Secretariat of the Review Council

3. (1) The Secretariat of the Review Council, provided under section 66 (1), and shall be responsible for the organisation and management of review procedures.

(2) The business of the Review Council and all clerical matters arising out of the conduct of a review under this procedure shall be carried out by the Secretariat. In particular, all applications for reconsideration, replies and subsequent communications shall be addressed to the Review Council at the Secretariat unless otherwise specified.

(3) Copies of all relevant forms to be used for the review procedure shall be available for collection at the office of the Secretariat and a copy of such forms shall be sent to all interested parties upon request.

(4) Following the receipt of an application for review, the Secretariat shall prepare and provide to the Review Council the case file and the terms of reference in the form provided for in the Secretariat's Manual of Procedures.

Representation

4. A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Review Council as suitable for the purposes of such representation.

Submission of Application for Reconsideration

5. (1) Any bidder wishing to submit an Application for Reconsideration shall submit the following documents to the Secretariat:

- (a) a completed Application for Reconsideration in the Form provided for by the Secretariat;
- (b) copies of any documentary evidence relied upon in support of the claim set out in the Application for Reconsideration Form;
- (c) where the request is made by an agent of the Applicant, an appropriate power of attorney.

(2) The Secretariat shall record receipt of the Application for Reconsideration in the Review Register and assign it a Case Reference Number.

(3) The Secretariat shall immediately verify that the Application for Reconsideration is in conformity with the paragraphs 1(1) and 5(1).

(4) The Review Council shall reject an Application for Reconsideration found not to be in conformity with this section to and return the application to the applicant together with a statement of the reasons for rejection; but the Applicant may re-submit a corrected Application for Reconsideration.

(5) Upon recording receipt, the Secretariat shall immediately notify the procuring entity against whom the Application for Reconsideration has been made (the Respondent) of the Application for Reconsideration and include with the notice a complete copy of the Application for Reconsideration. Such notification shall ordinarily take place at the latest the next

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working day following the submission of the Application for Reconsideration.

Submission of Reply

6. (1) Within five working days of the receipt of the notification from the Secretariat, the Respondent shall submit to the Secretariat a Reply containing the following documents:

(a) a written Reply to the Application for Reconsideration in the form provided by the Secretariat;

(b) copies of any documentary evidence relied upon in support of the Reply;

(c) where the Reply is made by an agent of the Respondent, an appropriate power of attorney.

(2) The failure of a Respondent to submit a Reply within the specified period shall not prevent the conduct of the review procedure and the Respondent shall remain bound by any decision of the Review Council.

(3) Where the Respondent fails to submit a Reply within the specified time limit, the Secretariat may proceed with the formal assignment of the case to the Review Council.

(4) The Review Council shall, if it is satisfied that the Application for Reconsideration was duly served on the Respondent and the party has failed to serve a Reply without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

Registration

7. (1) Following receipt of the Reply, the Secretariat shall

collate all the relevant documents into a single case file, including the Application for Reconsideration, the Reply, the documentary evidence provided by the parties and the powers of attorney, if any.

(2) The Secretariat shall formally assign the case to the Review Council and provide each member with a copy of the case file.

(3) Following confirmation of assignment of the case to the Review Council and receipt by the Secretariat of the procedural instruction for the review from the Review Council, the Secretariat shall register the commencement of the review procedure in the Review Register as the 'date of commencement'.

(4) The Secretariat shall immediately notify the parties of the date of commencement and provide them with a copy of the case file and the procedural instructions for the review.

(5) The Secretariat shall simultaneously notify the bidders, suppliers, contractors, service providers and any governmental authority whose interests are affected or are likely to be affected by the review in accordance with section 71.

Opening of Review Procedure

8. (1) The Review Council shall, taking into account the nature of the case defined in the Application for Reconsideration and the Reply, determine the order, time and place of its any hearing it intends to hold.

(2) At the request of the parties, the Review Council may proceed to make its decision in the absence of a hearing. In such a case, the Review Council, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties, may proceed to reach a decision without a hearing.

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(3) In determining the order and time of the hearing, the Review Council shall give sufficient consideration to preventing the delay of the proceedings.

(4) The Secretariat shall communicate this decision to the parties in the form provided for in the Manual of Procedures.

Hearing

9. (1) The hearing shall take place in the manner provided for by the Review Council.

(2) If one of the parties, despite having received notice of the hearing, fails to appear, the Review Council, if satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.

(3) The hearing shall be closed to the public save that, with the consent of the Review Council, persons having a justifiable interest in the proceedings may be admitted.

(4) The Secretariat shall, for each hearing, take and keep minutes or ensure that such are taken and kept, recording the time, place and the names of those attending together with a summary record of the meeting or hearing.

Evidence

10. (1) All relevant documentary evidence relied upon by the parties in support of their claims and replies shall be put before the Review Council in the form of copies of the Application for Reconsideration and Reply Forms provided for in the Manual of Procedures.

(2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Review Council, it is relevant and only with the Review Council's prior written consent.

(3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.

(4) The Review Council may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

Conclusion of the Proceedings

11. (1) The Review Council shall, when satisfied that all contentions and evidence of the parties have been submitted, conclude the proceedings.

(2) The Review Council shall deliver its decision to the Secretariat within ten working days of the date of commencement, subject to any adjournment that proves necessary in the opinion of the Review Council which may not exceed a further ten working days.

(3) The decision of the Review Council shall be confined to the issues raised by the Application for Reconsideration and Reply.

(4) The decision shall be formulated in accordance with the form provided for in the Manual of Procedures.

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(5) The Secretariat shall immediately notify all parties of the decision delivered by the Review Council.

(6) The decision of the Review Council shall be final and binding, subject only to judicial review on a point of law.

Passed in the House of Assembly this 1st day of December, 2021.

DANIEL JAMES
Clerk of the House of Assembly

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