

# PUBLIC PROCUREMENT ACT

Act No. 663 of 2003

## Section 1-Public Procurement Board.

(1) There is established by this Act a body to be known as the Public Procurement Board, referred to in this Act as "the Board".

(2) The Board shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Board may acquire, hold, manage or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are reasonably related to its functions.

## Section 2-Object of the Board.

The object of the Board is to harmonise the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner.

## Section 3-Functions of the Board.

In furtherance of its object the Board shall perform the following functions:

- (a) make proposals for the formulation of policies on procurement;
- (b) ensure policy implementation and human resource development for public procurement;
- (c) develop draft rules, instructions, other regulatory documentation on public procurement and formats for public procurement documentation;
- (d) monitor and supervise public procurement and ensure compliance with statutory requirements;
- (e) have the right to obtain information concerning public procurement from contracting authorities;
- (f) establish and implement an information system relating to public procurement;
- (g) publish a monthly Public Procurement Bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information;
- (h) assess the operations of the public procurement processes and submit proposals for improvement of the processes;

- (i) present annual reports to the Minister on the public procurement processes;
- (j) facilitate the training of public officials involved in public procurement at various levels;
- (k) develop, promote and support training and professional development of persons engaged in public procurement, and ensure adherence by the trained persons to ethical standards;
- (l) advise Government on issues relating to public procurement;
- (m) organise and participate in the administrative review procedures in Part VII of this Act;
- (n) plan and co-ordinate technical assistance in the field of public procurement;
- (o) maintain a register of procurement entities and members of and secretaries to tender committees of public procurement entities;
- (p) maintain a data base of suppliers, contractors and consultants and a record of prices to assist in the work of procurement entities;
- (q) investigate and debar from procurement practice under this Act, suppliers, contractors and consultants who have seriously neglected their obligations under a public procurement contract, have provided false information about their qualifications, or offered inducements of the kind referred to in section 32 of this Act;
- (r) maintain a list of firms that have been debarred from participating in public procurement and communicate the list to procurement entities on a regular basis;
- (s) hold an annual forum for consultations on public procurement and other related issues;
- (t) assist the local business community to become competitive and efficient suppliers to the public sector; and
- (u) perform such other functions as are incidental to the attainment of the objects of this Act.

#### **Section 4-Membership of the Board.**

- (1) The Board comprises
  - (a) a chairperson, who shall be a person competent and experienced in public procurement;
  - (b) a vice-chairperson, who shall be elected by members from among their number;
  - (c) four persons from the public sector made up of a representative of the Attorney General and three other persons, nominated by the Minister, one of whom is a woman and each of whom shall have experience in public procurement and be familiar with governmental and multi-lateral agency procurement procedures;

(d) three persons from the private sector who have experience in procurement at least one of whom is a woman;

(e) the Chief Executive of the Board.

(2) The members of the Board shall be appointed by the President acting in consultation with the Council of State.

#### Section 5-Term of Office.

(1) A member of the Board other than the Chief Executive,

(a) shall hold office for a term of four years and is eligible for re-appointment for another term only;

(b) may in writing addressed to the President through the Minister resign from office.

(2) A member may be removed from office by the President acting in consultation with the Council of State for inability to perform the functions of office, infirmity or any sufficient cause.

(3) Members shall be paid allowances determined by the Minister.

#### Section 6-Meetings of the Board.

(1) The Board shall meet for the dispatch of business at such times and places as the Chairperson may determine but shall meet at least once every three months.

(2) The Chairperson shall preside at meetings of the Board and in the absence of the Chairperson the Vice-Chairperson shall preside and in the absence of both, the members shall elect one of their number to preside.

(3) The quorum for a meeting of the Board shall be five including the Chief Executive.

(4) The Board may co-opt any person to act as adviser at a meeting of the Board, except that a co-opted person does not have the right to vote on any matter before the Board for decision.

(5) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(6) Except as otherwise expressly provided, the Board shall determine the procedure for its meetings.

#### Section 7-Committees of the Board.

The Board may for the discharge of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to them such functions as the Board may determine except that a committee composed entirely of non-members may only advise the Board.

#### Section 8-Secretariat of the Board.

(1) The Board shall have a Secretariat with such divisions and structures determined by the Board as may be necessary for the effective execution of its functions.

(2) The Board shall have an officer to be designated the Secretary who shall perform the function of keeping accurate records of proceedings and decisions of the Board and such other functions as the Chief Executive may direct.

(3) The Board may engage such consultants and advisers as it may require for the proper and efficient discharge of the functions of the Secretariat.

#### Section 9-Chief Executive of the Board.

(1) The Chief Executive of the Board shall be appointed in accordance with article 195 of the Constitution.

(2) The Chief Executive shall hold office on such terms and conditions as may be in the letter of appointment to office.

(3) Subject to such general directions as the Board may give, the Chief Executive is responsible for the day-to-day administration of the Secretariat of the Board and the implementation of the decisions of the Board.

(4) The Chief Executive may delegate functions of the office as Chief Executive to any officer of the Secretariat but shall not be relieved of the ultimate responsibility for the discharge of the delegated function.

#### Section 10-Expenses of the Board.

Parliament shall provide the Board with such monies as it may require to meet its expenditure. The Board may also receive monies from other sources approved by the Minister.

#### Section 11-Accounts and Audit.

(1) The Board shall keep books of account and proper records in relation to them and the accounts books and records of the Board shall be in a form prescribed by the Controller and Accountant-General and approved by the Auditor-General.

(2) The books and accounts of the Board shall be audited annually by the Auditor-General or by an auditor appointed by the Auditor-General.

#### Section 12-Financial Year of Board.

The financial year of the Board shall be the same as the financial year of the Government.

#### Section 13-Annual Report.

(1) The Board shall within three months after the end of each year, submit to the Minister a written report indicating the activities and operations of the Board in respect of the

preceding year.

(2) The annual report shall include a copy of the audited accounts together with the Auditor-General's report and the Minister shall as soon as practicable after receipt of the annual report submit the report to Parliament with such comment as the Minister considers necessary.

#### Section 14-Scope of Application.

(1) This Act applies to

(a) the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure;

(b) functions that pertain to procurement of goods, works and services including the description of requirements and invitation of sources, preparation, selection and award of contract and the phases of contract administration;

(c) the disposal of public stores and equipment; and

(d) procurement with funds or loans taken or guaranteed by the State and foreign aid funds except where the applicable loan agreement, guarantee contract or foreign agreement provides the procedure for the use of the funds.

(2) Without limiting subsection (1), this Act applies to

(a) central management agencies;

(b) government ministries, departments and agencies;

(c) subvented agencies;

(d) governance institutions;

(e) state owned enterprises to the extent that they utilise public funds;

(f) public universities, public schools, colleges and hospitals;

(g) the Bank of Ghana and financial institutions such as public trusts, pension funds, insurance companies and building societies which are wholly owned by the State or in which the State has majority interest;

(h) institutions established by Government for the general welfare of the public or community.

(3) Where the Minister decides under subsection (1)(a) that it is in the national interest to use a different procedure, the Minister shall define and publish in the Gazette the method of procurement to be followed in order to serve the interest of economy.

#### Section 15-Procurement Entity.

(1) A procurement entity is responsible for procurement, subject to this Act and to such other conditions as may be laid down in the procurement regulations and administrative instructions of the Minister, issued in consultation with the Board.

(2) The head of an entity and any officer to whom responsibility is delegated are responsible and accountable for action taken and for any instructions with regard to the implementation of this Act that may be issued by the Minister acting in consultation with the Board.

(3) Procurement decisions of an entity shall be taken in a corporate manner and any internal units concerned shall contribute to the decision making process.

(4) The head of an entity is responsible to ensure that provisions of this Act are complied with; and concurrent approval by any Tender Review Board shall not absolve the head of entity from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of this Act.

#### Section 16-Declaration of Procurement Entity.

(1) The Minister may, in consultation with the Board, by notice in the Gazette, declare any entity or person to be a procurement entity.

(2) Subject to approval by the Board, a procurement entity may undertake procurement in accordance with established private sector or commercial practices if

(a) the procurement entity is legally and financially autonomous and operates under commercial law;

(b) it is beyond contention that public sector procurement procedures are not suitable, considering the strategic nature of the procurement; and

(c) the proposed procurement method will ensure value for money, provide competition and transparency to the extent possible.

#### Section 17-Tender Committee.

(1) Each procurement entity shall establish a Tender Committee in the manner set out in Schedule 1.

(2) In the performance of its functions, a Tender Committee shall

(a) ensure that at every stage of the procurement activity, procedures prescribed in this Act have been followed;

(b) exercise sound judgment in making procurement decisions; and

(c) refer to the appropriate Tender Review Board for approval, any procurement above its approval threshold, taking into consideration the fact that approval above the Entity Committee is a one stop only approval.

#### Section 18-Meetings of Tender Committee.

The Tender Committee shall meet at least once every quarter and notice of the meetings shall be given at least two weeks prior to the scheduled date of the meeting.

#### Section 19-Tender Evaluation Panel.

(1) Each procurement entity shall appoint a tender evaluation panel with the required expertise to evaluate tenders and assist the Tender Committee in its work.

(2) In the performance of its functions, a tender evaluation panel shall proceed according to the predetermined and published evaluation criteria.

#### Section 20-Tender Review Boards.

(1) There shall be established at each level of public procurement the following Tender Review Boards in the manner set out in Schedule 2.

- (a) Central Tender Review Board;
- (b) Ministerial/Headquarters Tender Review Boards;
- (c) Regional Tender Review Boards;
- (d) District Tender Review Boards.

(2) A Tender Review Board shall perform the following functions:

(a) in relation to the particular procurement under consideration, review the activities at each step of procurement cycle leading to the selection of the lowest evaluated bid, best offer, by the procurement entity in order to ensure compliance with the provisions of this Act and its operating instructions and guidelines;

(b) subject to subsection (2)(a), give concurrent approval or otherwise to enable the procurement entity continue with the procurement process;

(c) furnish the Board with reports in a prescribed format;

(d) participate in public procurement fora; and

(e) review decisions of heads of entities in respect of a complaint.

(3) A Tender Review Board may engage the services of such consultants and advisers, or co-opt persons with specialized expertise as it may require for the proper and efficient discharge of its functions.

#### Section 21- Procurement Plan.

(1) A procurement entity shall prepare a procurement plan to support its approved programme and the plan shall indicate

- (a) contract packages,

(b) estimated cost for each package,

(c) the procurement method, and

(d) processing steps and times.

(2) A procurement entity shall submit to its Tender Committee not later than one month to the end of the financial year the procurement plan for the following year for approval.

(3) After budget approval and at quarterly intervals after that, each procurement entity shall submit an update of the procurement plan to the Tender Committee.

(4) The procurement entity shall send to the Tender Review Board, procurement notices for contracts and procurement plans above the thresholds stipulated in Schedule 3 for publication in the Public Procurement Bulletin.

(5) A procurement entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in this Act.

#### Section 22-Qualification of Tenderers.

(1) A tenderer in public procurement shall

(a) possess the necessary

(i) professional and technical qualifications and competence;

(ii) financial resources;

(iii) equipment and other physical facilities;

(iv) managerial capability, reliability, experience in the procurement object and reputation; and

(v) the personnel to perform the procurement contract;

(b) have the legal capacity to enter the contract;

(c) be solvent, not be in receivership, bankrupt or in the process of being wound up, not have its business activities suspended and not be the subject of legal proceedings that would materially affect its capacity to enter into a contract;

(d) have fulfilled its obligations to pay taxes and social security contributions and any paid compensation due for damage caused to property by pollution;

(e) have directors or officers who have not in any country been

(i) convicted of any criminal offence relating to their professional conduct or to making false statements or misrepresentations as to their qualifications to enter into a procurement contract, within a period of ten years preceding the commencement of the



procurement proceedings; or

(ii) disqualified pursuant to administrative suspension or disbarment proceedings.

(f) meet such other criteria as the procurement entity considers appropriate.

(2) The procurement entity may require tenderers to provide appropriate documentary evidence or other information that it considers useful to satisfy itself that the tenderers are qualified in accordance with the criteria referred to in subsection (1).

(3) Any requirement established pursuant to this section stated in the tender documents or other documents for invitation of proposals shall apply equally to the tenderers.

(4) The procurement entity shall evaluate the qualifications of candidates in accordance with the criteria and procedures stated in the documents referred to in subsection (3).

(5) The procurement entity shall disqualify a tenderer who submits a document containing false information for purposes of qualification.

(6) The procurement entity may disqualify a candidate if it finds at any time that the information submitted concerning the qualifications of the candidate was materially inaccurate or materially incomplete.

#### **Section 23-Prequalification Proceedings.**

(1) A procurement entity may engage in prequalification proceedings to identify tenderers who are qualified prior to the submission of tenders.

(2) Tenderers for prequalification proceedings shall meet the qualification criteria of the procurement entity and the proceedings shall be conducted pursuant to Part IV and V.

(3) A procurement entity shall supply a set of prequalification documents to each supplier or contractor that requests them; and the price that a procurement entity charges for the prequalification documents shall reflect the cost of printing and provision to suppliers or contractors.

(4) The prequalification documents shall include

(a) instructions to prepare and submit prequalification applications;

(b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;

(c) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;

(d) the manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procurement entity;

- (e) any other requirement that may be established by the procurement entity in conformity with this Act and procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings; and
- (f) in proceedings under Part V, the information required to be specified in the invitation to tender by section 48(1)(a) to (e) and if the information required under section 48(1)(a) to (e) is already known, the information required under paragraphs (j) and (k) of section 48(1).
- (5) The procurement entity shall respond to any request by a supplier or contractor for clarification of the prequalification documents if the request is made at least within ten days prior to the deadline for the submission of applications to prequalify.
- (6) The response by the procurement entity shall be given within a reasonable time and in any event within a period of at least seven working days so as to enable the supplier or contractor to make a timely submission of its application to prequalify.
- (7) The response to any request that might reasonably be expected to be of interest to other suppliers or contractors shall, without identifying the source of the request, be communicated to other suppliers or contractors provided with the prequalification documents by the procurement entity.

#### **Section 24-Decision on Prequalification.**

- (1) The procurement entity shall make a decision with respect to the qualification of each supplier or contractor submitting an application to prequalify and in reaching that decision shall apply only the criteria set out in the prequalification documents.
- (2) The procurement entity shall promptly notify each supplier or contractor submitting an application to prequalify of whether or not it has been prequalified and shall make available to any member of the general public upon request, the names of the suppliers or contractors who have been prequalified.
- (3) Suppliers or contractors who have been prequalified may participate further in the procurement proceedings.
- (4) The procurement entity shall upon request communicate to suppliers or contractors who have not been prequalified, the grounds for disqualification but the procurement entity is not required to specify the evidence or give the reasons for its finding on the grounds.
- (5) The procurement entity may require a supplier or contractor who has been prequalified to demonstrate its qualifications again in accordance with the same criteria used to prequalify the supplier or contractor.
- (6) The procurement entity shall disqualify any supplier or contractor who fails to demonstrate its qualification again if requested to do so.
- (7) The procurement entity shall promptly notify each supplier or contractor requested to demonstrate its qualifications again whether or not the supplier or contractor has done so to the satisfaction of the procurement entity.

**Section 25-Participation in Procurement Proceedings.**

Participation in procurement proceedings shall be on a competitive basis subject to sections 44, 45 and 46.

**Section 26-Form of Communication.**

Communication between procurement entities and tenderers shall be in writing and communications in any other form shall be referred to and confirmed in writing.

**Section 27-Documentary Evidence in Procurement Proceedings.**

The documentary evidence required in procurement proceedings shall comply with the Evidence Decree, 1975 (NRCD 323).

**Section 28-Record of Procurement Proceedings.**

(1) A procurement entity shall maintain a record of the procurement proceedings containing the following information

- (a) a brief description of the goods, works or services to be procured, or of the procurement need for which the procurement entity invited proposals or offers;
- (b) the names and addresses of suppliers or contractors that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered;
- (c) information relating to the qualifications, or lack of qualifications of suppliers or contractors that submitted tenders, proposals, offers or quotations;
- (d) the price, or the basis for determining the price and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract if these are known to the procurement entity;
- (e) a summary of the evaluation and comparison of tenders, proposals under section 69, offers or quotations including the application of any margin of preference pursuant to section 60;
- (f) if the tenders, proposals, offers or quotations were rejected, a statement to that effect and the grounds for the rejection;
- (g) if, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement contract, a statement to that effect and the reasons;
- (h) the information required under section 29, if a tender, proposal, offer or quotation was rejected pursuant to that provision;
- (i) a statement of the grounds and circumstances on which the procurement entity relied to justify the selection of the method of procurement used;

(j) in the procurement of services by means of Part VI, the statement required under section 71 of the grounds and circumstances on which the procurement entity relied to justify the selection procedure used;

(k) in procurement proceedings involving direct invitation of proposals for services in accordance with section 63(3), a statement of the grounds and circumstances on which the procurement entity relied to justify the direct invitation;

(l) in procurement proceedings in which the procurement entity, in accordance with section 25(1), limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procurement entity for the limitation;

(m) a summary of any requests for clarification of the prequalification or invitation documents, the responses received as well as a summary of any modification of the documents;

(n) a record of any complaints received from suppliers, contractors or consultants and the responses received.

(2) Subject to section 51(2), the portion of the record referred to in subsection (1)(a) and (b) shall, on request, be made available to any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

(3) Subject to section 51(2), the portion of the record referred to in subparagraphs (c) to (g) and (m) of subsection (1) shall, on request, be made available to suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

(4) Disclosure of the portion of the record referred to in subsections (1) (c) to (e), and (1) (m), may be ordered at an earlier stage by a competent court; except that when ordered to do so by a competent court and subject to the conditions of the court order, the procurement entity shall not disclose

(a) information, if its disclosure would

(i) be contrary to law;

(ii) impede law enforcement,

(iii) not be in the public interest;

(iv) prejudice legitimate commercial interests of the parties; or

(v) inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589); or

(b) information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations and tenders, proposal, offer or quotation prices, other than

the summary referred to in subsection (1)(e) of this section.

(5) The procurement entity is not liable to tenderers for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with this section.

(6) Records and documents maintained by procurement entities on procurement shall be made available for inspection by the Public Procurement Board, an investigator appointed by the Board and the Auditor-General upon request; and where donor funds have been used for the procurement, donor officials shall also upon request to the Minister have access to relevant procurement files for purposes of verification and review.

#### **Section 29-Rejection of Tenders, Proposals and Quotations.**

(1) A procurement entity may reject tenders, proposals and quotations at any time prior to acceptance if the grounds for the rejection are specified in the tender documents or in the request for proposals or quotations.

(2) The grounds for rejection shall be communicated to the tenderer but justification for the rejection is not required and the procurement entity shall not incur liability towards the tenderer.

(3) Notice of the rejection shall be given to participating tenderers within two days from the date the procurement entity decides to discontinue with the tender process.

(4) If the decision to reject tenders is taken before the closing date, tenders received shall be returned unopened to the tenderers submitting them.

(5) The rejection of the tender, proposal, offer or quotation with reasons shall be recorded in the procurement proceedings and promptly communicated to the supplier or contractor.

#### **Section 30-Entry into Force of the Procurement Contract.**

(1) In tender proceedings, acceptance of the tender and entry into force of the procurement contract shall be carried out in accordance with section 65 of this Act.

(2) In the other methods of procurement, the manner of entry into force of the procurement contract shall be notified to the suppliers or contractors at the time those proposals, offers or quotations are requested.

#### **Section 31-Public Notice of Procurement Contract Awards.**

(1) A procurement entity shall promptly publish notice of procurement contract awards.

(2) Regulations shall provide for the manner of publication of the notice of procurement contract awards.

#### **Section 32-Inducements from Suppliers, Contractors and Consultants.**

A procurement entity shall reject a tender, proposal, offer or quotation if the supplier, contractor or consultant that submitted it offers, gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procurement entity or other

governmental authority,

(a) a gratuity in any form;

(b) an offer of employment; or

(c) any other thing of service or value

as an inducement with respect to anything connected with a procurement entity and procurement proceedings.

### Section 33-Description of Goods, Works or Services.

(1) Any

(a) specifications, plans, drawings and designs that provide the technical or quality characteristics of goods, works, or services to be procured;

(b) requirements on testings and test methods, packaging, marketing, labelling or conformity certifications; and

(c) symbols and terminology description of services that create obstacles to participation including obstacles based on nationality

tenderers shall not be included or used in prequalification documents, invitation documents or other documents for invitation of proposals, offers or quotations.

(2) The provisions in subsection (1) shall be based on objective technical and quality characteristics of the goods, works or services to be procured and there shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer, unless a precise or intelligible way of describing the characteristics of the goods, works, or services to be procured does not exist, in which case, the words, "or equivalent" shall be included.

(3) Standardised features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, to formulate any specifications, plans, drawings and designs to be included in the prequalification documents, invitation documents or other documents for invitation of proposals, offers or quotations.

### Section 34-Language.

The prequalification documents, invitation documents and other documents for invitation of proposals, offers or quotations shall be in English.

### Section 35-Competitive Tendering.

(1) A procurement entity shall procure goods, services or works by competitive tendering except as provided in this Part.

(2) A procurement entity shall use the quality and cost-based method of selection in Part

VI when selecting consultants unless the procurement entity determines that

(a) it is feasible to formulate detailed specifications and tendering proceedings or other methods of procurement which are more appropriate taking into account the nature of the services to be procured; or

(b) it is more appropriate to use a method of selection referred to in Part VI if the conditions for the use of that method are satisfied.

(3) If the procurement entity uses the method of procurement other than competitive tendering, it shall include in the record required a statement of the grounds and circumstances on which it relied to justify the use of that method.

### Section 36-Two-stage Tendering.

(1) A procurement entity shall engage in procurement by two-stage tendering

(a) where it is not feasible for the procurement entity to formulate detailed specifications for the goods or works or, in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs; or where the character of the goods or works are subject to rapid technological advances;

(b) where the procurement entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs.

### Section 37-Procedures for Two-stage Tendering.

(1) The provisions of Part V shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.

(2) The invitation documents

(a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price;

(b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional and technical competence and qualifications of the suppliers or contractors.

(3) The procurement entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under section 29, 32 or 62(6) with respect to any aspect of its tender.

(4) In the second stage of the two tender proceedings the procurement entity,

(a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;

(b) may in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in those documents, evaluate and compare tenders and ascertain the successful tender;

(c) may add new characteristics or criteria that conform with this Act;

(d) shall communicate to suppliers or contractors in the invitation to submit final tenders, any deletion, modification or addition;

(e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings without the supplier or contractor forfeiting any tender security that the supplier or contractor may have been required to provide.

(5) The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in section 59(3)(b).

#### Section 38-Restricted Tendering.

A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering

(a) if goods, works or services are available only from a limited number of suppliers or contractors; or

(b) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.

#### Section 39-Procedure for Restricted Tendering.

(1) Where a procurement entity engages in restricted tendering on the grounds referred to in section 38(a), it shall

(a) invite tenders from the suppliers and contractors who can provide the goods, works or services;

(b) select in a non-discriminatory manner, a number of suppliers or contractors to ensure effective competition.

(2) Where the procurement entity engages in restricted tendering, it shall cause a notice of the selective-tendering award to be published in the Public Procurement Bulletin.

(3) The provisions of Part V of this Act, except section 47, shall apply to selective tendering proceedings, except to the extent that those provisions are varied in this section.

#### Section 40-Single-source Procurement.

(1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board,



- (a) where goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- (b) where there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procurement entity;
- (c) where owing to a catastrophic event, there is an urgent need for the goods, works or technical services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) where a procurement entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that
  - (i) additional supplies need to be procured from that supplier or contractor because of standardisation;
  - (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
  - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
- (e) where the procurement entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or
- (f) where the procurement entity applies this Act for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.

(2) A procurement entity may engage in single-source procurement with the approval of the Board after public notice and time for comment where procurement from a particular supplier or contractor is necessary in order to promote a policy specified in section 59(4)(c), (d) or 69(2)(c)(i), and procurement from another supplier or contractor cannot promote that policy.

#### Section 41-Procedure for Single-source Procurement.

The procurement entity may procure the goods, works or technical services by inviting a proposal or price quotation from a single supplier or contractor under section 40.

#### Section 42-Request for Quotations.

A procurement entity may engage in procurement by requesting quotations in accordance with section 43,

(a) for readily available goods or technical services that are not specially produced or provided to the particular specifications of the procurement entity; and

(b) for goods where there is an established market if the estimated value of the procurement contract is less than the amount in Schedule 3.

#### Section 43-Procedure for Request for Quotation.

(1) The procurement entity shall request quotations from as many suppliers or contractors as practicable, but from at least three different sources.

(2) Each supplier or contractor from whom a quotation is requested shall be informed whether any elements, apart from the charges for the goods or services themselves, such as transportation and insurance charges, customs duties and taxes, are to be included in the price.

(3) Each supplier or contractor shall only give one price quotation and shall not change its quotation;

(4) No negotiations shall take place between the procurement entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor, prior to evaluation of bids.

#### Section 44-National Competitive Tendering

(1) In procurement proceedings in which the procurement entity decides that only domestic suppliers or contractors may submit tenders, the procurement entity shall employ national competitive tendering procedures.

(2) The procurement entity is not required to employ the procedures set out in sections 47 and 48 of this Act if the estimated contract amount is lower than the value threshold specified in Schedule 3.

(3) The procurement entity may stipulate in the tender documents that tenderers must quote only in the local currency and payments must be made wholly in the local currency.

#### Section 45-International Competitive Tendering.

(1) International competitive tendering shall be used whenever open competitive tendering is used and effective competition cannot be obtained unless foreign firms are invited to tender.

(2) Open international tendering shall be in accordance with Part IV and Part V of this Act and the following shall also apply:

(a) the invitation to tender and tender documents must be in English, subject to sections 34 and 52;

(b) the invitation to tender shall be placed in a newspaper with adequate circulation to attract foreign competition as provided under section 47;

(c) at least six weeks shall be allowed for submission of tenders in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the tenders as provided in section 53;

(d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of sections 33 and 50(3);

(e) tenderers are permitted to express their tenders, as well as any security documents to be presented by them, in freely convertible currency and stated in the tender documents, subject to section 50(3) and section 55(2)(c); and

(f) general and special conditions of contract as stated in the tender documents.

#### Section 46-Other International Procedures.

Part IV and Part V shall apply with such modification as may be necessary whenever effective competition cannot be obtained unless foreign firms are invited to participate in procedures apart from open competitive international tendering such as selective tendering or invitation for proposals.

#### Section 47-Procedures for Inviting Tenders or Applications to Prequalify.

(1) A procurement entity shall invite tenders or, where applicable, applications to prequalify by causing an invitation to tender or an invitation to prequalify, to be published in the Procurement Bulletin.

(2) The invitation to tender or invitation to prequalify shall also be published in at least two newspapers of wide national circulation.

(3) The invitation may also be published in a newspaper of wide international circulation, in a relevant trade publication or technical or professional journal of wide international circulation.

#### Section 48-Contents of Invitation to Tender and Invitation to Prequalify.

(1) The invitation to tender shall contain the following information:

(a) the name and address of the procurement entity;

(b) the nature, quantity and place of delivery of the goods to be supplied, the country of origin, the nature and location of the works to be effected or the nature of the technical services and the location where they are to be provided;

(c) the desired or required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;

(d) the criteria and procedures to be used to evaluate the qualifications of suppliers or contractors, in conformity with section 23;

(e) a declaration, which may not be subsequently altered that suppliers or contractors may participate in the procurement proceedings regardless of nationality, or a declaration that participation is limited on the basis of nationality under section 25;

(f) the means of obtaining the invitation documents and the place from where they may be obtained;

(g) the price, if any, charged by the procurement entity for the invitation documents;

(h) the currency and means of payment for the invitation documents;

(i) the language in which the invitation documents are available;

(j) the place and deadline for the submission of tenders;

(k) the place, date and time for the opening of bids; and

(l) any other information considered relevant.

(2) An invitation to prequalify shall contain the information referred to in subsection (1)(a) to (e), (g) (h) and, if the information required under those paragraphs is already known, contain the information required under subsection (1)(j), as well as the following information

(a) the means to obtain the pre-qualification documents and the place from where they can be obtained;

(b) the price charged by the procurement entity for the pre-qualification documents;

(c) the currency and terms of payment for the pre-qualification documents;

(d) the language in which the pre-qualification documents are available;

(e) the place and deadline for the submission of applications to prequalify and the time allowed for the preparation of pre-qualification applications shall not be less than four weeks.

#### **Section 49-Provision of Tender Documents.**

(1) The procurement entity shall provide the tender documents to suppliers or contractors in accordance with the procedures and requirements specified in the invitation to tender.

(2) If pre-qualification proceedings have taken place, the procurement entity shall provide a set of tender documents to each supplier or contractor that has been prequalified and that pays the price charged for those documents.

(3) The price that the procurement entity may charge for the tender documents shall reflect the cost of printing them and providing them to suppliers or contractors.

#### **Section 50-Contents of Tender Documents and Use of Standard Tender Documents.**

(1) Procurement entities shall use the appropriate standard tender documents stipulated in Schedule 4 with such minimum changes acceptable to the Board.

(2) Changes shall be introduced only through tender or contract data sheets, or through special conditions of contract and not by introducing changes in the standard tender documents.

(3) The invitation documents shall include,

(a) instructions for preparing tenders;

(b) the criteria and procedures, in conformity with the provisions of section 22, for the evaluation of the qualifications of suppliers or contractors;

(c) the requirements on additional documentary evidence or other information that is to be submitted by suppliers or contractors to demonstrate their qualifications;

(d) the nature and required technical and quality characteristics, in relation to the goods, works or technical services to be procured under section 33 including, but not limited to,

(i) technical specifications, plans, drawings and designs,

(ii) the quantity of the goods;

(iii) any incidental services to be performed;

(iv) the location where the works is to be effected or the services are to be provided; and

(v) the desired or required time, if any when the goods are to be delivered, the construction is to be effected or the services are to be provided;

(e) the criteria to be used by the procurement entity to determine the successful tender, including any margin of preference and any criteria other than price to be used under section 59(4)(b)(c) or (d) and the factors apart from price to be used to determine the lowest evaluated bid, shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the tender documents;

(f) the terms and conditions of the procurement contract and the contract form to be signed by the parties;

(g) a statement that the characteristics of the goods, works or services, contractual terms and conditions or other requirements set out in the invitation documents are permitted, and a description of the manner in which alternative tenders are to be evaluated and compared;

(h) a description of the portion or portions for which tenders may be submitted where suppliers or contractors are permitted to submit tenders for only a portion of the goods, works or services to be procured;

(i) the manner in which the tender price is to be formulated and expressed, including a statement whether the price covers elements apart from the goods, works or services,

- such as applicable transportation and insurance charges, customs duties and taxes;
- (j) the currency or currencies in which the tender price is to be formulated and expressed;
- (k) the language in conformity with section 52, in which tenders are to be prepared;
- (l) any requirements of
- (i) the procurement entity connected with the issue, nature, form, amount and other principal terms and conditions of tender security to be provided by suppliers or contractors submitting tenders; and
- (ii) security for the performance of the procurement contract to be provided by a supplier or contractor that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) a statement that a supplier or contractor cannot modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security;
- (n) the manner, place and deadline for the submission of tenders;
- (o) the means by which suppliers or contractors may seek clarification of the invitation documents and a statement whether the procurement entity intends to convene a meeting of suppliers or contractors;
- (p) the period of time during which tenders will be in effect;
- (q) the place, date and time for the opening of tenders;
- (r) the procedures to be followed for opening and examining tenders;
- (s) the currency that will be used to evaluate and compare tenders under section 58 and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (t) references to this Act, the procurement regulations and other Acts and regulations relevant to the procurement proceedings, but the omission of the reference shall not constitute grounds for review under Part VII or give rise to liability on the part of the procurement entity;
- (u) the name, functional title and address of one or more officers or employees of the procurement entity who are authorised to communicate directly with and to receive communications directly from a supplier or contractor in connection with the procurement proceedings, without the intervention of an intermediary;
- (v) any commitments to be made by the supplier or contractor outside the procurement contract, such as commitments relating to countertrade or to the transfer of technology;
- (w) a statement of the right to seek review of an unlawful act or decision of, or procedure followed by the procurement entity in relation to the procurement proceedings;

(x) if the procurement entity reserves the right to reject tenders, a statement to that effect;

(y) any formalities that will be required once a tender has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by the Government and the estimated period of time following the despatch of the notice of acceptance that will be required to obtain the approval; and

(z) any other requirements established by the procurement entity under this Act and Regulations relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.

### Section 51-Clarifications and Modifications of Tender Documents.

(1) A supplier or contractor may request promptly clarification of the tender documents from the procurement entity.

(2) The procurement entity shall respond to a request by a supplier or contractor within a reasonable time before the deadline for the submission of tenders to enable the supplier or contractor make a timely submission of its tender and shall without disclosing the source of the request communicate the clarification to the suppliers or contractors provided with the invitation documents.

(3) The procurement entity may modify the invitation documents by issuing an addendum prior to the deadline for submission of tenders.

(4) The addendum shall be communicated promptly to the suppliers or contractors provided with the invitation documents by the procurement entity and shall be binding on those suppliers or contractors.

(5) The procurement entity may convene a meeting of suppliers and contractors to clarify and modify tender documents and shall prepare minutes of any previous meeting concerned with clarification of the invitation documents without identifying the sources of the requests.

(6) The minutes shall be given promptly to the suppliers and contractors provided with the invitation documents by the procurement entity to enable them take the minutes into account in the preparation of their tenders.

### Section 52-Language of Tenders.

(1) Tenders shall be formulated and submitted in English.

(2) Supporting documents and printed literature furnished by the tenderer may be in another language if they are accompanied by an accurate translation of the relevant passages in English.

(3) Where there is translation, the translation shall be used to interpret the tender.

**Section 53-Submission of Tenders.**

- (1) The procurement entity shall,
  - (a) fix the place for, and a specific date and time as the deadline for the submission of tenders; and
  - (b) allow tenderers at least six weeks to prepare their tenders for international competitive tendering.
- (2) The time for preparation of tenders under national competitive tendering procedures shall not exceed four weeks.
- (3) If a procurement entity issues clarification or modification documents or if a meeting of tenderers is held, the procurement entity shall prior to the expiry of the deadline for the submission of tenders extend the deadline to give the suppliers and contractors reasonable time to take the clarification or modification, or the minutes of the meeting into account in their tenders.
- (4) The procurement entity may, prior to the expiry of deadline for the submission of tenders, extend the deadline.
- (5) The procurement entity shall, at least ten days before the expiry of the deadline, give notice of an extension of the deadline by fax, e-mail or any other expedited written means of communication to each supplier or contractor to whom the procurement entity provided the tender documents or to any new prospective tenderers.
- (6) A tender shall be in writing, signed and be submitted in a sealed envelope.
- (7) A tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the contents of the tender and a similar degree of authenticity, security and confidentiality.
- (8) The procurement entity shall provide the tenderer with a receipt showing the date and time when its tender was received.
- (9) A tender received by the procurement entity after the deadline for the submission of tenders shall not be opened and shall be returned to the supplier or contractor which submitted it.

**Section 54-Period of Validity of Tenders; Modification and Withdrawal of Tenders.**

- (1) The period of validity for a tender shall be the period specified in the tender documents.
- (2) A procurement entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (3) A supplier or contractor may refuse the request without forfeiting its tender security and the effectiveness of its tender will terminate upon the expiry of the unextended period



of effectiveness.

(4) A supplier or contractor that agrees to an extension of the period of effectiveness of its tenders shall extend or procure an extension of the period of tender securities provided by it or provide new tender securities to cover the extended period of effectiveness of its tender.

(5) A supplier or contractor whose tender security is not extended or that has not provided a new tender security is considered to have refused the request to extend the period of effectiveness of its tender.

(6) A supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security unless otherwise stipulated in the tender documents.

(7) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

#### Section 55-Tender Securities.

(1) The procurement entity shall specify the principal terms and conditions of the required tender security in the invitation documents.

(2) When the procurement entity requires suppliers or contractors submitting tenders to provide tender security,

(a) the requirement shall apply to each supplier or contractor;

(b) the invitation documents shall stipulate that the issuer and confirmer of the tender security are acceptable to the procurement entity;

(c) notwithstanding paragraph (b), a tender security shall not be rejected by the procurement entity on the grounds that the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements in the invitation documents;

(d) a supplier or contractor may request the procurement entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the procurement entity shall respond promptly to the request;

(e) confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procurement entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

(3) Any requirement on tender security that refers directly or indirectly to conduct by the supplier or contractor submitting the tender may only relate to

(a) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if stipulated in the invitation documents;

(b) failure to sign the procurement contract if required by the procurement entity to do so;

(c) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.

(4) The procurement entity shall not make a claim to the amount of the tender security and shall promptly return or procure the return of the tender security document after whichever of the following occurs first

(a) the expiry of the tender security;

(b) the entry into force of a procurement contract and the provision of security for the performance of the contract, if the security is required by the invitation documents;

(c) the termination of the tendering proceedings without the entry into force of a procurement contract; or

(d) the withdrawal of the tender prior to the deadline for the submission of tenders.

#### Section 56-Opening of Tenders.

(1) Tenders shall be opened

(a) at the time specified in the tender documents as the deadline for the submission of tenders or at the deadline specified in any extension of the deadline; and

(b) at the place and in accordance with the procedures specified in the tender documents.

(2) The time for opening of the tenders shall be the same as the deadline for receipt of tenders or promptly after that deadline.

(3) A supplier or contractor who has submitted a tender or a representative of that supplier or contractor, shall be permitted by the procurement entity to be present at the opening of tenders.

(4) The name and address of each supplier or contractor whose tender is opened and the tender price shall be announced to those present at the opening of tenders and communicated on request to a supplier or contractor who has submitted a tender but is not present or represented at the opening of the tenders.

(5) The tender price shall be recorded immediately in the record of tendering proceedings.

#### Section 57-Examination of Tenders.

(1) The procurement entity may ask a supplier or a contractor for clarification of its tender in order to assist in the examination, evaluation and comparison of tenders.

(2) No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

(3) Notwithstanding subsection (2), the procurement entity shall correct purely arithmetical errors that are discovered during the examination of tenders.

(4) The procurement entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

#### Section 58-Responsiveness of Tenders.

(1) A procurement entity shall regard a tender as responsive if it conforms to the requirements set out in the tender invitation documents.

(2) The procurement entity may, however, regard a tender as responsive if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the invitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.

(3) The deviations shall be quantified, to the extent possible, and shall be taken into account in the evaluation and comparison of tenders.

(4) A procurement entity shall not accept a tender

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

(b) if the tenderer that submitted the tender does not accept a correction of an arithmetical error made under subsection (1)(b);

(c) if the tender is not responsive;

(d) in the circumstances referred to in section 32 with respect to inducement from a tenderer.

#### Section 59-Evaluation of Tenders.

(1) The procurement entity shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender in accordance with the procedures and criteria set out in the invitation documents.

(2) No criterion shall be used that has not been set out in the invitation documents.

(3) The successful tender shall be:

(a) the tender with the lowest evaluated tender price; and

(b) the lowest evaluated tender ascertained on the basis of criteria specified in the invitation documents which shall be

(i) objective and quantifiable; and

(ii) given relative weight in the evaluation procedure or expressed in monetary terms where practicable if the procurement entity has so stipulated in the invitation documents.

- (4) To determine the lowest evaluated tender, the procurement entity shall consider
- (a) the tender price, subject to any margin of preference applied under section 60(2);
  - (b) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provisions of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
  - (c) the effect the acceptance of the tender will have on
    - (i) the balance of payments position and foreign exchange reserves of the country;
    - (ii) the countertrade arrangements offered by suppliers or contractors;
    - (iii) the extent of local content, including manufacturer, labour and materials, in goods, works or services being offered by suppliers or contractors;
    - (iv) the economic development potential offered by tenders, including domestic investment or other business activity;
    - (v) the encouragement of employment, the reservation of certain production for domestic suppliers;
    - (vi) the transfer of technology;
    - (vii) the development of managerial, scientific and operational skills; and
  - (d) national security considerations.

#### Section 60-Margin of Preference.

- (1) A procurement entity may grant a margin of preference for the benefit of tenders for work by domestic contractors or for the benefit of tenders for domestically produced goods or for the benefit of domestic suppliers of services.
- (2) The margin of preference shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings;
- (3) The margin of preference shall be authorised by the Board and be subject to approval by the Board.

#### Section 61-Multiple Currency Tender Prices.

When tender prices are expressed in two or more currencies, the tender prices of the total number of tenders shall be converted to the same currency according to the rate specified in the invitation documents for the evaluation and comparison tenders.

#### Section 62-Repeat Tender Qualifications.

(1) The procurement entity may require the supplier or contractor which is the successful tenderer, to demonstrate its qualifications again, whether or not it has engaged in pre-qualification proceedings in accordance with criteria and procedures that conform to section 23 on prequalification proceedings.

(2) The criteria and procedures to be used for the further demonstration shall be set out in the tender documents.

(3) Where pre-qualification proceedings have been used, the criteria for further demonstration shall be the same as those used in the pre-qualification proceedings.

(4) If tenderers have not been pre-qualified, the entity shall determine whether the selected tenderer has the capacity to perform the contract effectively.

(5) The criteria to be met shall be specified in the tender documents and if the selected tender is rejected, the procurement entity shall make a similar determination of the next ranked best evaluated tender.

(6) If the supplier or contractor submitting the successful tender is requested to demonstrate its qualifications again but fails to do so, the procurement entity shall reject that tender and shall select a successful tenderer, in accordance with section 59(4) from among the remaining tenders, subject to the right of the procurement entity to reject the remaining tenders.

#### **Section 63-Non-disclosure of Tender Evaluation Details.**

Information relating to the examination, clarification, evaluation and comparison of tenders shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted, except as provided in section 28 on the record of procurement proceedings.

#### **Section 64-Prohibition of Negotiations with Suppliers or Contractors.**

(1) Subject to the exception in this section, on negotiations shall take place between the procurement entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor.

(2) If the lowest evaluated responsive tender exceeds the budget for the contract by a substantial margin, the procurement entity shall investigate the causes for the excessive cost and may

(a) consider requesting new tenders; or

(b) subject to approval by the relevant Tender Review Board and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract.

#### **Section 65-Acceptance of Tender and Entry into Force of Procurement Contract.**

(1) A tender that has been ascertained to be the successful tender in accordance with this Act shall be accepted and notice of acceptance of the tender shall be given within 30 days of the acceptance of the tender to the supplier or contractor submitting the tender.

(2) Where the tender documents require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming to the tender, the procurement entity and the supplier or contractor shall sign the procurement contract within 30 days after the notice referred to in subsection (1) is dispatched to the supplier or contractor.

(3) Where a written procurement contract is required to be signed, the contract shall enter into force on the commencement date indicated on the contract.

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

(5) Except as provided in subsection (2), a procurement contract in accordance with the terms and conditions of the accepted tender enters into force when the notice is dispatched to the supplier or contractor that submitted the tender, if it is dispatched while the tender is in force.

(6) The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor in a manner authorised in section 26.

(7) If the supplier or contractor whose tender had been accepted fails to sign a written procurement contract within 30 working days of receipt of the notice of acceptance or fails to provide the required security for the performance of the contract, the procurement entity shall select a successful tender in accordance with section 59(3) from among the remaining tenders that are in force, subject to the right of the procurement entity to reject the remaining tenders.

(8) The notice provided for in subsection (1) shall be given to the supplier or contractor that submitted the successful tender.

(9) A procurement entity shall give notice of the procurement contract in writing to unsuccessful suppliers and contractors and the notice shall

(a) specify the name and address of the successful supplier or contractor who has entered into the contract and the contract price;

(b) be given after the commencement of the procurement contract and may include the provision by the supplier or contractor of security for the performance of the contract;

(c) for contracts above the threshold in Schedule 3, be published in the Procurement Bulletin which shall disclose the names of firms or individuals awarded contracts, the start and completion dates, as well as the value of the contracts.

## Section 66-Notice of Invitation of Expressions of Interest and Preparation of Shortlists

(1) A procurement entity shall invite consulting services by causing a notice seeking expression of interest in submitting a proposal to be published in the Public Procurement Bulletin for consultancy contracts above the threshold in Schedule 3.

(2) The notice shall,

(a) contain the name and address of the procurement entity and a brief description of the services to be procured; and

(b) be published in English and in a newspaper of wide circulation or in a relevant trade or professional publication of wide circulation except where participation is limited solely to national consultants under section 44(1) or where the procurement entity decides that only national consultants may submit proposals.

(3) Where direct invitation is necessary for economic and efficiency reasons, the procurement entity with the approval of the Board may apply the provisions of subsection (1) and (2) where

(a) the services to be procured are available only from a limited number of consultants, if it invites expressions of interest from all these consultants;

(b) the time and cost required to examine and evaluate a large number of expressions of interest would be disproportionate to the value of the services to be performed, if it invites proposals from enough consultants to ensure effective competition; or

(c) direct invitation is the only means to ensure confidentiality or is required in the national interest, if it invites enough proposals from consultants for effective competition.

## Section 67-Shortlisted Candidates.

(1) The procurement entity is responsible for the preparation of a shortlist of consultants to be considered to participate in the selection process.

(2) The shortlist may comprise only national consultants but shall comprise at least three and not more than six consultants.

(3) The procurement entity shall provide the invitation for proposals to the shortlist of consultants selected on the basis of quality.

(4) The procurement entity shall provide the invitation for proposals to the most qualified or single sourced consultant selected on the basis of the consultant's qualifications.

## Section 68-Content of Requests for Proposals for Consultancy Services.

(1) The procurement entity shall use the standard invitation for proposals stipulated in Schedule 4 and any requirements for a specific assignment shall be introduced through information to consultants, data sheets or contract data sheets and not by introducing changes in the standard tender documents.

(2) The invitation for proposals shall include

(a) the name and address of the procurement entity;

(b) the language or languages in which proposals are to be prepared;

(c) the manner, place and deadline for the submission of proposals;

(d) a statement to the effect that the procurement entity reserves the right to reject proposals;

(e) the criteria and procedures related to the evaluation of the qualifications of the consultants and those related to additional qualifications under section 24(5).

(f) the requirements on documentary evidence or other information that shall be submitted by suppliers or contractors to demonstrate their qualifications;

(g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;

(h) whether the procurement entity is seeking proposals on various possible ways of meeting its needs;

(i) the currency in which the proposal price is to be expressed;

(j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;

(k) the procedure selected under section 71(1) to ascertain the successful proposal;

(l) the criteria to be used to determine the successful proposal, including any margin of preference to be used under section 57 and the relative weight of the criteria;

(m) the currency that will be used to evaluate and compare proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;

(n) a statement on alternative to the characteristics of the consultancy services, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;

(o) the name, functional title and address of one or more officers or employees of the procurement entity who are authorised to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary;



(p) the means by which consultants may seek clarification on the invitation for proposals and a statement whether the procurement entity intends to convene a meeting of consultants; and

(q) the terms and conditions of the consultancy contract as known to the procurement entity and the contract form to be signed by the parties.

#### **Section 69-Criteria for the Evaluation of Proposals.**

(1) The procurement entity shall establish criteria to evaluate the proposals and determine the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals.

(2) The consultants shall be notified of the criteria in the invitation for proposals and the criteria may deal with the following:

(a) the qualifications, experience, reputation, reliability and professional and managerial competence of the consultant and the personnel to be involved in providing the services;

(b) the effectiveness of the proposals submitted by the consultants in meeting the needs of the procurement entity as specified in section 68(2)(g);

(c) the proposal price, including any ancillary or related costs; and

(i) the effect that the acceptance of a proposal will have on the balance of payments position and foreign exchange reserves of the country;

(ii) the extent of participation by nationals;

(iii) the economic development potential offered by the proposal, including domestic investment or other business activity;

(iv) the encouragement of employment;

(v) the transfer of technology;

(vi) the development of managerial, scientific and operational skills;

(vii) the counter-trade arrangements offered by consultants; and

(d) national security considerations.

(3) A procurement entity may grant additional points for participation by nationals who are key staff in foreign and national firms, and these points shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings subject to approval by the Board.

#### **Section 70-Clarification and Modification of Invitation for Proposals.**

(1) A consultant may request clarification of the invitation for proposals from the procurement entity and where such a request is made the procurement entity shall

(a) respond to the request within 7 working days of the request being made if the request is received by the procurement entity within 14 working days prior to the deadline for the submission of proposals; and

(b) where the request is made later than 14 days prior to the deadline for the submission of proposals, respond promptly and early enough to enable the consultant make a timely submission of its proposal and shall, without identifying the source of the invitation, communicate the clarification to the other consultants to whom the procurement entity has provided the invitation for proposals.

(2) A procurement entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for the submission of proposals.

(3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted consultants to whom the procurement entity has provided the request for proposals and shall be binding on those consultants.

(4) If the procurement entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposal and its responses to those requests, without identifying the sources of the requests.

(5) The minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.

#### Section 71-Choice of Selection Procedure.

(1) The procurement entity shall use the selection procedure provided for in section 75(6)(a), 75(6)(b) or 76 that has been notified to consultants in the invitation for proposals.

(2) The procurement entity shall include in the record required under section 28, a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure under subsection (1).

(3) This Part does not prevent a procurement entity from resorting to an impartial panel of external experts in the selection procedure.

#### Section 72-Conditions for use of other Methods of Selection of Consultants.

(1) A procurement entity may select consultants by quality-based selection for the following types of assignments:

(a) complex or highly specialised assignments, where

(i) it is difficult to define precise terms of reference and the required input from the consultants;

- (ii) the client expects the consultants to demonstrate innovation in their proposals;
  - (b) assignments that have a high downstream impact where the objective is to have the best experts; and
  - (c) assignments that can be carried out in substantially different ways where proposals will not be comparable.
- (2) A procurement entity may use selection under a fixed budget approved by the Board where the assignment is simple and can be precisely defined.
- (3) A procurement entity may use least-cost selection procedures for small value assignments subject to the value threshold in Schedule 3 where the assignment is of a standard or routine nature and well-established practices and standards exist.
- (4) A procurement entity may use selection based on consultants' qualifications for very small value assignments subject to the value threshold in Schedule 3 where the need to prepare and evaluate competitive proposals is not justified.
- (5) The procurement entity may select consultants by inviting proposals from a single consultant where there is
- (a) only one eligible consultant;
  - (b) an emergency as specified in section 40(1)(b) and (c); or
  - (c) a follow-up assignment.

#### **Section 73-Receipt of Proposals.**

- (1) The procurement entity shall allow enough time for the consultants to prepare their proposals.
- (2) The time allowed shall depend on the nature of the assignment but shall not be less than four weeks.
- (3) To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes.
- (4) After the closing time for the submission of proposals, the appropriate committee of the procurement entity shall open the technical proposals immediately after the deadline for the submission of proposals.
- (5) The financial proposals shall remain sealed until they are opened publicly under section 56.

#### **Section 74-Evaluation of Proposals.**

- (1) The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost.

(2) Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation, including any Tender Board Review is concluded.

(3) The evaluation shall be carried out in conformity with the provisions in the invitation for proposals.

#### Section 75-Selection Procedure where Price is a Factor.

(1) Where the procurement entity uses the procedure in this section, it shall establish a threshold on the quality and technical aspects of the proposals in accordance with the criteria established under section 69 apart from those set out in the request for proposals and shall rate each proposal in accordance with that criteria and the relative weight and manner of application of those criteria set out in the invitation for proposals.

(2) The procurement entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 days after the decision has been taken by the procurement entity.

(3) The name of the consultant, the quality scores and the proposed prices shall be read aloud and recorded when the financial proposals are opened.

(4) The procurement entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

(5) The procurement entity shall compare the prices of the proposals that have attained a rating at or above the threshold.

(6) The successful proposals shall be

(a) the proposals with the best combined evaluation in terms of the criteria established under section 69 apart from price in the case of quality and cost-based selection;

(b) the proposals with the lowest price in the case of least-cost selection; or

(c) the consultants that submitted the highest ranked technical proposals within the budget;

(7) The consultants with the winning proposals shall be invited for negotiations, which shall focus mainly on the technical proposals.

(8) Proposed unit rates for staff-months and reimbursables shall not be negotiated unless there are exceptional reasons.

#### Section 76-Selection Procedure where Price is not a Factor.

(1) Where the procurement entity uses the quality-based selection, selection based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section.

(2) The procurement entity shall

- (a) establish a threshold in accordance with section 75(1);
  - (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with section 75(1);
  - (c) inform the consultants that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the consultant with the best rating do not result in a procurement contract; and
  - (d) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procurement entity that the negotiations with that consultant invited under subsection (2)(b), will not result in a procurement contract.
- (3) The procurement entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procurement entity shall invite the other consultants for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

#### **Section 77-Confidentiality.**

- (1) The procurement entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.
- (2) A party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party.

#### **Section 78-Right to Review.**

- (1) Any supplier, contractor or consultant that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the procurement entity by this Act, may seek review in accordance with this Part.
- (2) Notwithstanding subsection (1), the following shall not be subject to the review.
  - (a) the selection of a method of procurement under sections 35 to 43;
  - (b) the choice of a selection procedure under section 75(6)(a), 75(6)(b) or section 76;
  - (c) the limitation of procurement proceedings in accordance with section 44; and
  - (d) a decision by the procurement entity under section 29 to reject tenders, proposals, offers or quotation.

#### **Section 79-Review by Procurement Entity.**

- (1) A complaint shall, in the first instance, be submitted in writing to the head of the procurement entity if the procurement contract has not already entered into force.

(2) The head of the procurement entity shall not entertain a complaint unless it was submitted within twenty days after the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or when that supplier, contractor, or consultant should have become aware of those circumstances, whichever is earlier.

(3) The head of the procurement entity may entertain a complaint or continue to entertain a complaint after the procurement contract has entered into force notwithstanding subsection (1).

(4) A procurement entity shall attempt to resolve a complaint by mutual agreement of the supplier or contractor and the procurement entity.

(5) The head of the procurement entity shall, within twenty-one days after the submission of the complaint, issue a written decision.

(6) The decision shall

(a) state the reasons for the decision; and

(b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.

(7) If the head of the procurement entity does not issue a decision by the time specified in subsection (5), the supplier, contractor, or consultant, submitting the complaint is entitled to institute proceedings for administrative review under section 80.

(8) After the institution of the proceedings, the competence of the head of the procuring entity to entertain the complaint ceases.

#### Section 80-Administrative Review.

(1) A supplier, contractor or consultant entitled to seek review may submit a complaint to the Board,

(a) within twenty-one days after

(i) the supplier, contractor or consultant became aware of the circumstances giving rise to the complaint; or

(ii) the time when the supplier, contractor or consultant ought to have become aware of those circumstances,

if the complaint cannot be submitted under section 79 because of the entry into force of the procurement contract;

(b) if the head of the procurement entity does not entertain the complaint because the procurement contract has entered into force, and the complaint is submitted within twenty-one days after the issuance of the decision not to entertain the complaint;

(c) under section 79(7) if the complaint is submitted within twenty-one days after the

expiry of the period referred to in section 79(5); or

(d) if the supplier, contractor, or consultant claims to be adversely affected by a decision of the head of the procurement entity under section 79, and the complaint is submitted within twenty days after the issue of the decision.

(2) Upon receipt of a complaint, the Board shall give notice of the complaint promptly to the procurement entity.

(3) The Board may,

(a) declare the legal rules or principles that govern the subject-matter of the complaint;

(b) order that the provisions of this Act be complied with;

(c) require the procurement entity that has acted or proceeded in an illegal manner, or that has reached an illegal decision, to act or to proceed in a legal manner or to reach a legal decision;

(d) annul in whole or in part an illegal act or decision of the procurement entity, other than any act or decision bringing the procurement contract into force;

(e) revise an illegal decision by the procurement entity or substitute its own decision for the decision, other than any decision bringing the procurement contract into force;

(f) require the payment of compensation for reasonable costs incurred by the supplier or contractor who submitted the complaint, in connection with the procurement proceedings as a result of an illegal decision of, or procedure followed by the procurement entity;

(g) order that the procurement proceedings be terminated;

(h) dismiss the complaint and require the payment of compensation for reasonable costs incurred by the Procurement Entity or the Board.

(4) The Board shall, within twenty-one days of starting a review, issue a written decision concerning the complaint, stating the reasons for the decision.

(5) Correspondence pertaining to any complaint shall be copied to the Board.

#### **Section 81-Certain Rules Applicable to Review Proceedings.**

(1) The head of the procurement entity or the Board shall notify the suppliers, contractors, or consultants participating in procurement proceedings about the submission of a complaint and of its substance within 14 working days after the submission of the complaint for review.

(2) A supplier or contractor or any government authority whose interests are or could be affected by the review proceedings is entitled to participate in the review proceedings.

(3) A supplier, contractor, or consultant who fails to participate in the review proceedings is barred from subsequently making the same type of claim.

(4) A copy of the decision of the head of the procurement entity or of the Board shall be furnished within five days after the issue of the decision to the supplier, contractor, or consultant submitting the complaint to the procurement entity and to any other supplier, contractor or government authority that has participated in the review proceedings.

(5) After the decision has been taken, the complaint and the decision shall be promptly made available for inspection by the general public, but no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

### Section 82-Suspension of Procurement Proceedings.

(1) Where review proceedings are initiated, the procurement proceedings shall be suspended for 7 days if the complaint

(a) is not frivolous;

(b) contains a declaration which demonstrates that the supplier, contractor or consultant will suffer irreparable damage if the suspension is not granted; and

(c) is likely to succeed

and the grant of the suspension will not cause disproportionate harm to the procurement entity or to other suppliers, contractors, or consultants.

(2) When the procurement contract enters into force, upon the submission of a complaint under section 79, performance of the procurement contract shall be suspended for seven days, if the complaint meets the requirements set out in subsection (1).

(3) The head of the procurement entity and the Board under subsection (2) may extend the suspension in order to preserve the rights of the supplier, contractor, or consultant who is a party to the review pending the disposition of the review proceedings, but the total period of suspension shall not exceed thirty days.

(4) The suspension provided for by this section shall not apply if the procurement entity certifies that urgent public interest considerations requires the procurement to proceed.

(5) The certification shall state the grounds for the finding that urgent considerations exist and shall be made a part of the record of the procurement proceedings, and it is conclusive with respect to administrative review.

(6) Any decision by the procurement entity under this section and the grounds and circumstances shall be made part of the record of the procurement proceedings.

### Section 83-Authority to Dispose.

(1) The head of a procurement entity shall convene a Board of Survey comprising representatives of departments with unserviceable, obsolete or surplus stores, plant and equipment which shall report on the items and subject to a technical report on them,



recommend the best method of disposal after the officer in charge has completed a Board of Survey form.

(2) The Board of Survey's recommendations shall be approved by the head of the procurement entity and the items shall be disposed of as approved.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board for handling losses shall be followed before the items are boarded and disposed of.

#### Section 84-Disposal Procedures.

Disposal of obsolete and surplus items shall be by

(a) transfer to government departments or other public entities, with or without financial adjustment;

(b) sale by public tender to the highest tenderer, subject to reserve price;

(c) sale by public auction, subject to a reserve price; or

(d) destruction, dumping, or burying as appropriate.

#### Section 85-Instructions and Guidelines for Disposal of Unserviceable Stores.

(1) The Minister shall make further regulations on the disposal of unserviceable stores and obsolete equipment.

(2) The Board shall issue detailed instructions and policy guidelines relating to the disposal of unserviceable stores and equipment.

#### Section 86-Code of Conduct.

The Board shall compile and publish a code of conduct with the approval of the Minister which shall apply to every official of a procurement entity, the Board, members of Tender Review Boards, as well as suppliers, contractors and consultants.

#### Section 87-Modifications.

(1) Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of the contract by more than 10 percent of the original price, a procurement entity shall inform the appropriate Tender Review Board in the case of a contract subject to review by the Tender Review Board of any proposed extension, modification or variation order with reasons.

(2) In the case of contracts which are not originally subject to review by a Tender Review Board, any proposed modification of contract which will make the revised contract price exceed the procurement method threshold or the threshold of the procurement entity shall be cleared with the appropriate Tender Review Board.

#### Section 88-Request for Information by the Board.

Every procurement entity shall provide the Board with such information as the Board may require in writing, regarding procurement engaged in by the procurement entity.

#### Section 89-Investigation by the Board.

(1) The Board may appoint a person to conduct an investigation into any matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent, or detect a contravention of this Act.

(2) An investigator may, subject to subsection (3),

(a) at any time during normal office hours, without previous notice, enter the premises of the procurement entity tenderer, supplier, contractor, or consultant concerned with the procurement proceedings under investigation;

(b) require an officer, employee or agent of the procurement entity or tenderer, supplier, contractor, or consultant to produce any books, records, accounts or documents;

(c) search premises for any books, records, accounts or documents;

(d) examine and make extracts from and copies of books, records, accounts or documents of the procurement entity, tenderer, supplier, contractor or consultant;

(e) remove books, records, accounts or documents of the procurement entity, tenderer, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them, but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;

(f) require an officer, employee or agent of the procurement entity or tenderer, supplier, or contractor or consultant,

(i) to explain an entry in the books, records, accounts or documents;

(ii) to provide the investigator with information concerning the management or activities of the procurement entity or tenderers as may be reasonably required.

(3) The powers of entry and search conferred by subsection (2)(a) and (c) of this section shall not be exercised except with the consent of the procurement entity or tenderer, supplier, contractor, or consultant concerned or of the person in charge of the premises unless there are reasonable grounds to believe that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or to obtain evidence relating to an offence.

(4) Any person who, without just cause, hinders or obstructs an investigator in the exercise of a function under this section commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding two years or to both.

#### Section 90-Procedures on Completion of Investigation.

(1) An investigator shall

(a) forward a copy of the investigation report to the Board; and

(b) send a summary of the findings and recommendations to the procurement entity and to any tenderer, supplier, contractor or consultant whose conduct was the subject of the investigation.

(2) The Board shall, if satisfied that there has been a contravention of this Act or any other law in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include

(a) annulment of the procurement proceedings;

(b) cancellation of the procurement contract;

(c) ratification of anything done in relation to the proceedings; or

(d) a declaration consistent with any relevant provisions of this Act.

(3) The Board shall afford a person adequate opportunity to make representations in a matter, before taking any action in terms of subsection (2) which may adversely affect the rights or property of that person.

#### **Section 91-Statutory Audits.**

(1) The Auditor-General shall conduct annual audits of the procurement activities of entities and shall furnish copies of reports on the audits to the Board upon request from the Board.

(2) The Auditor-General shall also carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants with the procurement requirements in this Act and regulations made under this Act at the request of the Board.

(3) The statutory audit of procurement activities may be relied upon by the Board to institute measures to improve the procurement system.

#### **Section 92-Offences Relating to Procurement.**

(1) Any person who contravenes any provision of this Act commits an offence and where no penalty has been provided for the offence, the person is liable on summary conviction to a fine not exceeding 1000 penalty units or a term of imprisonment not exceeding five years or to both.

(2) The following shall also constitute offences under this Act:

(a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with any other supplier or contractor where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;

- (b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
- (c) altering any procurement document with intent to influence the outcome of a tender proceeding and this includes but is not limited to
  - (i) forged arithmetical correction;
  - (ii) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
- (d) request for clarification in a manner not permitted under this Act.

#### Section 93-Corrupt Practices.

- (1) Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution.
- (2) An act amounts to a corrupt practice if so construed within the meaning of corruption as defined in the Criminal Code, 1960 (Act 29).

#### Section 94-Review of Threshold Levels.

The threshold levels specified in Schedule 3 shall be reviewed by the Board and presented by the Minister for the approval of Parliament.

#### Section 95-Public Access to Legal Texts.

The Chief Executive of the Board shall ensure that administrative rulings and directives of general application under this Act are promptly made available to the public.

#### Section 96-International Obligations.

Notwithstanding the extent of the application of this Act to procurement, procurement with international obligations arising from any grant or concessionary loan to the government shall be in accordance with the terms of the grant or loan.

#### Section 97-Regulations.

- (1) The Minister, in consultation with the Board, may make regulations by legislative instrument to give effect to the purposes of this Act.
- (2) In furtherance of subsection (1), the Minister may make regulations
  - (a) on the preparation and submission of tenders;
  - (b) to provide for the manner of publication of the notice of procurement contract awards;
  - (c) on the margin of preference in the evaluation of tenders;

(d) on the preparation and submission of applications to prequalify for a tender;

(e) on procurement proceedings on the basis of nationality;

(f) on the procurement process where one entity or a specially appointed agent is to procure items on behalf of another entity;

(g) on the disposal of unserviceable stores and obsolete equipment;

(h) to amend the schedules to this Act; and

(i) on any other matter connected with public procurement.

(3) Notwithstanding anything to the contrary in any enactment, a person who contravenes any regulation made under this Act is liable on summary conviction to a fine not exceeding 1000 penalty units or imprisonment for a term not exceeding five years or to both.

### Section 98-Interpretation.

In this Act unless the context otherwise requires,

"Board" means the public procurement Board established under section 1 of this Act;

"Catastrophic event" means a disaster of a national proportion;

"central management agencies" means the Public Services Commission, Office of the President and Office of the Head of Civil Service;

"CEO" means chief executive officer;

"confirmer" in relation to security means a person who or a bank which confirms letters of credit or bills;

"consultancy services" means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organise specific projects, advise clients, conduct training or transfer knowledge;

"consultant" means a person, natural or corporate, dealing in the provision of services including consultancy services;

"currency" includes monetary unit of account;

"entity" means procurement entity;

"a domestic supplier" means a citizen who is a supplier or a corporate body with a majority shareholding owned by citizens which is a supplier;

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

"governance institutions" includes Regional Co-ordinating Councils, District Assemblies, Metropolitan and Municipal Assemblies;

"head of entity" means in relation to

(i) the central management agencies and Ministries, the sector Minister;

(ii) subvented agencies, the Director-General, Executive Director, Secretary or Chief Executive;

(iii) the Regional Co-ordinating Councils, the Regional Minister;

(iv) the District Assemblies, the District Chief Executive;

(v) State Owned Enterprises, the sector Minister;

"key staff" means important professional staff but excludes support staff;

"Least Cost Selection (LCS)" means a competitive method where quality and cost are taken into account but the firm offering the least cost is considered;

"local content" means a product originating from Ghana;

"Minister" means the Minister responsible for Finance;

"national interest" means a condition where the nation attaches high value, returns, benefit and consideration to the matter in question;

"national security" means a condition where security takes priority over economic consideration and efficiency;

"one stop only" means in relation to the operating threshold the procurement entity seeks, concurrent approval for a contract award from one tender review board only.

"performance security" means a security guaranteeing the performance of a contract;

"procurement contract" means a contract between the procuring entity and a supplier, contractor or consultant resulting from procurement proceedings;

"procurement entity" means any entity conducting public procurement under this Act;

"procurement unit" means the person or unit in the procurement entity that is dedicated to providing technical procurement services for the tender committee;

"professional body" means a body comprising members of a profession which is registered under the Professional Bodies Registration Decree, 1973 (NRCD 143) or under any other enactment;

"public funds" include the Consolidated Fund, the Contingency Fund and such other public funds as may be established by Parliament;

"Quality Cost Based Selection (QCBS)" means a competitive method of combining quality and cost of services in the selection of a firm taking into consideration

(a) the relative weight to be given to quality and the cost to be determined in each case depending on the nature of the assignment,

(b) the total score to be obtained by weighing the quality and the cost score and adding them together, where the weight assigned to the quality and price is determined by the relative to importance of quality in the assignment;

"security" means an amount to secure the fulfillment of any obligation of a contractor, supplier or consultant, which may take the form of a financial deposit, a surety bond, or an irrevocable letter of credit;

"selection procedure where price is not a factor" means selection which is made on technical quality only and where price is negotiated later;

"service" means the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;

"subvented agency" means an agency set up by Government to provide public service and financed from public funds allocated by Parliament in the annual appropriation;

"supplier or contractor" means any potential party or the party to a procurement contract with the procuring entity;

"technical services" means services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations;

"Tender Committee" means the body within an entity with responsibility for planning, processing, and generally taking procurement decisions and ensuring compliance with the public procurement law, among others;

"tenderer" means a person who puts in a bid in a procurement contract;

"tender security" means security provided to the procurement entity to secure the fulfillment of an obligation under this Act and includes arrangements such as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits and bills of exchange;

"works" means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

Section 99-Repeal and Savings.

(1) The following enactments are hereby revoked or repealed as appropriate:

(a) The District Tender Board Regulations, 1995 (L.I. 1606);

(b) the Ghana National Procurement Agency Decree, 1976 (SMCD 55); and

(c) the Ghana Supply Commission Law, 1990 (PNDCL 245).

(2) Notwithstanding the revocation and repeal of the enactments stated in subsection (1), any contracts, orders, decisions or anything made or done by a body which, until the coming into force of this Act, was charged with the performance of any of the functions under this Act shall, be valid and continue to be in force as if it was made or done under this Act.

(3) Where in the view of the Board the continued validity of an act under subsection (2) is inconsistent with this Act, the Board may take the appropriate decision to rectify the inconsistency to the extent consistent with this Act.

(4) Notwithstanding the coming into force of this Act, Tender Boards, and Committees which immediately before the coming into force of this Act performed the functions of Award Authorities as envisaged under this Act shall continue in existence until they are reconstituted or otherwise replaced under this Act.