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PUBLIC PROCUREMENT ACT, 2008

(Act 33 of 2008)

I assent



J. A. Michel
President

23rd December, 2008

AN ACT to provide for the basic principles and procedures to be applied in, and regulate, the public procurement of goods, public works, consultancy services, and other services and for the institutions responsible for those matters, and to provide for related matters.

Enacted by the President and National Assembly.

PART I PRELIMINARY

1. (1) This Act may be cited as the Public Procurement Act, Short Title 2008 and it shall come into operation on a date appointed by the Minister by a notice published in the Gazette

2. In this Act —

Interpretation

“approvals authority” means the body or individual with power to grant prior authorisation of certain key steps in the procurement process;

“best evaluated bidder” means the bidder ranked as first, following the application of the specified evaluation methodology and criteria;

“bid” means an offer to provide goods, works or services submitted by a bidder in response to an invitation from a procuring entity and includes a tender, proposal, quotation and, where applicable, an application to pre-qualify;

“bidder” means a person or group of persons that offers to provide goods, works or services in response to an invitation from a procuring entity and includes, where applicable, a potential bidder and an applicant to pre-qualify;

“bidding document” —

(a) means any document issued by a public body on the basis of which bidders prepare bids;

(b) includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract and other similar items;

“bid security” means the security instrument required to ensure that a bid remains valid during the period stated in the bidding document;

“Board” means the National Tender Board established under section 13;

“challenge” means a challenge made under section 98;

“chief executive officer”, in relation to a public body, means the person responsible for, or the head of, a public body;

“close relative” means a spouse, concubine, partner, child, or parent;

“coercive practice” means harming or threatening to harm, directly or indirectly, a person or a person's property, in order to influence that person's participation in a procurement process or affect the execution of a contract;

“collusive practice” means a scheme or an arrangement between two or more bidders, with or without the knowledge of a procuring entity, designed to establish bid prices at an artificial or non-competitive levels;

“conflict of interests” means circumstances in which the personal knowledge and official status of a person might benefit, directly or indirectly, that person in another capacity;

“consultant” means a person under contract to provide consultancy services to a procuring entity in relation to a procurement contract;

“consultancy services” means services of an intellectual or advisory nature, not incidental to the provision of goods or services or the execution of works, such as reports, drawings or designs including engineering designs, supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice, assistance with institutional reforms and software development;

“contract” means an agreement between a procuring entity and a supplier, contractor or consultant resulting from a procurement proceeding;

“corrupt practice” means to give, confer, procure, or promise or offer to give or confer, or to procure or attempt to procure, directly or indirectly anything of value to a public officer, to influence his or her action in a procurement process or in the execution of a contract;

“direct bidding” means a procurement method where a bid is obtained directly from a single bidder, without any competition;

“donor organisation” means an organisation based outside Seychelles which provides or joins in providing, grants, credits or loans to the Government or its agencies;

“due diligence” means the assessment of a bidder or supplier's technical, financial and managerial capabilities, or a bidder or supplier's governance record to effectively execute a contract;

“foreign bidder or supplier” means a bidder or supplier who is not licensed to undertake business activities in Seychelles;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process, or an execution of a contract;

“goods” means objects of every kind and description including raw materials, manufactured products and equipment, objects in solid, liquid or gaseous form, electricity, as well as works or services or both, incidental to the supply of the goods, if the value of those incidental works or services or both do not exceed that of the goods themselves;

“international competitive bidding” means bidding open to all bidders, including citizens of Seychelles, local and foreign bidders;

“limited bidding” means a procurement method for goods, works and non-consultancy services, where bids are obtained by direct invitation to a shortlist of bidders, without open advertisement;

“limited selection” means a procurement method for consultancy services, where bids are obtained by direct invitation to a shortlist of bidders, without open advertisement;

“local bidder or supplier” means a bidder or a shortlist of bidders, without open advertisement, or supplier who is licensed to undertake business activities in Seychelles;

“major contract” means a contract for the procurement of goods, services or works —

(a) to which a public body is or proposes to be a party; and

(b) of which the estimate of the fair and reasonable value exceeds the prescribed amount;

“Minister” means the Minister responsible for Finance and “Ministry” is construed accordingly;

“national competitive bidding” means bidding which is limited to citizens of Seychelles and local bidders or suppliers;

“non-consultancy services” means services other than consultancy services, for the carrying out of works of any kind, with or without the use of vehicles, machinery or equipment, or the provision of operators, technicians or drivers;

“open bidding” means the procurement method for goods, works and non-consultancy services which is open to participation on equal terms to all bidders through advertisement of the opportunity;

“open selection” means the procurement method for consultancy services which is open to application for short-listing on equal terms to all bidders through advertisement of the opportunity;

“parastatal body” means a statutory corporation or body, or a company in which the Government has a majority or controlling interest;

“post-qualification” means the conduct of due diligence to determine whether a bidder is qualified to perform a contract effectively;

“Procurement Oversight Unit” means the Procurement Oversight Unit in the Ministry;

“procurement” means acquisition by purchase, lease, tenancy, hire purchase, licence, franchise or by any other contractual means of any type of works, assets, services or goods including livestock or any combination thereof;

“Procurement Committee” means the Procurement Committee of a procuring entity established under section 33;

“Procurement Unit” means the division or department in a procuring entity that is responsible for the execution of procurement functions;

“procuring entity” means a public body that is undertaking public procurement in accordance with this Act;

“public body” means a Ministry or other agency of

the Government or any other body or unit established and mandated by the Government, to carry out procurement using public funds;

“public funds” —

(a) has the meaning given to it in the Public Finance Act; and

(b) includes monetary resources appropriated to a public body through the budgetary process, as well as extra budgetary funds, including aid, grants and credits, put at the disposal of a public body by a foreign donor;

“public office” means an office of emolument in the public service;

“public officer” means a person holding or acting in a public office;

“responsive” in relation to a bid, means responsive to the basic requirements of a bid in relation to the ability to perform and complete on time;

“Review Panel” means the Independent Review Panel established under section 99;

“services” means any object of procurement, other than goods or works, which involve the furnishing of labour, time or effort;

“simplified bidding” means a procurement method which compares quotations from a number of bidders;

“solicitation document” means a bidding document, request for proposals, request for quotation and, where applicable, pre-qualification document or document of any kind issued by a procuring entity, inviting bidders to participate in procurement proceedings;

“supplier” means a contractor, consultant, service provider or natural person or incorporated body that is party to a contract with a procuring entity for the provision of goods, works or services;

“undue influence” includes any form of pressure brought to bear by any official, elected or appointed, who is in a position to provide a benefit to, or exact punishment against, any person involved in procurement activities or decisions;

“works” means works associated with the construction, re-construction, demolition, repair or renovation of a building, road, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction, such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to a contract, if the value of those services does not exceed that of the works themselves.

Extent of application **3. (1)** Notwithstanding any other enactment, a procuring entity is not required to apply the procedure provided for in this Act, to the following procurements —

- (a) a public procurement in the case of which, adherence to the procedure may result in a disclosure of a State secret;
- (b) procurement undertaken to protect national security or defence or incidental to the protection of national security or defence;
- (c) contracting for arbitration or conciliation services;

(d) contracting for financial services relating to the issue, sale, purchase or assignment of securities or other financial instruments;

- (e) contracting for scientific research, if the results of research are to be used by the procuring entity only;
 - (f) purchasing of immovable or rights relating to immovable, property;
 - (g) contracting for services by the Seychelles Broadcasting Corporation or any other entity replacing it, for the acquisition, development, production or co-production of a programme or a part of it, and broadcasting time;
 - (h) entering into a public service contract or an employment contract pursuant to the Public Service Orders or the Employment Act;
 - (i) purchasing of museum objects, records, data media or licences for the use of data media, if the purchaser is a museum, archive or library;
 - (j) contracting for the performance of auditing and special auditing, for the purposes of exercising State supervision, if the right of the State supervision authority to order such special auditing is provided by law;
 - (k) a public procurement in the case of which a contract is entered into according to a mandatory special procedure of an international organisation.
- (2) This Act applies to any other procurement effected by a public body unless otherwise prescribed by the Minister.
- (3) This Act binds the Republic.
4. A procuring entity shall, before entering into an international agreement relating to procurement, obtain the approval of the Procurement Oversight Unit, and the advice of the Attorney-Genera

Approval
required for
international
agreements on
procurement

- | | |
|---|--|
| Conflict with
other enactment | <p>5. (1) This Act shall prevail where it conflicts with any other enactment in matters relating to procurement.</p> <p>(2) An enactment that provides for a person or body to approve any work or expenditure, shall not be construed as giving that person or body any power with respect to procurement proceedings.</p> |
| Conflict with
international
agreements | <p>6. (1) Where this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Seychelles under any treaty or any other form of agreement, those procurement rules shall prevail.</p> <p>(2) Where a treaty or agreement referred to in subsection (1) contains provisions favourable to the citizens of Seychelles and local contractors, full advantage shall be taken of those provisions in the interest of promoting domestic capacity development.</p> <p>(3) Where procurement, to which subsection (1) applies, favours an external beneficiary —</p> <p>(a) the procurement through contributions made by Seychelles shall be undertaken in Seychelles as far as it is feasible, through contractors registered in Seychelles; and</p> <p>(b) relevant insurances shall be placed with companies, and goods shall be transported in vehicles, registered in Seychelles as far as it is feasible.</p> |
| Conflict with
conditions on
donated funds | <p>7. (1) Where this Act or any direction of the Board conflicts with a condition imposed by a donor of funds, the condition shall prevail with respect to a procurement that uses those funds.</p> <p>(2) This section shall not apply, if the donor of funds is a public body.</p> |

PART II

PROCUREMENT OVERSIGHT UNIT

8. (1) There shall be a Procurement Oversight Unit.

The Procurement Oversight Unit shall be administered by a Director appointed by the Minister on such terms and conditions as may be determined by the Minister

9. The Procurement Oversight Unit —

Policy making
responsibility

(a) shall serve as a procurement policy making and monitoring body;

(b) shall not in any way be involved in conducting procurement proceedings or resolving procurement disputes; and

(c) may request information from, and consult with, the Board, the Review Panel, or any public body, in the development of procurement policy for the Government.

10.(1) The Procurement Oversight Unit shall, in the performance of its functions —

Functions

(a) issue instructions to public bodies concerning the coordination of their actions with the Procurement Oversight Unit, the Board and the Review Panel;

(b) issue public procurement circulars and publications to provide guidance on the interpretation and application of this Act;

(c) formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of this Act;

- (d) issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement;
- (e) collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with this Act;
- (f) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the introduction of information and communications technology, the dissemination of publications and the setting up of websites dedicated to procurement;
- (g) present an annual report to the Minister regarding the overall functioning of the procurement system;
- (h) communicate and cooperate with international institutions, funding agencies and other foreign entities on matters of procurement;
- (i) advise the Minister regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and carry out an annual review of such delegations;
- (j) register the names, and keep a database of, suppliers, contractors and consultants;
- (k) receive complaints from procuring entities about suppliers, contractors and consultants;
- (l) maintain a list of firms that have been excluded

from participating in public procurements and communicate the list to procuring entities in a transparent manner, on a regular basis;

- (m) ensure that the standard bidding documents contain all the information necessary for a bidder to submit a bid, as specified in Schedule 2
- (n) vet bidding documents and public notices submitted to it, to ensure compliance with the relevant laws, regulations and policies;
- (o) within such time as may be prescribed after having received the documents referred to it in accordance with this Act, may authorise the procuring entity to call for bids, or utilise another appropriate procurement method;
- (p) select persons from a list of qualified and independent evaluators maintained and paid by it, who have not been a party to the preparation of any bidding documents, to act as members of a bid evaluation committee of the procuring entity, in order to —
 - (i) oversee the examination and evaluation of bids; and authorise a procuring entity to use an appropriate method where —
 - (ii) authorise a procuring entity to use an appropriate method where —
 - (aa) an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location, scattered location, financing or high mobilisation costs, for an outside supplier;
 - (bb) an activity for a pilot project of a particular nature for the development

of a technology work method cannot be carried out by a contractor;

(cc) works must be carried out without disrupting the existing operations of the staff of a public body, who are familiar with those operations;

(dd) there is an emergency such as a natural disaster which calls for immediate action;

(ee) the risk of unavoidable work interruptions is better borne by a public body rather than a contractor;

(ff) an activity is such that, if carried out by a contractor, it would impose an unacceptable risk on the contractor as the cost cannot be determined in advance; or

(gg) it has been demonstrated that departmental execution is the only practical method for construction, maintenance and conservation works under special circumstances;

(q) do such other acts and things as are incidental to the foregoing or conducive to the attainment of the objects of the Procurement Oversight Unit.

(2) The Procurement Oversight Unit shall in the performance of its functions act in a predictable and transparent manner, and not be subject to any undue influence.

Staff

11.(1) The Minister shall appoint on such terms and conditions as may be determined by the Minister, the professional staff of the Procurement Oversight Unit.

(2) The staff referred to under subsection (1) comprises persons with integrity and experience in the field of procurement, with a background in technical, legal, financial or administrative matters.

(3) Public officers shall be designated as may be required to assist the Procurement Oversight Unit in the performance of its functions, and officers so designated shall be under the administrative control of the Director.

12.(1) In order to ensure due compliance with this Act, the Procurement Oversight Unit shall establish under the general supervision of the Director, an inspectorate unit which shall monitor, in accordance with the rules or regulations made under this Act, the procurement performance of procuring entities.

Inspectorate
Unit

(2) The Procurement Oversight Unit may appoint such inspectors and other staff to the inspectorate unit as may be necessary for the performance of the functions of that unit.

PART III

NATIONAL TENDER BOARD

13.(1) There is established a National Tender Board.

Establishment

(2) The Board shall be a body corporate.

14.(1) The President appoints the Board which comprises —

Composition

(a) a Chairperson; and

(b) a maximum of six other members as follows —

- i. two public officers;
- ii. a representative of the Seychelles Chamber of Commerce and Industry;
- iii. a representative of a Non Governmental Organisation nominated by LUNGOS; and

- (iv) two representatives of professional associations operating in Seychelles, nominated by such associations,

having the necessary experience and knowledge in general economics, legal, administrative, financial, engineering, scientific or technical matters.

(2) The members of the Board shall elect, from among themselves, a vice-chairperson.

(3) The President shall cause a notice of the names of the members of the Board referred to under subsection (1) to be published in the Gazette.

Functions

15.(1) The functions of the Board are —

- (a) to establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
- (b) to receive and publicly open bids;
- (c) to review the recommendations of a bid evaluation committee and —
 - (i) approve or reject the award of a contract; or
 - (ii) on specified grounds, may require the evaluation committee to make a fresh or further evaluation or seek an independent evaluation.

(2) The Board shall strive to achieve the highest standards of transparency and equity in the performance of its functions, taking into account —

- (a) the evaluation criteria and methodology disclosed in the bidding documents;

- (b) the qualification criteria and methodology disclosed in the bidding documents;
- (c) equality of opportunities for all bidders;
- (d) fairness of treatment to all parties;
- (e) the need to obtain the best value for money in terms of price, quality and delivery, having regard to set specifications; and
- (f) transparency of process and decisions.

16.(1) In the performance of its functions, the Board shall have power —

Powers

- (a) to call for such informations or documents or both, as it may need from any public body;
- (b) to summon witnesses;
- (c) to examine such records or other documents and take copies or extracts from them;
- (d) to commission any studies relevant to the determination of an award of a major contract;
- (e) to request any professional or technical assistance from any appropriate person in Seychelles or elsewhere; and
- (f) to do such acts and things incidental or conducive to the exercise of its powers.

(2) A public body to which a request is made under subsection (1)(a) that fails to comply with the request, or through its employee, wilfully gives a false or misleading answer to any question lawfully put to it by the Board, commits an offence and is liable on conviction to a fine not exceeding fifty thousand rupees.

(3) An award of a tender shall have the approval of the

Board as per the procurement thresholds set out in Schedule 1.

- (4) An award of a tender signed by a procuring entity without the approval of the approvals authority, or signed over the procurement thresholds set out in Schedule 1 shall be null.
- (5) Where —
 - (a) a variation in a contract price subsequent to the conclusion of a procurement contract entered into by a public body causes the total contract amount to exceed the procurement thresholds set out in Schedule 1; or
 - (b) the lowest bid submitted in response to an invitation made by a public body exceeds the cost estimate, the matter, together with all the bidding and contract documents, if any, shall be referred to the Board for approval.
- (6) The Chairperson of the Board may, where he or she

considers it appropriate, refer a matter reported under subsection

(5), to the Procurement Oversight Unit.

(7) The Board shall periodically publish in appropriate media information on award of tenders.

(8) Where it comes to the knowledge of the Board that a contract has been awarded in breach of this Part, the Board shall forthwith report the matter to the Procurement Oversight Unit, recommending such action as it may consider appropriate.

Tenure of
office and
vacancy

17.(1) Members of the Board shall hold office for a period of three years from the date of appointment, except that, half the number of members shall be re-appointed, for a further term of office to ensure continuity and institutional memory.

(2) A member of the Board shall, on the expiration of the period for which the member was appointed, continue to hold

office until such other member is appointed to succeed that member, except that the period shall not exceed three months.

(3) The office of a member of the Board shall become vacant —

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent from three consecutive meetings of the Board, of which the member has had notice, without the prior written approval of the Board;
- (d) upon the expiry of one month's notice of the member's intention to resign from office, given by the member in writing to the Board;
- (e) if the member becomes mentally or physically incapable of performing the functions of a member of the Board; or
- (f) if the member is convicted of an offence and sentenced to imprisonment for a term of six months or more.

(4) A member of the Board may resign from office by giving not less than one month's notice in writing to the Board.

(5) The President shall, at any time, terminate the appointment of a member of the Board who has been guilty of —

- (a) any misconduct, default or breach of trust in the discharge of the member's duties;
- (b) an offence of such a nature that calls into question the member's professional standing or the reputation of the Board, and warrants that the appointment of such member be terminated.

(6) The President shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

Proceedings **18.(1)** The Board shall regulate its own proceedings.

(2) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting upon receiving a written request from at least five members of the Board.

(3) If the urgency of any particular matter does not permit the giving of the notice required under subsection (2), a special meeting may be called by the Chairperson upon giving a shorter notice.

(4) A quorum for a meeting of the Board shall be three members.

(5) The Chairperson shall preside at meetings of the Board at which he or she is present, and in the absence of the Chairperson from a meeting, the vice-chairperson shall preside.

(6) Where the Chairperson and vice-chairperson are absent from a meeting of the Board, the members shall elect among themselves such member to preside at that meeting.

(7) A decision of the Board on any question shall be by a majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(8) The Board may invite a person whose presence is in its opinion, desirable to attend, and participate in the deliberations of a meeting of the Board, but such person shall have no vote.

(9) A member of the Board may disclose, at a meeting of the Board, any information that the member possesses as a

result of that member's appointment or position in any other public office, to assist the Board in its deliberations.

(10) The validity of a proceeding, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of a member.

(11) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and any committee established by the Board.

19.(1) The Board may, for the purpose of performing its functions under this Act, constitute any committee and delegate to any such committee such of its functions as it thinks fit.

Committees

(2) The Board may appoint as members of a committee constituted under subsection (1), persons who are or are not members of the Board, and such persons shall hold office for such period as the Board may determine.

(3) A committee of the Board shall regulate its own proceedings.

20. There shall be paid to members of the Board or a committee of the Board such allowances as the Board may, with the approval of the Minister, determine.

Allowance

21.(1) A member or person who is present at a meeting of the Board or a committee at which any matter, in which that person or any member of the person's close relative is directly or indirectly interested in a private capacity, is the subject of consideration, shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to, that matter.

Disclosure
of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting

Prohibition of
publication or
disclosure of
information

22.(1) A person shall not, without the consent in writing given by or on behalf of the Board, publish or disclose to an unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding two years, or to both.

Seal

23.(1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Director appointed under section 24(1).

(2) The affixing of the seal shall be authenticated by the Chairperson or vice-chairperson or one other person authorised in that behalf by a resolution of the Board.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Director referred to under subsection (1) or any other person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be executed or issued, as the case may be, without any further proof, unless the contrary is proved.

24.(1) The President shall appoint a Director on such terms and conditions as the President may determine. Director

(2) The Director shall-

- (a) provide administrative and professional support to the Board;
- (b) ensure the proper implementation of the work programme of the Board;
- (c) prepare or co-ordinate the preparation of such papers, documents or studies as may be requested by the Board; and
- (d) carry out any other duties which, in the opinion of the Board, may best serve its objects.

(3) The Director shall be an *ex-officio* member of the Board and act in that capacity at all meetings of the Board, but shall have no right to vote.

(4) The Board may for good cause request the Director to withdraw from a meeting of the Board.

(5) The Board may delegate to the Director such of its duties under this Act as may be necessary to enable him or her to carry out effectively the day to day business of the Board.

25.(1) The Board may appoint, on such terms and conditions as it may determine, such other professional staff as it may consider necessary for the performance of the board's functions under this Act. Other staff

(2) Such other professional staff of the Board shall be persons of integrity and with experience in the field of procurement, with a background in technical, legal, financial or administrative matters.

26. An action or other proceeding shall not lie or be instituted against a member of the Board, a committee of the

Immunity of
members and
staff

Board, staff of the Board or the Director for or in respect of any act or thing done or omitted to be done in good faith in the discharge, exercise or performance, or purported discharge, exercise or performance, of any of the duties, powers or functions of such member, staff or Director conferred under this Act.

Co-operation
with other
authorities

27.(1) The performance by the Board of its functions under this Act, shall not affect in any manner the functions of other authorities under any other enactment.

(2) The Board shall co-operate with other bodies performing oversight functions over public procurement in Seychelles and may, for that purpose, establish mechanisms for sharing information and working jointly with those bodies.

(3) A procuring entity and a person involved in public procurement shall cooperate with the Board and any other public body performing monitoring and oversight functions over public procurement.

Funds

28.(1) The funds of the Board consist of moneys as may —

- (a) be appropriated to the Board by the National Assembly for the purposes of the Board;
- (b) be paid to the Board by way of fees, charges or grants; and
- (c) otherwise vest in or accrue to the Board.

(2) There shall be paid from the funds of the Board —

- (a) the salaries, allowances, gratuities and pensions of the staff of the Board and other payments for the recruitment and retention of such staff;
- (b) such reasonable travelling and subsistence allowances or other allowances for members of, the Board, any committee of the Board and staff

of the Board, when engaged on business of the Board, at such rates as the Board may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Board in the performance of its functions under this Act.

29. The financial year of the Board shall be the period of twelve months ending on 31st December of each year. Financial year

30.(1) The Board shall cause to be kept proper books of account and other records relating to the accounts of the Board. Account and audit

(2) Article 158 of the Constitution shall apply in respect of the auditing of the accounts of the Board.

31.(1) As soon as practicable, but not later than ninety days after the end of the financial year, the Board shall submit to the Minister a report concerning its activities during that financial year. Annual report

(2) The report, referred to in subsection (1), shall include information on the financial affairs of the Board and there shall be appended to the report —

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than thirty days after the receipt of the report referred to in subsection (1), present the report before the National Assembly.

PART IV

INSTITUTIONAL STRUCTURES

32. For the purposes of this Act, a procuring entity comprises — Composition of procuring entity

Establishment
of
Procurement
Committee
Composition

- (a) a Procurement Committee; and
 - (b) a Procurement Unit.
- 33.** There is established a Procurement Committee for a procuring entity.
- 34.(1)** A Procurement Committee comprises —
- (a) a chairperson appointed by the chief executive officer;
 - (b) not more than three other members appointed by the chief executive officer, as follows -
 - (i) two members from the procuring entity; and
 - (ii) one other person who is not a public officer.
 - (2) The Minister shall prescribe the procedures to be followed by a procuring entity, unable to constitute a Procurement Committee in view of its size.
 - (3) A member of a Procurement Committee shall be appointed with regards to his or her —
 - (a) technical and professional competence;
 - (b) procurement skills and knowledge required for the performance of the functions of the Procurement Committee; and
 - (c) proven integrity and sound decision-making abilities.
4. A chief executive officer shall, in selecting the members of a Procurement Committee, seek to establish a balance of skills and experience among the members to ensure that the Procurement Committee

- (a) has an appropriate level of seniority and experience in decision-making;
- (b) includes persons with knowledge and experience in public procurement and other relevant professional disciplines; and
- (c) includes persons with knowledge and experience of the procuring entity's operations.

(5) A chief executive officer shall, when appointing members of a Procurement Committee, appoint half the members for a tenure of two years in order to ensure both continuity and rotation in the membership of the Procurement Committee.

35.(1) A Procurement Committee shall ensure that all procurements of a procuring entity are conducted in accordance with this Act.

Powers and
functions of
Procurement
Committee

(2) A Procurement Committee shall be responsible for providing prior authorisation of the procurement process in accordance with the procedure set out in Part VII.

(3) A Procurement Committee shall abide by the procurement thresholds set out in Schedule 1.

36. (1) A Procurement Unit is established in a procuring entity.

Establishment
and functions of
Procurement
Unit

(2) The Procurement Unit referred to under subsection (1) is responsible for, managing procurement activities of a procuring entity in accordance with this Act and obtaining the required approvals from the approvals authority.

(3) Without prejudice to the generality of subsection (2), the functions of a Procurement Unit are —

- (a) to plan the procurement activities of a procuring entity and recommend the appropriate method of procurement;

- (b) to prepare solicitation documents, bid notices, short-lists, evaluation reports, contract award recommendations and contracts;
- (c) to manage the bidding process, including pre-bid meetings, clarifications, receipt and opening of bids;
- (d) to manage the evaluation of bids and any pre-qualifications or negotiations;
- (e) management by a designated contracts manager; and
- (f) to prepare any procurement reports required by the Procurement Oversight Unit, Board, a chief executive officer or a Procurement Committee.

Procurement
authorization
and
procurement
thresholds

- 37.**(1) A procuring entity shall establish procedures for the making of decisions relating to procurement, on behalf of the public body.
- (2) The procedures required under subsection (1) shall be consistent with this Act and regulations made under this Act.
- (3) A procurement shall be —
- (a) within the approved budget of a procuring entity, and planned by the procuring entity through an annual procurement plan; and
 - (b) undertaken by a procuring entity in accordance with the procurement thresholds set out in Schedule 1 and regulations made under this Act.
- (4) The following stages of a procurement process shall require the prior approval of the Board or a chief executive officer as the case may be —
- (a) the use of the limited or direct bidding methods

- of procurement, except where direct bidding is on the basis of lowest value bid;
- (b) solicitation documents prior to their issue;
 - (c) evaluation reports prior to any further bid opening, the subsequent stage of evaluation and notification of an award
 - (d) any other documents incorporating a contract award recommendation, such as reports on negotiations, prior to any notification of the award;
 - (e) amendments to a contract prior to its issue;
 - (f) the cancellation of procurement proceedings; and
 - (g) the termination of a contract.
- (5) The approvals authority shall be —
- (a) a chief executive officer, where the value of the procurement does not exceed the procurement thresholds level set out in Schedule I;
 - (b) a Procurement Committee for all other procurement, subject to the procurement thresholds level set out in Schedule I; and
 - (c) the Board for any procurement in excess of the procurement thresholds level set out in Schedule I.
- (6) A chief executive officer shall authorise the issue of a contract:

Provided that the contract documents are in line with the contract award recommendations authorised previously by the Procurement Committee.

(7) A chief executive officer may delegate a threshold level of procurement, up to the maximum provided in Schedule I, to any designated senior officer or officers of a public body, including the head of a Procurement Unit.

(8) Any delegation made by a chief executive officer under subsection (7), shall be in writing and copied to the head of the Procurement Unit.

(9) Where the proposed or actual value of a contract exceeds the value originally estimated for a procurement, and thereby exceeds the threshold level of a Procurement Committee who authorised any previous stages in a procurement process, a procuring entity shall make a request for approval by the Board, with details of the earlier stages and prior approval.

Responsibility
for complying
with Act

38.(1) A public body shall ensure that this Act, regulations made under this Act and any directions of the Procurement Oversight Unit or Board are complied with in respect of each of its procurement.

(2) A chief executive officer shall ensure that the public body fulfils its obligations under subsection (1).

(3) Every public officer of a public body and each member of a board or committee of that body shall ensure, within the area of their responsibilities that this Act, the regulations made under this Act, and any directions of the Procurement Oversight Unit or Board are complied with.

(4) A chief executive officer may use the Procurement Committee of another procuring entity to carry out a procurement of that Procurement Committee.

(5) The Procurement Oversight Unit shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay or in such other prescribed instances.

39.(1) The Minister may, on the recommendations of the Procurement Oversight Unit, by regulations —

Procurement
of common use
items

- (a) designated an urgency of unit with responsibility for the procurement of common use items for a group of public bodies; and
- (b) specify the procedure for the procurement of common use items in conformity with this Act and regulations made under this Act, by a designated agency or unit.

(2) A procuring entity shall, until the Minister designates an agency or unit under subsection (1), procure common use items in accordance with this Act.

(3) For the purposes of this section, common use items shall be any goods, works or services required by more than one procuring entity, for which the Government can obtain greater efficiency and value for money through centralised purchasing.

(4) The Procurement Oversight Unit is to determine the goods, works or services which are to be common use items, and regularly distribute a list of those items so determined to all procuring entities, and the list shall indicate which common use items are held in stock in government storage.

(5) The Procurement Oversight Unit, for any common use items —

- (a) shall liaise with all procuring entities, as part of the annual procurement planning process, on an ongoing basis, in order to establish a detailed list of common use items and estimated needs;
- (b) may evaluate suppliers for common use items in order to issue a list of approved sources of supply;
- (c) may enter into framework contracts or other appropriate contractual arrangements for the

(d) may utilise warehouses for cost effective storage and distribution of common use items; and

(e) shall regularly issue updated information to all procuring entities on the items available, prices, delivery times and arrangements established for ordering or obtaining such items.

(6) A procuring entity shall utilise approved sources of supply or framework contracts to obtain common use items in accordance with instructions issued by the Procurement Oversight Unit.

Use of procurement
agent or
procurement
service provider

40.(1) A procuring entity may, in such manner as may be prescribed, appoint a procurement agent or procurement service provider on a competitive basis to carry out procurement functions in accordance with this Act.

(2) The Board shall pre-qualify a procuring agent or procurement service provider to be engaged by a procuring entity under subsection (1).

(3) A procuring agent or procurement service provider shall register with the Procurement Oversight Unit.

Adhoc
evaluation
committee

41.(1) A procuring entity shall appoint an adhoc evaluation committee for each procurement required in accordance with this Act.

(2) The adhoc evaluation committee appointed under subsection (1) shall be responsible for, the evaluation of tenders, proposals or quotations, and the preparation of evaluation reports for submission to the approvals authority.

(3) The adhoc evaluation committee comprises not less than three members and any other person appointed by the approvals authority, and may include a member who is not an employee of a public body.

(4) The members of the adhoc evaluation committee shall possess skills, knowledge and experience relevant to a procurement requirement which may include —

- (a) technical skills;
- (b) procurement and contracting skills;
- (c) financial management or analysis skills; or legal expertise.

(5) The number and level of expertise of members of the adhoc evaluation committee shall depend on the value and complexity of a procurement requirement.

(6) Subject to this Act, a member of the Board or Procurement Committee shall not be a member of an adhoc evaluation committee.

PART V

GENERAL PROCUREMENT RULES

42.(1) The procuring entity shall use open tendering under Part VI for every tendering, or an alternative procurement procedure under Part VII.

Choice of
procurement
procedure

(2) A procuring entity may, subject to this Act, use an alternative procurement procedure only, if that procedure is allowed under Part VII.

(3) A procuring entity may use restricted tendering or direct procurement as an alternative procurement procedure only, if before using that procedure, the entity —

- (a) obtains the written approval of the Procurement Oversight Unit; and
- (b) records, in writing, the reasons for using the alternative procurement procedure.

Procurement
not to be
split or
inflated

43.(1) A procuring entity shall not structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure.

(2) Standard goods, services and works with known market prices shall be procured at the prevailing real market price.

(3) A public officer involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices may, in addition to any other sanctions provided in this Act, be required to compensate the procuring entity for any loss resulting from his or her action.

Restricted
or
negotiated
procedures

44.(1) In restricted or negotiated procedures, pre-qualification shall be —

- (a) applied to select those parties invited to submit tenders; and
- (b) advertised in a local newspaper having wide circulation in Seychelles with the intention of providing to all parties an opportunity to participate in the pre-qualification.

(2) In restricted or negotiated procedures —

- (a) the parties selected for participation by a pre-qualification, shall be invited to submit a bid in a notification sent to all the parties concurrently; and
- (b) the notification under paragraph (a) shall be accompanied by bidding documents and any other documentation as may be required.

(3) The number of participants to be selected in a restricted procedure shall not be less than three or more than twenty so as to ensure competition in the procedure, except that, if the number of participants to be selected in pre-qualification is to be limited, this shall be stated in the bidding document.

(4) In the case of a negotiated procedure, the number of participants to be selected in pre-qualification procedures to submit bids, shall not be less than three.

45. A procuring entity may use pre-qualification procedures in order to identify qualified persons, or may use the results of a pre-qualification procedure used by another procuring entity to identify qualified persons.

Pre-
qualification
procedures

46. Except as expressly allowed under regulations made under this Act, a procuring entity shall not enter into a contract for procurement with —

Limitation on
contracts with
employees

- (a) an employee of the procuring entity, a member of the Board, a member of a Procurement Committee or a close relative of that employee or
- (b) a Minister, public officer or a member or committee of the Government or any department of the Government

47.(1) A procuring entity shall prepare specific requirements, relating to goods, services or works, and give a correct and complete description of those goods, services or works being procured and allow for fair and open competition among those who wish to participate in the procurement proceedings.

Specific
requirements

- (2) The specific requirements referred to under subsection (1) shall include all the procuring entity's technical requirements with respect to the goods, works or services being procured.
- (3) The technical requirements referred to under subsection (2) shall —
 - (a) relate to performance rather than design;
 - (b) relate to descriptive characteristics; and
 - (c) be based on national or international standards

(4) The technical requirements referred to under subsection (2) and (3) shall not refer to any particular trademark, name, patent, design, type, producer or service provider or a specific origin, unless —

(a) there is no other sufficiently precise intelligible way of describing those requirements; and

(b) those requirements allow equivalents to what are referred to.

Statement and
declaration

48. A bid, proposal or quotation submitted by a person shall include a statement attesting to the fact that the person is not debarred from participating in procurement proceedings under this Act, and a declaration that the person shall not engage in any corrupt practice.

Termination of
procurement
proceedings

49.(1) A procuring entity may, at any time, terminate procurement proceedings without entering into a contract.

(2) A procuring entity shall give prompt notice of termination of procurement proceedings to every person who submitted a bid, proposal or quotation or, if direct procurement had been used, to each person with whom the procuring entity had negotiated.

(3) On the request of a person described in subsection (2), the procuring entity shall within fourteen days of the request, give its reasons for terminating the procurement proceedings.

(4) If procurement proceedings involved bids and the proceedings are terminated before the bids are opened, a procuring entity shall return the bids unopened.

(5) A procuring entity shall not be liable to any person for a termination under this section.

(6) A termination under this section shall not be reviewed by the Board, Review Panel or a court.

(7) A procuring entity that terminates procurement proceedings shall give the Board a written report on the termination.

(8) A report under subsection (7) shall include the reasons for the termination and shall be made in accordance with any directions of the Board with respect to the contents of the report and when it is due.

50.(1) A procuring entity shall maintain records of all procurement proceedings.

Records of
procurement

(2) A public body shall record and preserve all documentation and data relating to procurement proceedings for a period of at least eight years from the date of —

- (a) the completion of a contract or its termination;
- (b) the decision to terminate procurement proceedings;
- (c) the settlement of any dispute under a contract; or
- (d) the resolution of a challenge or appeal made under this Act,

whichever is later.

(3) Subject to this Act, all notifications, decisions and other communications, including electronic communications, referred to in this Act shall be in writing.

(4) Subject to the prior approval of the Procurement Oversight Unit, a public body may authorise the use of other forms of communications, including electronic communications, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payments.

(5) Where other means of communications are used in accordance with subsection (4), the public body shall ensure that—

- (a) a record of the content of the communication is preserved;
 - (b) an adequate level of security and confidentiality is provided;
 - (c) bidders' access to the records of procurement proceedings is preserved; and
 - (d) any other requirement of this Act is complied with.
- (6) After a contract has been awarded and procurement proceedings have terminated, the procuring entity shall, on request, make the records of the procurement available to a person who has submitted a bid, proposal or quotation or, if direct procurement was used, a person with whom the procuring entity was negotiating
- (7) The procuring entity may charge a fee for making the records available but such fee shall only cover the administrative cost of making the records available.
- (8) A disclosure under this section shall not be contrary to this Act.
- (9) A procuring entity shall maintain a proper filing system with clear links between procurement and expenditure files.

Communication

51.(1) A communication between a procuring entity and a bidder or supplier shall be in writing and where it is made in any other form, it shall be reduced to, and confirmed in writing.

(2) For the purposes of this section, “in writing” means in a form that provides a record of the contents of a communication.

(3) The use of electronic bidding, or any other form of modern information and communications technology, shall only be permitted in accordance with public procurement standards issued by the Procurement Oversight Unit.

(4) Unless otherwise permitted by the Procurement Oversight Unit, english, french or creole shall be the accepted language of communication.

52.(1) A public officer shall keep confidential the information that comes into the public officer's possession relating to procurement proceedings and to bids, including any bidder's proprietary information.

Confidentiality

(2) Without prejudice to the generality of subsection (1), a procuring entity shall not, except where required to do so by an order of a court, disclose any information relating to procurement proceedings and bids, where the disclosure would —

- (a) amount to a contravention of an enactment;
- (b) obstruct law enforcement;
- (c) prejudice the legitimate commercial interests of the parties;
- (d) inhibit fair competition in public procurement; or
- (e) in anyway be contrary to public interest.

53.(1) A procuring entity shall use the standard documents as may be approved by the Procurement Oversight Unit as templates for drafting invitations, contracts and notices.

Use of
standard
documents

(2) Where no suitable standard document has been issued, a procuring entity shall consult the Procurement Oversight Unit on the document to be used.

54.(1) A notice inviting bidders to participate in procurement proceedings, and a contract award notice shall be published —

Publication
of notice

- (a) at least three times in a local newspaper of wide enough circulation in Seychelles, to reach sufficient potential bidders so as to ensure effective competition; and

(b) to the extent feasible, on the internet, including any Government website.

(2) Where international tendering is used, the notice under subsection (1) shall also be published in appropriate media of wide regional or international circulation or on widely read internet sites.

(3) Notwithstanding subsection (2), where a procuring entity considers it necessary to ensure wide competition, it may, after the date of publication of the notice, send invitation notices directly to

-
- (a) potential bidders, who may be registered bidders, past suppliers or any other identified potential sources;
- (b) professional or industry associations; or
- (c) Seychelles embassies in countries which are likely to participate or foreign embassies in Seychelles.

(4) A procuring entity shall keep records of bidders or organizations to which invitation notices are sent directly, which shall form part of the procurement record.

Failed
tenders

55.(1) Where no responsive bids are received or tender proceedings are otherwise unsuccessful, the procuring entity shall investigate the failed tender proceedings and prepare a report for the Board.

(2) The report made under subsection (1), shall include the reasons for the failed tender proceedings, and recommendations on how any new procurement proceedings should be managed to avoid such failings.

(3) The investigation shall consider relevant issues, which may include-

- (a) whether the tendering period was sufficient;
- (b) whether the requirements of the invitation documents and terms and conditions of the proposed contract were reasonable and not so excessive as to deter competition;
- (c) whether the statement of requirements was clear, reasonable and designed to encourage fair and open competition;
- (d) whether the tender notice was published in an appropriate publication and on the required date;
- (e) whether any short-list included sufficient bidders and the bidders included, provided the goods, works or services required;
- (f) whether any amendments or clarifications to the invitation documents allowed sufficient time for bidders to take them into account in preparing their tenders;
- (g) whether there were other extraneous events or circumstances which may have affected the ability of bidders to respond;
- (h) whether the evaluation process was conducted in accordance with this Act and the solicitation documents, and staff responsible for the evaluation had adequate skills and resources;
- (i) whether there is any suspicion of collusion between potential bidders;
- (j) whether the original choice of procurement method was appropriate;
- (k) whether the procuring entity made any appropriate recommendations, which may include —

- (i) the use of an alternative method of procurement;
- (ii) amendments to the solicitation documents, including bidding requirements, the statement of requirements, the type of contract or the terms and conditions of the proposed contract;
- (iii) alternative publication of any solicitation document or a revised short-list; and
- (iv) the introduction of international competition

PART VI METHODS OF PROCUREMENT

Choice or
procurement
method

56.(1) A procuring entity shall use one of the procurement methods specified in this Part.

(2) The choice of a procurement method shall be determined in accordance with the conditions specified in Part VII, taking into account —

- (a) the estimated value of the procurement;
- (b) whether the procurement is of goods, works, non-consultancy or consultancy services;
- (c) any special circumstance, as such as a limited number of potential sources or an emergency requirement; and
- (d) whether national or international competition is required.

(3) A procuring entity shall not split up procurement requirements with the intention of avoiding a particular method

of procurement, where such requirements could be procured under a single contract.

57.(1) The objective of open bidding is to obtain value for money and promote private sector participation through maximum possible competition.

Open bidding

(2) Subject to this Act, a procuring entity shall use open bidding for the procurement of all goods, works and non-consultancy services.

(3) A procuring entity shall use open national bidding or open international bidding in accordance with this Part.

58.(1) Subject to subsection (2), a procuring entity shall use open national bidding for all procurements.

National and
International
bidding

(2) A procuring entity shall use open international bidding where —

- (a) the estimated value of the procurement exceeds the procurement thresholds set out in Schedule 1;
- (b) the goods, works or services are not available under competitive prices and other conditions from at least three suppliers in Seychelles; or
- (c) regional or international participation is required in accordance with an agreement entered into by the Government.

3. Participation in open national bidding shall be limited to citizens of Seychelles and local bidders.

4. Participation in open international bidding shall be open to all bidders, including citizens of Seychelles, local and foreign bidders.

5. Where open international bidding is used —

- (a) a bid notice shall, in addition to the national media, be published in any regional or international media; and
- (b) the period for submission of bids or pre-qualification applications shall be increased to allow sufficient time for foreign bidders to respond.

Open
Selection

59.(1) The objective of open selection is to promote private sector participation to obtain the best possible short-list, in order to obtain value for money.

(2) Except as provided for in this Act, a procuring entity shall use open selection for the procurement of all consultancy services.

National and
International
Selection

60.(1) Subject to subsection (2), a procuring entity shall use open national selection in all procurements.

(2) A procuring entity shall use open international selection where —

- (a) the estimated value of the procurement exceeds the procurement thresholds set out in Schedule 1;
- (b) consultancy services are not available at competitive prices and other conditions from at least three suppliers in Seychelles; or
- (c) regional or international participation is required in accordance with an agreement entered into by the Government.

(3) Participation in open national selection shall be limited to citizens of Seychelles and local bidders.

(4) Participation in open international selection shall be

open to all bidders, including citizens of Seychelles, local and foreign bidders.

(5) Where open international selection is used —

- (a) a bid notice shall, in addition to the national media, be published in any appropriate regional or international media; and
- (b) the period for submission of expressions of interest shall be increased to allow sufficient time for foreign bidders to respond.

61.(1) The objective of limited bidding is to obtain competition and value for money to the extent possible, where the circumstances do not justify or permit the use of open bidding.

Limited bidding

(2) Limited bidding may be used where —

- (a) the goods, works or services are only available from a limited number of suppliers; or
- (b) there is an urgent need for the goods, works or services and engaging in open bidding would be impractical.

62.(1) The objective of limited selection is to obtain competition and value for money to the extent possible where the circumstances do not justify or permit the use of open selection.

Limited selection

(2) Limited selection may be used where —

- (a) consultancy services are only available from a limited number of suppliers; or
- (b) there is an urgent need for the goods, works or services and engaging in open selection would be impractical.

63.(1) The objective of direct bidding is to achieve timely and

Direct bidding

efficient procurement, where the circumstances or value do not justify or permit the use of competition.

(2) Direct bidding may be used where —

- (a) the goods, works or consultancy or non-consultancy services are available only from a single source and no reasonable alternative or substitute exists;
- (b) due to an emergency, there is urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (c) additional goods, works or services must be procured from the same source because of the need for compatibility, standardisation or continuity;
- (d) an existing contract could be extended for additional goods, works or services of a similar nature and no advantage could be obtained by further competition; or
- (e) the estimated value of the goods, works or services do not exceed the procurement thresholds set out in Schedule 1 .

Request for
sealed
quotation

64.(1) A request for sealed quotations method shall only be used for the procurement of —

- (a) readily available commercially standard goods not specially manufactured to the particular specifications of the public body;
- (b) small works; or
- (c) other small services.

(2) Sealed quotations shall be requested in writing from not less than three bidders, except where the item in question is not available from three suppliers.

(3) The request shall contain a clear statement of the requirements of the public body as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as may be prescribed.

(4) Each bidder may submit one sealed quotation, which shall not be altered or negotiated.

65.(1) A procuring entity may purchase goods, services or works from a single supplier without competition in cases of extreme urgency.

Emergency
Procurement

(2) The scope of an emergency procurement shall as far as possible be limited to the period of emergency, so that appropriate competitive procurement methods may be utilised at the conclusion of the emergency period.

(3) For the purposes of this section, “extreme urgency” includes a situation where —

- (a) Seychelles is seriously threatened by or actually confronted with a disaster, catastrophe, war or an event of force majeure;
- (b) life or the quality of life or the environment may be seriously compromised;
- (c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain these capital goods in their actual value or usefulness; or
- (d) an investment project may be seriously delayed for want of an item of a minor nature.

66.(1) The use of force account is a procurement method

Force
account

whereby construction is done by the use of a procuring entity's own personnel and equipment, and may be used if it is the only practical method of constructing some kind of works.

(2) The use of force account may be justified where —

- (a) the amount of work involved cannot be defined in advance;
- (b) the works are small and scattered, or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) the works are required to be carried out without disrupting ongoing operations of a public body's staff who is familiar with those operations;
- (d) the risks of unavoidable work interruptions are better borne by the procuring entity than by a bidder or supplier; and
- (e) there are emergency works needing prompt attention.

67.(1) Where a procuring entity is able to fulfil a procurement requirement through purchase from another public body and there would be no benefit in purchasing from a supplier, the procuring entity may purchase directly from the public body without the application of any other method of procurement:

Provided that the public body is able to meet the requirements of the procuring entity, as specified in the statement of requirements.

(2) A parastatal body is eligible to participate as a bidder or supplier in a public procurement in accordance with this Act, if it is legally, and financially autonomous.

68.(1) An award of a contract relating to —

- (a) the construction, rehabilitation or operation of public infrastructure and other public goods on the basis of private investment,
- (b) service concessions, or
- (c) comparable forms of contracting,

Infrastructure for private financing and award of concessions

shall be subject to such special procedures as may be prescribed by the Minister.

(2) An award of a contract made under subsection (1) —

- (a) shall be consistent with the general procurement rules set out in this Act; and
- (b) may vary the procurement process set out in this Act, to the extent necessary to meet the requirements of the contract.

69.(1) Where, in the interest of project sustainability, or achieving certain specific social objectives of the project, it is desirable in a number of selected project components to -

Community participation in procurement

- (a) call for participation of local communities and Non Governmental Organisations;
- (b) increase the utilisation of local know-how and materials; and
- (c) employ labour-intensive and other appropriate technologies,

the procurement procedures, specifications, and contract packaging shall be suitably adapted by the Procurement Oversight Unit to reflect these considerations, provided they are efficient.

(2) The Minister shall prescribe the procedures under subsection (1).

PART VII
PROCUREMENT PROCESS

Initiation of
procurement
requirements

70.(1) Procurement requirements shall be documented prior to the commencement of any procurement proceedings, recording at least the goods, works or services required and their estimated value.

(2) Procurement proceedings shall only be initiated where—

- (a) the availability of funding for the requirement has been confirmed; and
- (b) approval to proceed has been given by a chief executive officer or an officer designated by the chief executive officer, as the case may be, to perform the function.

Procurement
planning

71.(1) A procuring entity shall prepare a procurement plan for each financial year and shall revise the plan as appropriate during the course of the year.

(2) An annual procurement plan shall be integrated with applicable budget processes based on indicative or approved budgets, as the case may be.

(3) An annual procurement plan for each procuring entity shall include —

- (a) a list of the goods, works and services required;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of which items can be aggregated for procurement as a single package or through any applicable arrangements for common use items in accordance with this Act;

- (d) an estimate of the value of each package of goods, works or services required and details of the budget available and sources of funding;
- (e) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements; and
- (f) an indication of how the procuring entity is expected to manage the procurement.

(4) A procuring entity shall submit a copy of its annual procurement plan, and each update of it to the Procurement Oversight Unit.

(5) A procuring entity shall plan its procurement in a rational manner and in particular shall —

- (a) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;
- (b) make use of rate or running contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure goods, works or services that are required continuously or repeatedly over a set period of time;
- (c) avoid splitting of procurement to defeat the use of appropriate procurement methods; and
- (d) integrate its expenditure programme with its procurement plan.

(72) Where a procuring entity is required to procure goods, works or services which are not included in its procurement plan, it shall

Unplanned
procurement

- a. complete the prescribed procurement requisition form;
- (b) mark the requisition as unplanned procurement, providing an explanation;
- (c) update its procurement plan to include additional goods, works or services and ensure that an updated version of it is submitted to the Procurement Oversight Unit.

Statement of
procurement
requirement

73.(1) A statement of procurement requirement shall give a correct and complete description of the goods, works, consultancy or non-consultancy services required.

(2) A statement of procurement requirements shall be —

- (a) included in a solicitation document to inform bidders of the procuring entity's requirements;
- (b) used in evaluation to determine whether a bidder meets the procuring entity's requirements, as specified in the solicitation document, and where appropriate, to determine the quality of a bid; and
- (c) included in a contract to define the goods, works or services being purchased.

(3) A statement of procurement requirements included in a solicitation document shall be prepared with a view to —

- (a) create fair and open competition; and
- (b) ensure that the goods, works or services are fit for the purpose for which they are being purchased and of appropriate quality.

(4) A statement of procurement requirements shall, to

the extent possible be based on the relevant objective, technical and quality characteristics of the goods, works or services to be procured.

74.(1) A solicitation document shall use the appropriate standard bidding document issued by the Procurement Oversight Unit.

Solicitation
document

(2) A solicitation document shall contain —

- (a) clear instructions on the management of the procurement process and the applicable rules;
- (b) a clear description of the object of the procurement in the form of a statement of requirements; and
- (c) the proposed form and conditions of a contract or a statement of the form and conditions of a contract which will apply.

75.(1) The method for selection of bidders shall be determined by the procurement method used, and shall be —

Selection of
bidders

- (a) by publication of a bid notice or through a pre-qualification process for open bidding;
- (b) by publication of a notice requesting expressions of interest in order to develop a short-list for open selection;
- (c) by development of a short-list for limited bidding and request for sealed quotations; or
- (d) by selection of a single bidder in the case of direct bidding.

(2) The Minister may prescribe the rules for the publication of notices, pre-qualification, the development of

short-lists, and the selection of single bidders.

Solicitation of bids **76.**(1) A procuring entity shall keep a record of all bidders to whom a solicitation document is issued.

(2) Where solicitation documents are issued to pre qualified or short-listed bidders, the documents shall be issued to all bidders at the same time.

(3) Bidding documents may be sold at such fee as may be prescribed by the Minister.

(4) In setting bidding deadlines, a procuring entity shall—

(a) allow sufficient time for bidders to obtain solicitation documents, prepare complete and responsive bids, and submit bids; and

(b) comply with the minimum bidding periods as may be prescribed by the Minister.

(5) A procuring entity may require bidders to submit bid securities, in the manner and in accordance with such procedures as may be prescribed by the Minister.

(6) The Minister may make rules for, the management of the bidding processes, including pre-bid meetings, clarification and amendment of solicitation documents, and the withdrawal, modification and substitution of bids.

(7) A procuring entity shall require bidders to submit sealed and written bids, unless otherwise provided for in this Act.

(8) The method for bid submission shall be as specified in regulations made under this Act and shall take into account the method of procurement, the complexity of the procurement and the evaluation methodology to be used.

77.(1) A solicitation document shall clearly state the date and time of the bidding deadline, and that late

(2) A procuring entity shall ensure that —

- (a) tender boxes, or other means of receiving bids, are made available to bidders;
- (b) bids are kept confidential, and in the case of sealed bids, the bids remain unopened, until the time for opening of bids; and
- (c) bids are closed at the precise date and time of the bid deadline, and no late bids are accepted.

78. All open bidding, limited bidding and open selection processes shall include a public bid opening, in accordance with the procedures specified in regulations made under this Act.

Public bid
opening

79.(1) The choice of evaluation methodology shall be determined by the type, value and complexity of the procurement requirement, and shall be done in accordance with regulations made under this Act.

Evaluation

(2) A solicitation document shall clearly state the methodology and criteria to be used in the evaluation of bids and the determination of the best evaluated bidder.

(3) A methodology or criterion, other than those stated in a solicitation document, shall not be taken into account during evaluation, and the criterion shall be applied equally to all bids.

(4) A procuring entity may ask a bidder to clarify its bid in order to assist in the evaluation, but no changes in the substance of the bid, including changes in price, shall be permitted after the date and time of the closing of the bid, unless otherwise provided for in this Act.

(5) A procuring entity may undertake a post qualification evaluation in accordance with the criteria in a solicitation

document, to determine whether the best evaluated bidder has the capability and resources to effectively carry out the contract.

(6) A procuring entity shall prepare an evaluation report for submission to the appropriate approvals authority.

Negotiation

80. (1) Subject to subsection (3), negotiations shall only be undertaken by a procuring entity in accordance with the conditions and procedures specified in regulations made under this Act.

(2) Negotiations shall not relate to the price of a bid, except in the case of direct bidding, or where the price of the bid has not been taken into account in the evaluation methodology.

(3) The use of compound interest in any negotiation or contract is prohibited.

Decision to
award
contract

81.(1) An award of a contract shall be recommended to the best evaluated bidder, as determined by the evaluation methodology and criteria specified in the solicitation document.

(2) The decision to award a contract shall be taken by the appropriate approvals authority.

(3) A decision to award a contract by the approvals authority shall not constitute a contract.

Publication of
best evaluated
bidder

82.(1) A procuring entity shall, within seven working days of awarding a contract, prepare a notice indicating the best evaluated bidder and the value of the proposed contract, and send the notice to all bidders who submitted bids.

(2) An award of a contract shall not be made for a period of ten working days following the completion of the requirements stipulated in subsection (1).

(3) The provisions of this section shall not apply to procurement using —

- (a) request for sealed quotations;
- (b) direct bidding; or
- (c) limited bidding on grounds of insufficient time.

83.(1) A solicitation document shall state the procedures for an award of a contract, which shall be —

Award of
Contract

- (a) by placement of a written contract document;
or
- (b) by issue of a letter of bid acceptance, which shall be confirmed by the written contract.

(2) No contract, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid or an award of a contract shall be issued prior to —

- (a) an award decision by the appropriate approvals authority in accordance with this Act;
- (b) publication and dispatch of the notice of best evaluated bidder in accordance with this Act;
- (c) confirmation that a procurement is not subject to administrative review;
- (d) confirmation that funding is available for the contract; and
- (e) any other approvals required, including the approval of the contract by the Attorney-General.

(3) Any contract, purchase order, letter of bid acceptance or other communication issued contrary to subsection (2) is void.

84.(1) A contract shall be in the standard form issued by the Procurement Oversight Unit or any other form approved by the Unit.

Contract

(2) A procuring entity shall publish in appropriate media, a notice of all contracts awarded which exceed the procurement thresholds set out in Schedule 1.

Information of
unsuccessful
bidder

85. A procuring entity shall, after the commencement of a contract with a successful bidder, inform all the other bidders that their bids have not been successful.

Contract
Management

86. (1) A procuring entity shall appoint a contract manager for every contract awarded, who shall be responsible for —

- (a) managing the obligations of the procuring entity specified in the contract; and
- (b) ensuring that the supplier performs the contract in accordance with the terms and conditions specified in the contract.

(2) A contract manager shall be selected in accordance with the procedure prescribed by the Minister, taking into account the skills, experience and functions required for the management of a contract.

Amendment of
contract

87.(1) All amendments to a contract shall require the prior authorisation of the appropriate approvals authority and the Attorney-General.

(2) Any amendment to a contract shall be determined by the original or revised value of the contract, whichever is greater.

(3) Any amendment to a contract purportedly effected without the approval of the Attorney-General shall be void.

Deviation

88. The Procurement Oversight Unit may, in such manner and in accordance with such procedure prescribed by the Minister, permit a procuring entity to deviate from the use of a public procurement method, rule, process or document where—

- (a) exceptional requirements make it impossible, impractical or uneconomical to comply with the provisions of this Act;

- (b) market conditions or behaviour do not allow the effective application of the procurement method, rule, process or document; or
- (c) specialised or particular requirements are regulated or governed by international standards or practices.

89. The Procurement Oversight Unit may, in the prescribed manner, accredit an alternative procurement system where a procuring entity —

Accreditation
of alternative
procurement
system

- (a) operates in a specialised field or discipline which requires an alternative system;
- (b) has a status which requires alternative or additional procedures; or
- (c) is required to use an alternative system to comply with the provisions of international agreements or any other agreements.

PART VIII

BIDDERS AND SUPPLIERS

90.(1) A procuring entity shall require all bidders to meet the following criteria in order to be eligible to participate in any public procurement —

Eligibility
criteria of
bidders

- (a) bidders shall have the legal capacity to enter into a contract;
- (b) bidders —
 - (i) shall be solvent;
 - (ii) shall not be in receivership;
 - (iii) shall not be bankrupt or wound up;
 - (iv) shall not have their affairs administered by a court or a judicial officer; or

- (v) shall not have their business activities suspended or be the subject of legal proceedings.
 - (c) bidders shall have fulfilled their obligations to pay taxes;
 - (d) bidders should not, nor its directors or officers have been convicted of a criminal offence related to their professional conduct or making of false statements or mis-representations as to their qualifications to enter into a contract within a period of three years preceding the commencement of the procurement proceedings;
 - (e) bidders should not have been suspended pursuant to section 94; and
 - (f) bidders should not have a conflict of interest in relation to a procurement requirement.
- (2) A procuring entity may require bidders to be citizens of Seychelles or local bidders to be eligible to participate in a public procurement where —
- (a) open national bidding is used and the activity is not likely to attract bidders from outside Seychelles, at a reasonable price in view of its size, nature, location or scattered location or financing or high mobilisation costs;
 - (b) open national selection is used; or
 - (c) the procurement is subject to a reservation scheme in accordance with this Act.
- (3) A bidding document shall state the eligibility criteria and specify any documentary evidence required as proof of eligibility.

(4) A review of the eligibility of a bidder shall be conducted as part of the preliminary examination of bids, except where it has been conducted as part of the pre-qualification proceedings.

(5) Any change in the circumstances or qualifications of a bidder during the procurement process that could materially affect the bidder's capacity to execute the contract shall immediately be drawn to the attention of the procuring entity.

91.(1) A procuring entity may require a bidder to have such qualifications as the procuring entity considers appropriate to the particular procurement requirement, to demonstrate that the bidder has the capacity and resources to effectively carry out a contract.

Qualification of
bidders

(2) All qualifications shall be specified in the bidding documents and may relate to —

- (a) professional and technical qualifications;
- (b) financial resources and condition;
- (c) equipment and other physical facilities;
- (d) personnel and managerial capability;
- (e) record of past performance of similar contracts;
or
- (f) registration or licensing with a relevant professional body in Seychelles or in the bidder's country of origin where so required by law.

(3) A bidding document shall specify the documentary evidence or information required to demonstrate the bidder's qualifications.

(4) Qualifications shall be assessed by examining whether

the bidder does or does not meet the qualification set out in this section and not by using a point system for comparing the relative level of qualifications of participating bidders.

(5) A review of the qualifications of bidders shall be conducted separately from the evaluation and comparison of bids.

(6) If pre-qualification proceedings are not conducted, post qualification, in which the procuring entity ascertains the qualifications of the best evaluated bidder, may be utilised.

Preference or
reservation

92.(1) A preference or reservation policy shall be formulated by the Procurement Oversight Unit, in consultation with the Government, and such policy, shall be prescribed.

(2) Regulations providing for preferences or reservations shall clearly define —

- (a) the target group and eligibility requirements;
- (b) the percentage of preferences or reservations, where applicable;
- (c) the period for the operation of a scheme; and
- (d) the objectives of the preferences or reservations, and the means of measuring their effectiveness in achieving their objectives.

Supplier
database or
list

93.(1) The Procurement Oversight Unit may organise and maintain a centralised system, in the form of a database or list, to provide centralised information on potential suppliers of goods.

(2) A procuring entity may organise and maintain a system or database of potential suppliers and shall copy the information recorded in the system or database to the Procurement Oversight Unit for inclusion in the centralised system referred to under subsection (1).

(3) A supplier shall not be required to register in any database or list as a condition of participating in any procurement proceedings.

(4) Inclusion in any database or list shall be open at any time to potential suppliers and requests to register shall be acted upon within a reasonable period of time.

(5) The Procurement Oversight Unit, and any procuring entity operating any system or database in accordance with this section, shall regularly publicise —

- (a) the existence of the database or list;
- (b) procedures for registering and updating entries in the database or list;
- (c) the conditions to be satisfied for entry on the database or list and the documentary evidence required; and
- (d) the period of any registration and requirements for updating entries.

(6) Entry in the database or list shall not be subject to any eligibility criteria more stringent than those set out in this Act.

(7) A database or list maintained under this section shall be reviewed and updated on a regular basis.

(8) The Procurement Oversight Unit and any procuring entity operating a system or database under this section shall notify potential suppliers of —

- (a) their inclusion in the database or list;
- (b) any rejection of a request to register and the reasons for such rejection; and
- (c) their removal from the database or list and the reasons for such removal.

Suspension

94(1) The Procurement Oversight Unit may suspend a bidder or supplier from participating in public procurement on the grounds specified under section 95.

(2) A bidder or supplier shall not be suspended unless —

- (a) reasonable notice has been given to the bidder or supplier of the grounds for the proposed suspension and details of the alleged grounds;
- (b) reasonable opportunity has been given to the bidder or supplier to respond to the alleged grounds and provide information in his or her defence; and
- (c) a thorough investigation of the facts of the case has been undertaken by the Procurement Oversight Unit.

(3) A suspension shall be for a minimum period of six months and a maximum period of two years.

Grounds for
suspension

95.(1) A bidder or supplier shall be suspended from participating in a procurement on any of the following grounds—

- (a) providing false information in a bid or any other document submitted to a procuring entity in connection with a procurement process or contract;
- (b) connivance to interfere with the participation of other bidders;
- (c) refusal to sign a contract or to furnish a performance security in accordance with the terms of the bidding document and bid, if required to do so; or
- (d) substantial non performance or under performance of contractual obligations, except

if the non-performance or under performance is not due to any force majeure.

(2) The Minister shall, by regulations, provide the disqualification standards and procedures for suppliers, contractors and consultants.

96.(1) A bidder or supplier shall not, in a procurement proceeding, offer, give, or agree to give, directly or indirectly, an inducement or anything of value to a public officer, or be involved in any corrupt practice.

Inducement
by bidder or
supplier

(2) If a bidder or supplier contravenes subsection (1), the following shall apply —

- (a) the procuring entity shall reject the bid, proposal, offer or quotation of the bidder or supplier; or
- (b) if a contract has already been entered into with a bidder or supplier, the contract shall be voidable at the option of the procuring entity.

(3) Any action instituted by the procuring entity under paragraph (b), shall be without prejudice to any other legal remedy of the procuring entity.

(4) Where a bidder or supplier contravenes subsection (1), the procuring entity shall immediately report the matter to the Board for further action.

97. A bidder or supplier aggrieved by a decision of the Procurement Oversight Unit to suspend or debar a bidder or supplier from participating in public procurements may challenge the decision and appeal that decision, in accordance with this Act.

Appeal
against
suspension

PART IX

CHALLENGE, REVIEW AND APPEAL

98.(1) A bidder or supplier who —

Challenge

- (a) is aggrieved with a decision made by a procuring entity under this Act; or
- (b) claims to have suffered, or is likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board under this Act,

may challenge the procurement proceedings at any time before the entry into force of the procurement contract.

(2) A challenge under subsection (1) shall —

- (a) be in writing to the chief executive officer;
- (b) identify the specific decision, act or omission being challenged; and
- (c) be made in such manner as may be prescribed by regulations, upon payment of the prescribed fee.

(3) The chief executive officer shall copy the challenge referred to under subsection (2) to the Procurement Oversight Unit.

(4) A chief executive officer shall not accept a challenge made under this section, unless it is submitted within ten working days from the date the bidder or supplier submitting his or her application —

- (a) was informed of; or
- (b) became aware of;

the circumstances giving rise to the challenge or from the date the bidder or supplier should have become aware of those circumstances, whichever is earlier.

(5) Unless a challenge is dismissed or resolved by mutual agreement between the applicant and the procuring entity, the chief executive officer shall —

- (a) upon receipt of the challenge, institute an investigation;

- (b) ensure that no contract award is made prior to the resolution of the challenge; and
- (c) issue a written decision, within ten working days after the submission of the challenge.

(6) A decision issued under paragraph (c) of subsection (5) shall state —

- (a) whether the challenge is upheld, in whole or in part or dismissed;
- (b) the reasons for the decision; and
- (c) any corrective measures that are to be taken by the procuring entity or bidder, as the case may be.

(7) The chief executive officer shall copy the decision issued under paragraph (c) of subsection (5) to the Procurement Oversight Unit.

(8) A bidder or supplier who is aggrieved by the decision of the chief executive officer may submit the matter to the Review Panel under section 99.

99.(1) There shall be a Review Panel which shall consist of the following members who shall be appointed by the President—

Review
Panel

- (a) a Chairperson;
- (b) a representative of the Attorney General;
- (c) a representative of the Fair Trading Commission;
and
- (d) a representative of a non-governmental consumer welfare organisation.

(2) A person appointed as a member of the Review Panel

under subsection (1) shall have experience in legal, administrative, economics, financial, engineering, scientific or technical matters.

(3) A member of the Review Panel shall be appointed on such terms and conditions as the President may determine.

(4) The Chairperson and the other members of the Review Panel shall hold office for three years and be eligible for re-appointment.

(5) The President shall at any time terminate appointment of a member who has been found guilty of —the

(a) any misconduct, default or breach of trust in the discharge of that member's duties; or

(b) an offence of such nature as renders it desirable that the members' appointment be terminated.

(6) The Review Panel shall endeavour to avoid formality in its proceedings and may conduct them in such manner as it thinks fit

Right of
review

100.(1) An unsatisfied bidder or supplier shall be entitled to apply to the Review Panel for a review of the procurement proceedings where —

(a) the chief executive officer does not issue a decision within ten working days after the submission of the challenge;

(b) the bidder or supplier is not satisfied with the decision of the chief executive officer; or

(c) before or after the entry into force of a procurement contract the value of which is above the threshold, the bidder or supplier is not satisfied with the procurement proceedings on a

ground that he or she has suffered, or is likely to suffer, loss or injury due to a breach of a statutory duty imposed on a public body or the Board under this Act.

(2) An application for review under subsection (1) shall —

- (a) be in writing;
- (b) specify the reasons for making the application; and
- (c) be made within such time as may be prescribed.

(3) An applicant for a review under subsection (1) shall be required to make a deposit as may be prescribed, which shall be forfeited if the Review Panel determines that the application was frivolous.

(4) Where an application for review is made in accordance with this section, the procurement proceedings shall, subject to subsection (5), be suspended until the appeal is heard and determined by the Review Panel.

(5) The suspension provided for by subsection (4) shall not apply where the public body certifies that urgent public interest considerations require the procurement proceedings to proceed.

(6) A certificate issued by a public body under subsection (5) shall expressly state the grounds of the urgent public interest considerations and such certificate shall be made a part of the record of the public procurement proceedings.

(7) A certificate issued by a public body under subsection (5) shall be binding on the Review Panel and the procurement proceedings shall proceed unless an application for leave to seek judicial review is successful.

(8) The Review Panel shall make a decision under this section within thirty days of the date of submission of an application for review under subsection (2).

(9) Where the procurement proceedings have not been suspended under subsection (5), and the application for review of

a bidder or supplier under this section is determined in the favour of the bidder or supplier, the Review Panel shall award the bidder or supplier compensation limited to the recovery of the costs of his or her bid preparation, and participation, if applicable, in the procurement proceedings.

(10) The Review Panel may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies —

- (a) prohibit the public body from acting or deciding in an unauthorised manner or following an incorrect procedure;
- (b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body;
- (c) recommend a re-evaluation of a bid or a review of the decision for an award, specifying the grounds for such recommendation; or
- (d) recommend payment of reasonable costs incurred in preparing the bid or participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.

PART X

PROCUREMENT INTEGRITY

Code of
Conduct

101. The Procurement Oversight Unit may promulgate a code of conduct to regulate the conduct of public officers, bidders and suppliers involved in public procurement.

Restriction
on public
officers

102.(1) A public officer, or a public officer's close relative, shall not participate as a bidder in a public procurement of a procuring entity by which the public officer is employed or over which the public officer exercises any supervision or oversight.

2) A person who served as a procurement officer or participated in the approval of any procurement activity shall not—

- (a) participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to an award, a modification or an extension of a contract for such procurement; or
- (b) participate personally or substantially on behalf of a supplier in the performance of the contract.

(3) The restriction in subsection (2) shall remain in effect for the duration of the procurement proceedings and contract, if any, in question.

103. (1) A bidder or supplier participating in public procurement shall —

Conduct of
bidder or
supplier

- (a) at all times abide by his or her obligations under this Act, the contract and other instruments applicable to his or her conduct and activities related to public procurement; and
- (b) not engage in or abet any —
 - (i) corrupt;
 - (ii) fraudulent,
 - (iii) collusive; or
 - (iv) coercive ,

practices.

(2) A bidder or supplier who contravenes subsection (1) (b)(i), (ii), (iii) or (iv) commits an offence and is liable, upon conviction —

- (a) in the case of an individual, to a fine not exceeding two hundred and fifty thousand rupees or to

imprisonment for a term not exceeding eight years, or to both; or

(b) in the case of a body corporate or un-incorporate, to a fine not exceeding five hundred thousand rupees.

Responsibilities
and duties of
chief executive
officers and
public bodies

104. (1) Notwithstanding anything to the contrary contained in any enactment, where a commitment is made or an expenditure is incurred in respect of a procurement, a chief executive officer shall ensure that such procurement is in accordance with this Act.

(2) Subject to the provisions of subsections (3) and (4), a chief executive officer shall be accountable for failing to comply with subsection (1).

(3) Where a chief executive officer satisfies the Procurement Oversight Unit that he or she had, in accordance with this Act, delegated his or her functions under subsection (1) to another person, body or committee, that other person and every member of that body or committee shall be accountable for any failure to comply with subsection (1).

(4) Where a chief executive officer satisfies the Procurement Oversight Unit that he or she is, under the provisions of any enactment, subject to the control or direction of another person, board, committee or other body, and that such control or direction caused the failure to comply with subsection

(1), then such other person or every member of that board, committee or other body, shall be accountable for the failure to comply with subsection (1).

(5) Every public body shall be responsible for ensuring that procurement is carried out in accordance with this Act and any guidelines and qualification requirements prescribed or laid down by the Procurement Oversight Unit.

Conduct of
public
officers

105.(1) A public officer involved in planning or conducting public procurement proceedings or contract administration, shall—

- (a) discharge his or her duties impartially so as to ensure fair competitive access to procurement by suppliers;
- (b) act in the public interest and in accordance with the objectives and procedures set out in this Act;
- (c) avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his or her duties or in the manner he or she conducts himself or herself;
- (d) not engage in or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;
- (e) keep confidential any information that comes to his or her knowledge or into his or her possession, relating to procurement proceedings, including bidders' proprietary information, except where it is in the public interest to divulge such information;
- (f) not disclose any information gained in the course of his or her public employment when subsequently employed by a private concern;
- (g) subscribe to such oath as may be prescribed.

(2) A public officer or the officer's close relative shall not participate as a bidder or supplier in any procurement proceeding of a public body, and no award of a contract shall be made to that officer, his or her close relative or any body in which that officer or that officer's close relative is employed in a management capacity or has a substantial financial interest.

PART XI

OFFENCES

106. A person who contravenes a provision of this Act for

Offences

which no penalty is provided, commits an offence and is liable on conviction

- (a) in the case of an individual, to a fine not exceeding two hundred and fifty thousand rupees or to imprisonment for a term not exceeding eight years, or to both; or
- (b) in the case of a body corporate or unincorporate, to a fine not exceeding five hundred thousand rupees.

Offences by
public
officers and
other persons

107.(1) A person who —

- (a) without reasonable excuse fails or refuses to give information, or produce any document, record or report required under this Act;
- (b) assaults, resists or obstructs any officer or employee of the Procurement Oversight Unit in the performance of his or her functions under this Act; or
- (c) contrary to this Act, interferes with or exerts undue influence on an officer or employee of the Procurement Oversight Unit or a procuring entity, in the performance of his or her functions or in the exercise of his or her powers under this Act,

commits an offence.

(2) A public officer who —

- (a) due to recklessness or dishonesty fails to exercise his or her powers as a public officer or to discharge his or her duties under this Act;

uses his or her position dishonestly or with the intention of

- (b) directly or indirectly gaining an

advantage for himself or herself or someone else or causing detriment to a procuring entity;

- (c) uses his or her position recklessly without regard to whether his or her conduct may directly or indirectly gain an advantage for himself or herself or someone else or cause detriment to a procuring entity;
- (d) uses information obtained because of his or her position to gain an advantage for himself or herself or someone else or cause detriment to a procuring entity;
- (e) tampers with a bid, including any document or item submitted with the bid, by opening, burning, tearing, destroying, or partially burning, tearing or destroying, altering, erasing, falsifying or rendering incomplete or misleading, the bid; or
- (f) publishes or discloses information relating to procurement, other than in the proper and authorised course of his or her duties as a public officer,

commits an offence and is liable to the applicable administrative and legal sanctions applicable to a public officer under his or her conditions of employment and any other enactment.

108.(1) A court of competent jurisdiction may order a person to compensate a public body for any damage or loss suffered by the procuring entity, if the damage or loss resulted from an offence committed by the person.

Compensation

(2) Any compensation ordered under subsection (1) is a civil debt due to the public body.

109. The Procurement Oversight Unit may, where a procuring entity contravenes this Act, transfer the procurement function of the procuring entity to another public body or procurement agency appointed by the Procurement Oversight

Transfer of functions of public body to other body

Unit, until the Procurement Oversight Unit is satisfied that the causes of the contravention have been rectified.

PART XII
MISCELLANEOUS PROVISIONS

Regulations **110.**(1) The Minister may, on the recommendation of the Procurement Oversight Unit, make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under subsection (1) may provide for the following —

- (a) detailed procurement procedures;
- (b) competent authorities;
- (c) operational thresholds;
- (d) time limits and other deadlines;
- (e) the levying of fees or charges by the Procurement Oversight Unit, the Board or the Review Panel;
- (f) rules on the structure and presentation of tender

PROCUREMENT THRESHOLDS

Procurement of Goods and Services

COLUMN 1	COLUMN 2
Thresholds	Approval Procedures
Not exceeding SR100,000	Approval is given by a chief executive officer
Exceeding SR100,000 but not exceeding SR500,000	Approval is given by a Procurement Committee
Exceeding SR500,000	Approval is given by the Board

Procurement of Works

COLUMN 1	COLUMN 2
Thresholds	Approval Procedures
Not exceeding SR150,000	Approval is given by a chief executive officer
Exceeding SR150,000 but not exceeding SR750,000	Approval is given by a Procurement Committee
Exceeding SR750,000	Approval is given by the Board

Procurement of Consultancy Services

COLUMN 1	COLUMN 2
Thresholds	Approval Procedures
Not exceeding SR50,000	Approval is given by a chief executive officer
Exceeding SR50,000 but not exceeding SR150,000	Approval is given by a Procurement Committee
Exceeding SR150,000	Approval is given by the Board

SCHEDULE 2

(Section 10(1)(m))

1. bid specifications where quantity and other relevant issues are specified
2. the name of a procuring entity and all information concerning communications with the tender supervisor
3. presentation of bids
4. listing of tender documents
5. time limits, location and timing of bid opening
6. delivery time or duration of execution
7. duration of tenders
8. payment, indexation and insurance, if applicable
9. documents to prove financial and technical competencies that a bidder shall provide, or may be required to provide
10. handling of inquiries from prospective bidders
11. delivery terms
12. language or languages in which tenders shall be submitted
13. selection criteria
14. whether it is permitted to tender for part of the intended procurement

15. whether variant offers are acceptable and the prerequisites for those offers
16. deadline for a purchaser to accept a bid

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 19th December, 2008.

Marie-Nella Azemia
Clerk of the National Assembly