

PUBLIC PROCUREMENT ACT, 2003 (ACT 663)

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<sup>2</sup> The Schedules were substituted by section 58 of the Public Procurement (Amendment) Act, 2016 (Act 914).

THE SIX HUNDRED AND SIXTY-THIRD

# ACT

OF THE PARLIAMENT OF THE REPUBLIC  
OF GHANA  
ENTITLED

## THE PUBLIC PROCUREMENT ACT, 2003

AN ACT to provide for public procurement, to establish the Public Procurement Authority, make administrative and institutional arrangements for procurement, stipulate tendering procedures and provide for related matters.

DATE OF ASSENT: *31st December, 2003.*

BE IT ENACTED by Parliament as follows:

### PART ONE

#### *Establishment of the Authority*

#### **Public Procurement Authority**

1. (1) There is established by this Act a body to be known as the Public Procurement Authority.

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

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

#### **Object of the Authority**

2. The object of the Authority 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, *environmentally and socially sustainable*<sup>3</sup> manner.

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<sup>3</sup> Inserted by section 1 of the Public Procurement (Amendment) Act, 2016 (Act 914).

### Functions of the Authority

3. In furtherance of its object the Authority shall

- (a) make proposals for the formulation of policies on procurement;
- (b) ensure policy implementation and human resource development for public procurement;
- (c) develop rules, instructions, other regulatory documentation on public procurement and formats for public procurement documentation;<sup>4</sup>
- (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 *by the end of each month* a<sup>5</sup> 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 *to the Board*<sup>6</sup> 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 *including Metropolitan, Municipal and District Assemblies*<sup>7</sup> on issues relating to public procurement;
- (m) organise and participate in the *complaints and*<sup>8</sup> administrative review procedures in Part Seven;

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<sup>4</sup> Amended by paragraph (a) of section 2 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of "draft".

<sup>5</sup> Substituted by paragraph (b) of section 2 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>6</sup> Inserted by paragraph (c) of section 2 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>7</sup> Inserted by paragraph (d) of section 2 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>8</sup> Inserted by paragraph (e) of section 2 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (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;
- (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.

***Governing body of the Authority<sup>9</sup>***

*4. (1) The governing body of the Authority is a Board consisting of nine persons*

- (a) a person competent and experienced in public procurement, as the chairperson;*
- (b) four persons from the public sector made up of one representative of the Attorney General and three other persons nominated by the Minister, one of whom is a woman and each of whom is a person who has experience in public procurement and is familiar with governmental and multilateral agency procurement procedures;*
- (c) three persons from the private sector who have experience in procurement, at least one of whom is a woman; and*
- (d) the chief executive officer of the Authority.*

<sup>9</sup> This section was substituted by section 3 of the Public Procurement (Amendment) Act, 2016 (Act 914).



*(2) The vice chairperson shall be elected by members from among their number.*

*(3) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.*

*(4) The Board shall ensure the proper and effective performance of the functions of the Authority.*

#### **Term of office**

5. (1) A member of the Board other than the chief executive officer,
- (a) shall hold office for a term of four years and is eligible for reappointment 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 other sufficient cause.

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

#### **Meetings of the Board**

6. (1) The Board shall meet at least once every three months for the despatch of business at the times and places determined by the chairperson.

(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 is five including the chief executive officer.

(4) The Board may co-opt a person to act as adviser at a meeting of the Board but a co-opted person does not have the right to vote on a 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.

#### **Committees of the Board**

7. The Board may for the performance of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to a committee a function of the Board as determined by the

Board, but a committee composed entirely of non-members may only advise the Board.

#### **Secretariat of the Authority**

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

(2) The Authority 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 any other functions directed by the chief executive officer.

(3) The Authority may engage the consultants and advisers who it may require for the proper and efficient performance of the functions of the secretariat.

#### **Chief Executive of the Authority**

9. (1) The chief executive officer of the Authority shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The chief executive officer shall hold office on the terms and conditions specified in the letter of appointment to office.

(3) Subject to the general directions that the Board may give, the chief executive officer is responsible for the day-to-day administration of the secretariat of the Authority and the implementation of the decisions of the Board.

(4) The chief executive officer may delegate a function of the office of the chief executive officer to an officer of the secretariat but is not relieved of the ultimate responsibility for the performance of the delegated function.

#### **Funds of the Authority<sup>10</sup>**

10. (1) *The funds of the Authority include*

- (a) *moneys provided by Parliament;*
- (b) *administrative fines, fees and other income accruing to the Authority in the performance of its functions;*
- (c) *donations, grants and gifts; and*
- (d) *any other moneys provided by the Minister.*

(2) *The Minister may, by legislative instrument, make provision for the*

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<sup>10</sup> This section was substituted by section 4 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*Authority to retain part or all of its internally generated funds for specified purposes.*

#### **Accounts and audit**

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

(2) The books and accounts of the Authority shall be audited annually by the Auditor-General in accordance with article 187 of the Constitution.

#### **Financial year of Authority**

12. The financial year of the Authority shall be the same as the financial year of the Government.

#### **Annual report**

13. (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 Authority 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 the comment that the Minister considers necessary.

(3) *The part of the annual report concerning a Metropolitan, Municipal or a District Assembly and the relevant part of the audited accounts, together with relevant parts of the Auditor-General's Report affecting specific Metropolitan, Municipal or District Assemblies shall be submitted to that Metropolitan, Municipal or District Assembly for debate.*<sup>11</sup>

## **PART TWO<sup>12</sup>**

### *Procurement Structures*

#### **Scope and application**

14. (1) *This Act applies to*

- (a) *the procurement of goods, works and services, financed in whole or in part from public funds;*
- (b) *functions that pertain to the procurement of goods, works and*

<sup>11</sup> Inserted by section 5 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>12</sup> This Part was substituted by section 6 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*services including the description of requirements and sources of supply, selection and award of contracts and the phases of contract administration;*

- (c) the disposal of public stores, vehicles and equipment; and*
- (d) procurement with public funds including loans procured by government, grants, foreign aid funds and internally generated funds except as exempted under section 96.*

*(2) In addition to subsection (1), this Act applies to*

- (a) central management agencies;*
- (b) 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 including public trusts, pension funds, insurance companies and building societies which are wholly owned by the Republic or in which the Republic has a majority interest;*
- (h) institutions established by Government for the general welfare of the public or community;*
- (i) statutory funds, Commissions and other bodies established by Government for a special purpose; and*
- (j) the phases of contract administration as specified in the Contract Administration Manuals.*

*(3) The Contract Administrator shall*

- (a) manage the obligations and duties of the procurement entity specified in the contract; and*
- (b) ensure that the supplier or contractor performs the contract in accordance with its terms and conditions.*

*(4) The Board may recommend to the Minister, new procurement methods where the context requires.*

*(5) A procurement entity in conducting procurement, shall be guided by further procedures specified in manuals, regulatory notices and guidelines issued by the Board.*

#### ***Declaration of procurement entity***

**15. (1)** *The Minister in consultation with the Board may, by notice in the Gazette, declare an entity, a subsidiary or agency of an entity or a person to be a procurement entity.*

**(2)** *Subject to approval by the Board, a procurement entity may*

undertake procurement in accordance with established commercial practices if

- (a) the procurement entity is legally and financially autonomous and operates under commercial law;
- (b) it is beyond contention that public 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.

(3) The approval given by the Board to a procurement entity to undertake procurement in accordance with established commercial practices shall be published in the Gazette.

#### **Procurement entity**

16. (1) A procurement entity is responsible for procurement, subject to this Act and any other conditions that may be established in Regulations and administrative instructions issued by the Minister in consultation with the Board.

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

#### **Head of procurement entity**

17. (1) The head of entity and an officer to whom responsibility is delegated are responsible and accountable for action taken and for instructions as regards the implementation of this Act.

(2) The liability of the head of entity or officer to whom responsibility is delegated is however limited to acts that are inconsistent with this Act.

#### **Functions of the head of a procurement entity**

18. (1) The head of entity shall ensure that provisions of this Act are complied with.

(2) The concurrent approval by a tender review committee 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 a provision of this Act.

(3) The head of entity shall

- (a) establish within the procurement entity, a procurement unit, staffed with qualified procurement personnel;

- (b) *empanel competent and qualified evaluation panels;*
  - (c) *ensure that at each stage of the procurement activity, procedures prescribed in this Act have been followed;*
  - (d) *ensure that stores, vehicles and equipment are disposed of in compliance with this Act;*
  - (e) *exercise sound judgment in making procurement decisions; and*
  - (f) *refer to the entity tender committee for approval, a procurement above the approval threshold of the head of entity.*
- (4) *The head of entity shall*
- (a) *apply the thresholds that relate to heads of entities as specified in the Second and Third Schedules to this Act; and*
  - (b) *facilitate contract administration and ensure compliance with the reporting requirements under this Act.*

#### ***Procurement unit***

19. (1) *The head of a procurement entity of each ministry, department and agency and Metropolitan, Municipal and District Assembly, shall establish a procurement unit within the entity which shall be headed and staffed by qualified procurement personnel.*

(2) *The head of a procurement entity shall appoint a head of procurement of the procurement entity who shall be the Secretary to the entity tender committee.*

#### ***Entity tender committee***

20. (1) *A procurement entity shall establish a tender committee in the manner set out in the First Schedule and in accordance with the categories set out in Schedule 1A.*

(2) *An entity tender committee of each procurement entity shall have the composition specified in Schedule 1B or Schedule 1C of the First Schedule.*

(3) *An entity tender committee may co-opt a person to act as a technical adviser at a meeting of the entity tender committee, but a co-opted person shall not vote on a matter for decision before the entity tender committee.*

(4) *An entity tender committee shall work within the method thresholds specified in the Fifth Schedule and approval limits specified in the Second and Third Schedules in the conduct of its duties as regards tenders for works, goods or services.*

(5) *The thresholds applicable to an entity tender committee shall be as specified in the Second and Third Schedules.*

**General provisions on the functions of an entity tender committee**

20A. (1) *An entity tender committee shall*

- (a) *ensure that at each stage of procurement activity, procedures prescribed in this Act have been followed;*
- (b) *work within the threshold limits specified in the Second Schedule and the method thresholds specified in the Fifth Schedule;*
- (c) *exercise sound judgment in making procurement decisions; and*
- (d) *review and refer to the central tender review committee for concurrent approval, procurement above the entity tender committee's threshold, that has been duly*
  - (i) *processed by the procurement unit; and*
  - (ii) *evaluated by the appropriate evaluation panel constituted by the head of entity.*

(2) *The chairpersons and members of an entity tender committee and a tender review committee may delegate their functions in writing.*

**Functions of specific entity tender committees**

20B. (1) *An entity tender committee of a central management agency, ministry, department and subvented agency shall*

- (a) *review and approve annual procurement plans and quarterly updates of procurement plans in order to ensure that they support the objectives and operations of the entity;*
- (b) *confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the entity;*
- (c) *review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, the Regulations and guidelines made under this Act;*
- (d) *ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Second Schedule;*

- (e) *facilitate contract administration and ensure compliance with reporting requirements under this Act; and*
- (f) *assist the head of entity to ensure that stores, vehicles and equipment are disposed of in accordance with this Act.*

*(2) An entity tender committee of a Regional Coordinating Council shall*

- (a) *review procurement plans in order to ensure that they support the policies and programmes of the Regional Administration, Metropolitan, Municipal or District Assembly;*
- (b) *confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Regional Administration, Metropolitan, Municipal Assembly or District Assembly;*
- (c) *review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its Regulations and guidelines;*
- (d) *ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Third Schedule;*
- (e) *facilitate contract administration and ensure compliance with reporting requirements under this Act; and*
- (f) *assist the head of entity to ensure that stores, vehicles and equipment are disposed of in compliance with this Act.*

*(3) An entity tender committee of a Metropolitan, Municipal or District Assembly shall*

- (a) *review and approve annual procurement plans and quarterly updates of procurement plans in order to ensure that they support the policies and programmes of the Assembly;*
- (b) *confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Assembly;*
- (c) *review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, the Regulations and guidelines made under this Act;*
- (d) *ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Third Schedule;*



- (e) *facilitate contract administration and ensure compliance with reporting requirements under this Act; and*
- (f) *assist the head of entity to ensure that stores, vehicles and equipment are disposed of in compliance with this Act.*

#### ***Applicable thresholds***

20C. (1) *The threshold limits for ministries, departments and agencies and Metropolitan, Municipal and District Assemblies for procurement shall be as specified in the Second and Third Schedules.*

(2) *The threshold limits for procurement methods for ministries, departments and agencies, and Metropolitan, Municipal and District Assemblies shall be as specified in the Fifth Schedule.*

#### ***Meetings of entity tender committees***

20D. *An entity tender committee shall meet at least once each quarter and notice of the meetings shall be given at least two weeks before the date of the meeting.*

#### ***Tender evaluation panel***

20E. (1) *A procurement entity shall appoint a tender evaluation panel with the required expertise to evaluate tenders.*

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

#### ***Tender review committees***

20F. (1) *There shall be established tender review committees for ministries, departments and agencies and Metropolitan, Municipal and District Assemblies as specified in the Fourth Schedule.*

(2) *The tender review committee of a ministry, department or agency is the central tender review committee.*

(3) *The tender review committee of a Metropolitan, Municipal and District Assembly is the regional tender review committee.*

(4) *The members of the central tender review committee shall be appointed by the Minister in consultation with the Board.*

(5) *The members of a regional tender review committee shall be appointed by the Regional Minister in consultation with the Minister.*

(6) *The central tender review committee, the regional tender review committee and each entity tender committee shall perform the functions of the tender review committee for the entities for which they are responsible.*

(7) *A tender review committee shall perform the following functions:*

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

(b) *give concurrent approval or otherwise to enable the procurement entity continue with the procurement process subject to subsection (1) of section 16;*

(c) *participate in public procurement fora; and*

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

(8) *The regional tender review committee shall furnish the Board, Metropolitan, Municipal and District Assembly with reports pertaining to the regional tender review committee's operations in the prescribed format.*

(9) *A tender review committee may engage the services of consultants and advisers or co-opt persons with the specialised expertise that it may require for the proper and efficient performance of its functions.*

#### ***Review of tender review committee decisions***

20G. (1) ~~*A procurement entity or tenderer aggrieved by the decision of a tender review committee may apply to the Board for the review of the decision of that tender review committee.*~~

(2) ~~*The Board shall take appropriate action and determine the grievance in accordance with section 80(3) or as it considers appropriate.*~~

(3) ~~*A tenderer or procurement entity that is dissatisfied with a decision of the Board may seek redress in court.*~~

### PART THREE

#### Procurement Rules

#### Procurement plan

21. (1) A procurement entity shall prepare a procurement plan to support its approved programme.

(2) The plan shall indicate

- (a) contract packages *description or lots*<sup>13</sup>,
- (b) estimated cost for each package,
- (c) the procurement method *approvals needed*<sup>14</sup>, and
- (d) processing steps and times.

(3) A procurement entity shall submit to its entity tender committee not later than one month to the end of the financial year the procurement plan for the following year for approval and shall post the procurement plan on the website of the Authority.<sup>15</sup>

(4) After budget approval and at quarterly intervals after that, a procurement entity shall submit an update of the procurement plan to the entity tender committee and shall post the update of the procurement plan on the website of the Authority.<sup>16</sup>

(5) Repealed.<sup>17</sup>

(6) 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 under this Act.

#### Qualification of tenderers

22. (1) A tenderer in public procurement shall

- (a) possess the necessary
  - (i) *professional, technical and environmental qualifications*;<sup>18</sup>
  - (ii) financial resources;
  - (iii) equipment and other physical facilities;
  - (iv) managerial capability, reliability, experience in the procurement object and reputation; and

<sup>13</sup> Inserted by paragraph (a) of section 7 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>14</sup> Inserted by paragraph (b) of section 7 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>15</sup> Substituted by paragraph (c) of section 7 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>16</sup> Substituted by paragraph (d) of section 7 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>17</sup> Repealed by paragraph (e) of section 7 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>18</sup> Substituted by paragraph (a) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (v) the personnel to perform the procurement contract;
- (b) have the legal capacity to enter the contract;
- (ba) *meet ethical and other standards applicable in this country;*<sup>19</sup>
- (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 have paid the 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 *debarment*<sup>20</sup> proceedings.
- (f) meet any other criteria that the procurement entity considers appropriate *that does not discriminate and is objectively justifiable.*<sup>21</sup>

(2) *Subject to the right of tenderers to protect their intellectual property or trade secrets*<sup>22</sup>, the procurement entity may require tenderers to provide appropriate documentary evidence or any 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) A requirement established pursuant to this section stated in the tender documents or any other documents for invitation of proposals shall apply equally to the tenderers *and shall be set out in the pre-qualification or pre-selection documents.*<sup>23</sup>

<sup>19</sup> Inserted by paragraph (b) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>20</sup> Substituted by paragraph (c) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>21</sup> Added by paragraph (d) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>22</sup> Inserted by paragraph (e) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>23</sup> Added by paragraph (f) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

(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 *that constitutes a misrepresentation*<sup>24</sup> 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.

(7) *Other than in a case to which subsection (1)(a) applies, a procurement entity shall not disqualify a tenderer on the grounds that the information submitted concerning the qualifications of the tenderer were inaccurate or incomplete in a non-material respect.*

(8) *The tenderer may however be disqualified for failure to remedy the deficiency promptly on request by the procurement entity.*

(9) *The procurement entity may require the authentication of a foreign document provided by a tenderer to demonstrate the qualification of the tenderer.*<sup>25</sup>

#### **Suspension of a supplier or consultant**

22A. (1) *The Board may suspend a supplier or consultant from engaging in any public procurement or disposal process for a period determined by the Board*

- (a) *on the recommendation of a procurement entity or after investigations on its own initiative; and*
- (b) *where it is determined after a special audit or by a court, that a tenderer is engaged in corrupt or fraudulent practices.*

(2) *The suspension of a supplier or consultant by the Board shall occur where*

- (a) *the supplier or consultant is in contravention of a provision in this Act;*
- (b) *the supplier or consultant is debarred from the procurement processes of an international agency of which the Republic of Ghana is a member;*

<sup>24</sup> Inserted by paragraph (g) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>25</sup> Inserted by paragraph (h) of section 8 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (c) *the supplier or consultant is found to have a record of unsatisfactory performance after investigations by the Auditor-General;*
- (d) *the supplier or consultant fails to substantially perform its obligations under the contract;*
- (e) *the supplier or consultant is suspended by a professional body for professional misconduct;*
- (f) *the supplier or consultant is found to have faulted on its obligations by an Act of Parliament; or*
- (g) *the supplier or consultant has been convicted of corrupt practice or a fraudulent act under this Act.<sup>26</sup>*

### **Prequalification proceedings**

23. (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 Parts Four and Five.

(3) A procurement entity shall supply a set of prequalification documents to a 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) the documentary evidence or any 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

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<sup>26</sup> Inserted by section 9 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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 Five, 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 the 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 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 a 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.

#### **Decision on prequalification**

24. (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 on 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.

### **Participation in procurement proceedings**

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

### **Form of communication**

26. (1) *A procurement entity shall, when soliciting the participation of a tenderer in procurement proceedings, specify*

*(a) the form of the procurement proceedings; and*

*(b) measures and requirements needed*

*the protection of classified information involved to ensure in the procurement.*

(2) *A procurement entity shall only use the means of communication commonly used by a tenderer in a specific type of procurement in the procurement process and in any meeting with tenderers shall use means of communication that ensure the full participation of tenderers.*

(3) *A procurement entity shall put in place measures to secure the authenticity, integrity and confidentiality of the information used in a procurement process.*

(4) *Communication between procurement entities and tenderers shall be in writing and communication in any other form shall be referred to and confirmed in writing.<sup>27</sup>*

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<sup>27</sup> Substituted by section 10 of the Public Procurement (Amendment) Act, 2016 (Act 914).



### **Documentary evidence in procurement proceedings**

27. The documentary evidence required in procurement proceedings shall comply with the Evidence Act, 1975 (N.R.C.D. 323).

### **Record of procurement proceedings**

28. (1) A procurement entity shall maintain a record of the procurement proceedings containing,

- (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 Four, 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<sup>28</sup>*, 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;
  - (o) *a statement of the reasons and circumstances relied on by the procurement entity when the procurement is cancelled, stating the reasons and circumstances relied on by the procurement entity for its decision to cancel the procurement;*
  - (p) *the reasons and circumstances for which a procurement entity rejected a tender or consultancy proposal;*
  - (q) *any socio-economic policies considered in the procurement proceedings, details of the policies and the manner in which they were applied;*
  - (r) *a copy of the review proceedings where a complaint is submitted to the procurement entity;*
  - (s) *where a system other than competitive tendering has been used, the reasons and circumstances the procurement entity considered when selecting the other procurement method;*
  - (t) *the reasons and circumstances relied on by a procurement entity when a tenderer is excluded<sup>1</sup> from procurement proceedings;*
  - (u) *a statement where the award of a procurement contract is as a*

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<sup>28</sup> Substituted by paragraph (a) of section 11 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*result of the failure of the previous tenderer to sign the procurement contract or provide the required security for the performance of the contract;*

- (v) the reasons and circumstances relied on by a procurement entity where confidentiality in the procurement proceedings is required;*
- (w) the requirements imposed on tenderers for the protection of classified information in a procurement process;*
- (x) a statement of the reasons and circumstances used to justify the framework agreement process where applicable; and*
- (y) any other information required to be included in the record by a procurement entity in furtherance of the procurement process.<sup>29</sup>*

(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 a 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 paragraphs (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.<sup>30</sup>

*(4A) A procurement entity shall not disclose the portion of the record referred to in subsection (1) (c) to (e), (l) and (m) or information that relates to the examination, evaluation and comparison of tenders, proposals, offers or quotations and tenders, proposals, offers or quotation prices other than the summary referred to in subsection (1) (e) if*

- (a) non-disclosure of the information is necessary for the protection of essential security interests of the State; or*
- (b) disclosure of the information would be contrary to law and*

<sup>29</sup> Inserted by paragraph (b) of section 11 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>30</sup> Amended by paragraph (c) of section 11 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of all words after "court".

would

- (i) *impede law enforcement,*
- (ii) *not be in the public interest;*
- (iii) *prejudice the legitimate commercial interests of the tenderer or consultant; and*
- (iv) *inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589),*

*unless the disclosure is ordered by a court or the Board in which case the procurement entity shall comply with the conditions of the order.*<sup>31</sup>

(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 Board, an investigator appointed by the Board and the Auditor-General on request; and where donor funds have been used for the procurement, donor officials shall also on request to the Minister have access to relevant procurement files for purposes of verification and review.

(7) *A procurement entity shall record, file and preserve the documents that relate to the procurement proceedings, Regulations and the Public Records and Archives Administration Act, 1997 (Act 535).*<sup>32</sup>

### **Cancellation of procurement proceedings**

28A. (1) *A procurement entity may, for specific and fully justified reasons, cancel procurement proceedings before the expiry of the deadline for the submission of tenders, where*

- (a) *the entity discovers an imperfection in the wording of the request for submission of tenders, which could mislead tenderers;*
- (b) *the procurement entity decides to carry out the work subject of the tender by itself;*
- (c) *there is a cut in the budget intended for performing the contract;*
- (d) *no bid has been submitted;*

<sup>31</sup> Added by paragraph (d) of section 11 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>32</sup> Inserted by paragraph (c) of section 11 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (e) *exceptional circumstances or a force majeure render normal performance of the contract impossible;*
- (f) *the economic or technical data of the project has fundamentally changed.*

(2) *The head of a procurement entity may, after the expiry of the deadline for the submission of tenders, cancel a procurement proceeding where*

- (a) *no tender has been submitted within the specified deadline;*
- (b) *the tender procedure has been unsuccessful;*
- (c) *it is established that the tender documents contain terms or technical specifications that cannot be met by any of the tenderers or that these specifications lead exclusively to a specific economic operator;*
- (d) *the prices of the tenders that meet the terms and the technical requirements of the tender documents are unrealistic or appear to be the product of collusion between the tenderers, resulting in the circumvention of healthy competition;*
- (e) *the circumstances under which the procurement procedure was announced have changed to such an extent that the scope of the tender procedure is no longer necessary;*
- (f) *exceptional circumstances or a force majeure render normal performance of the contract impossible; or*
- (g) *any other serious unforeseeable reason, which the procurement entity considers justifiable, applies.*

(3) *The head of a procurement entity shall, before cancelling a procurement proceeding under subsection (2) have due regard to*

- (a) *the time and resources expended by interested tenderers, particularly in the case of complex contracts with a complicated scope;*
- (b) *the right of an interested party who has or had an interest in being awarded the specific contract, and who has sustained or is likely to sustain a loss as a result of the cancellation, to seek administrative review under this Act or to seek redress in court; and*

(c) *general principles of good faith and transparency and public policy.*

(4) *A procurement entity may cancel procurement proceedings after acceptance of a successful tender if the tenderer whose submission has been accepted, fails to sign the applicable contract as required or fails to provide the applicable security required for performance of the contract.*

(5) *Subject to subsection (3), where a procurement proceeding is cancelled before the contract is signed, a tenderer or interested party shall not be entitled to claim any compensation from the procurement entity.*

(6) *For the avoidance of doubt, a procurement entity shall not incur liability for invoking this section and shall in no event be liable for any damages including, damages for loss of profits in any way connected with the cancellation of a tender.*

(7) *The publication of a tender notice does not commit the procurement entity that published the notice to implement the programme or project announced.*

(8) *Subject to this section, where a tender proceeding divides tenders into lots, individual lots may be cancelled.*

(9) *The decision of a procurement entity to cancel the procurement and reasons for that decision shall be included in the record of procurement proceedings and shall be promptly communicated to any tenderer or consultant who presented a tender or proposal.*

(10) *A cancellation notice shall promptly after decision to cancel is made, be published on the website of the procurement entity or of the Authority.*

(11) *After cancelling a procurement proceeding, the procurement entity may*

*(a) start a new tender proceeding; or*

*(b) re-start the tender proceeding using the same reference as the original invitation.<sup>33</sup>*

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<sup>33</sup> Inserted by section 12 of the Public Procurement (Amendment) Act, 2016 (Act 914).

### **Rejection of tenders, proposals and quotations**

29. (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.

### **Entry into force of the procurement contract**

30. (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.

(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.

### **Public notice of procurement contract awards**

31. (1) A procurement entity shall promptly publish notice of procurement contract awards *on the website of the Authority*.<sup>34</sup>

(2) *The Regulations shall provide for any other manner of publication of the notice of procurement contract awards.*<sup>35</sup>

### **Inducements from suppliers, contractors and consultants**

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

<sup>34</sup> Inserted by paragraph (a) of section 13 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>35</sup> Substituted by paragraph (b) of section 13 of the Public Procurement (Amendment) Act, 2016 (Act 914).

(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.

### **Confidentiality**

32A. (1) *A procurement entity shall not disclose information to a supplier or contractor if the disclosure will compromise national security or if the disclosure will impede law enforcement, prejudice the legitimate commercial interest of a supplier or contractor, or impede fair competition.*

(2) *A procurement entity shall treat applications to pre-qualify, applications for pre-selection and submissions for a procurement contract in a manner that avoids the disclosure of their contents to a competing tenderer or any unauthorised person, except as provided under this Act.*

(3) *A discussion or communication permitted under this Act between a procurement entity and a tenderer during the tender process or other procurement process that permits discussions, negotiations or dialogue at any stage, is confidential and, unless required by law or ordered by a court, a person concerned with the discussion or communication shall not disclose any technical information, price or other information to another person without the consent of the other party.*

(4) *A person concerned with the discussion or communication in a procurement process shall not disclose any technical information, price or other information to another person without the consent of the other party.*

(5) *A person who contravenes subsections (3) or (4) commits an offence.*

(6) *Subject to section 28 (4), a procurement entity involved in classified information may*

*(a) impose requirements on tenderers to protect classified information; and*

*(b) demand that tenderers ensure that their subcontractors comply with the requirements to protect classified information.<sup>36</sup>*

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<sup>36</sup> Inserted by section 14 of the Public Procurement (Amendment) Act, 2016 (Act 914).



### Description of goods, works and<sup>37</sup> services

#### 33. (1) The

- (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 *goods, works and*<sup>38</sup> services that create obstacles to participation including obstacles based on nationality of tenderers,<sup>39</sup>

shall not be included or used in prequalification documents, invitation documents or any 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, quality and performance 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 pre-qualification documents, invitation documents or any other documents for invitation of proposals, offers or quotations.*

*(4) A procurement entity shall pay due regard to the use of standardised trade terms and standardised conditions where available in the formulation of the terms and conditions of the procurement, the procurement contract, the framework agreement, pre-qualification, pre-selection agreements and the tender documents.*<sup>40</sup>

<sup>37</sup> Substituted by paragraph (a) of section 15 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>38</sup> Inserted by paragraph (b) of section 15 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>39</sup> Inserted by paragraph (b) of section 15 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>40</sup> Substituted by paragraph (c) of section 15 of the Public Procurement (Amendment) Act, 2016 (Act 914).

## Language

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

## PART FOUR

### *Methods of Procurement*

#### *Methods of procurement and conditions of use, including framework contracting*

34A. (1) *The procurement entity may conduct procurement by means of the following methods and as from time to time determined by Regulations:*

- (a) *competitive tendering that includes;*
  - (i) *international competitive tendering,*
  - (ii) *national competitive tendering,*
  - (iii) *request for quotations, and*
  - (iv) *restricted tendering;*
- (b) *single source procurement;*
- (c) *selection of consultants determined by*
  - (i) *quality and cost based selection,*
  - (ii) *quality based selection,*
  - (iii) *selection based on consultant's qualification,*
  - (iv) *least cost selection,*
  - (v) *fixed budget selection, and*
  - (vi) *single source selection; and*
- (d) *framework contracting where*
  - (i) *the Board in consultation with the Minister, may introduce framework contracting agreements and other methods for any specific entity where the context permits until it is possible to do so nationally; and*
  - (ii) *a procurement entity may engage in a framework agreement procedure in accordance with regulations or guidelines issued by the Board.*

(2) *These methods shall be used subject to and in accordance with the thresholds specified in the Fifth Schedule.*<sup>41</sup>

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<sup>41</sup> Inserted by section 16 of the Public Procurement (Amendment) Act, 2016 (Act 914).

### **Competitive tendering**

35. (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 Six 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 Six 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.

### **Two-stage tendering**

36. (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.

### **Procedures for two-stage tendering**

37. (1) The provisions of Part Five 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 a supplier or contractor whose tender has not been rejected under section 29, 32 or 62 (6) with respect to an 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 an aspect of the technical or quality characteristics of the goods, works or services to be procured together with the 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, a deletion, modification or an 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 the 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).

### **Restricted tendering**

38. (1)<sup>42</sup> 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 by reason of the highly complex and specialised nature<sup>43</sup> goods, works or services are available only from a limited number of suppliers or contractors;
- (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; or
- (c) if an offer for competitive tendering fails to receive any response after publication.<sup>44</sup>

(2) The Authority may charge a processing fee as determined by the Board for single source and restricted tendering applications.<sup>45</sup>

### **Procedure for restricted tendering**

39. (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 publish a notice of the selective-tendering award in the Public Procurement Bulletin.

(3) The provisions of Part Five but not section 47, shall apply to selective tendering proceedings, except to the extent that those provisions are varied in this section.

### **Single-source procurement**

40. (1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board *in the following exceptional circumstances*,<sup>46</sup>

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<sup>42</sup> Renumbered by paragraph (b) of section 17 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>43</sup> Inserted by paragraph (a) of section 17 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>44</sup> Inserted by paragraph (c) of section 17 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>45</sup> Inserted by paragraph (d) of section 17 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>46</sup> Inserted by paragraph (a) of section 18 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (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 a reasonable alternative or substitute does not exist;
- (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 any other methods of procurement because of the time involved in using those methods;
- (d) *where the procurement entity having procured goods, equipment, technology or services from a supplier, contractor or consultant, determines that additional supplies must be procured from the supplier, contractor or consultant because of standardisation or compatibility with existing goods, equipment, technology or services taking into account*
  - (i) *the effectiveness of the original procurement in meeting the needs of the procurement entity;*
  - (ii) *the limited size of the proposed procurement in relation to the original procurement;*
  - (iii) *the reasonableness of the price; and*
  - (iv) *the unsuitability of alternatives to the goods or services in question;*<sup>47</sup>
- (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.

<sup>47</sup> Substituted by paragraph (b) of section 18 of the Public Procurement (Amendment) Act, 2016 (Act 914).

(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) or socio-economic policy<sup>48</sup> and procurement from another supplier or contractor cannot promote that policy.

#### **Procedure for single-source procurement**

41. 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.

#### **Request for quotations**

42. (1)<sup>49</sup> A procurement entity may engage in procurement by requesting quotations in accordance with section 43,

(a) for readily available goods, works<sup>50</sup> 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 the Fifth Schedule.<sup>51</sup>

(2) *The successful quotation shall be the lowest evaluated responsive quotation that meets the needs of the procurement entity in the request for quotations.*<sup>52</sup>

#### **Procedure for request for quotation**

43. (1) *The procurement entity shall request for quotations from as many suppliers or contractors as practicable, but shall compare quotations from at least three different sources that should not be related in terms of ownership, shareholding or directorship and the principles of conflict of interest shall apply between the procurement entities and their members and the different price quotation sources.*<sup>53</sup>

(2) A supplier or contractor from whom a quotation is requested shall be informed whether the elements, apart from the charges for the goods or

<sup>48</sup> Inserted by paragraph (c) of section 18 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>49</sup> Renumbered by paragraph (b) of section 19 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>50</sup> Inserted by paragraph (a) of section 19 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>51</sup> Substituted by paragraph (c) of section 19 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>52</sup> Added by paragraph (d) of section 19 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>53</sup> Substituted by section 20 of the Public Procurement (Amendment) Act, 2016 (Act 914).

services themselves, such as transportation and insurance charges, customs duties and taxes, are to be included in the price.

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

(4) Negotiations shall not 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.

## **PART FIVE** **Tendering Procedures**

### *Invitation of Tenders and Applications to Prequalify*

#### **National competitive tendering**

44. (1) *Locally registered suppliers, contractors or consultants may participate in national competitive tendering procurement proceedings without regard to nationality, except where the procurement entity decides to limit participation in national competitive tendering proceedings to only domestic suppliers, contractors or consultants, in accordance with this section.*

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

(3) *A procurement entity is not required to employ the procedures set out in sections 47 and 48 if the estimated contract amount is lower than the value threshold specified in the Fifth Schedule.*

(4) *A procurement entity, when first calling for participation in procurement proceedings, shall notify prospective tenderers whether the proceedings are limited to domestic suppliers only and the declaration shall not be altered later.*

(5) *A procurement entity that decides to limit the participation of suppliers, contractors and consultants in procurement proceedings, shall include in the record of procurement proceedings, a statement of the reasons and circumstances on which it relied and shall make available to any person, on request, its reasons for limiting participation.*

(6) *A 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.*



*(7) A procurement entity shall stipulate a minimum period of two weeks or a maximum period of six weeks for the submission of tenders under the national competitive tender procedures.*<sup>54</sup>

#### **International competitive tendering**

45. (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 Four and Part Five 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.

#### **Other international procedures**

46. Part Four and Part Five shall apply with the modifications that are necessary whenever effective competition cannot be obtained unless foreign

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<sup>54</sup> Substituted by section 21 of the Public Procurement (Amendment) Act, 2016 (Act 914).

firms are invited to participate in procedures apart from open competitive international tendering such as selective tendering or invitation for proposals.

**Procedures for inviting tenders or applications to prequalify**

47. (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 Public Procurement Bulletin and on the website of the Authority.*

(2) *An invitation to tender or prequalify shall be published in at least one daily newspaper of national circulation.*

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

(4) *The invitation shall be published on the website of the Authority at a fee to be determined by the Board.<sup>55</sup>*

**Contents of invitation to tender and invitation to prequalify**

48. (1) The invitation to tender shall contain

- (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;

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<sup>55</sup> Substituted by section 22 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (f) the means of obtaining the invitation documents and the place from where they may be obtained;
- (g) the price, 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 regarding

- (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.

#### **Provision of tender documents**

49. (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.

(4) Where electronic procurement procedures are applied, the price of tender documents shall be determined by the Board.<sup>56</sup>

#### **Contents of tender documents and use of standard tender documents**

50. (1) Procurement entities shall use the appropriate standard tender documents stipulated in the *Sixth Schedule*<sup>57</sup> with the 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) the technical specifications, plans, drawings and designs,
  - (ii) the quantity of the goods;
  - (iii) the incidental services to be performed;
  - (iv) the location where the works are to be effected or the services are to be provided; and
  - (v) the desired or required time, 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 the margin of preference and the 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

<sup>56</sup> Added by section 23 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>57</sup> Substituted by paragraph (a) of section 24 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- 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) the 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 can 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 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 Seven 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) *a statement of*<sup>58</sup> the commitments to be made by the supplier or contractor, 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) the 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

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<sup>58</sup> Inserted by paragraph (b) of section 24 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- 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 the Regulations relating to the preparation and submission of tenders and to any other aspects of the procurement proceedings.

#### **Clarifications and modifications of tender documents**

51. (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 is 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 the 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.

#### *Submission of Tenders*

##### **Language of tenders**

52. (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 a translation, the translation shall be used to interpret the tender.

### **Submission of tenders**

53. (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) [Repealed].<sup>59</sup>

(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.

### **Period of validity of tenders; modification and withdrawal of tenders**

54. (1) The period of validity for a tender shall be the period specified in the tender documents.

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<sup>59</sup> Repealed by section 25 of the Public Procurement (Amendment) Act, 2016 (Act 914).



(2) A procurement entity may request suppliers or contractors to extend the period of validity for an additional specified period of time *before the expiry of the period of validity of tenders*.<sup>60</sup>

(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.

#### **Tender securities**

55. (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) despite 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;

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<sup>60</sup> Added by section 26 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (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) A 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.

#### *Evaluation and Comparison of Tenders*

#### **Opening of tenders**

56. (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.

#### **Examination of tenders**

57. (1) The procurement entity may ask a supplier or a contractor for clarification of its tender *in writing*<sup>61</sup> in order to assist in the examination, evaluation and comparison of tenders.

(2) A change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall not be sought, offered or permitted.

(3) Despite 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.

#### **Responsiveness of tenders**

58. (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

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<sup>61</sup> Inserted by section 27 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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 *section 57(3)*;<sup>62</sup>
- (c) if the tender is not responsive; or
- (d) in the circumstances referred to in section 32 with respect to inducement from a tenderer.

#### **Evaluation of tenders**

59. (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) *The evaluation criteria relating to the subject matter of the procurement shall include*

- (a) *the price;*
- (b) *the cost of operating, maintaining and repairing goods and the functional characteristics of the goods;*
- (c) *the time for delivery of goods;*
- (d) *the costs of construction and the functional characteristics of the construction;*
- (e) *the completion of construction;*
- (f) *the cost of the provision of services;*
- (g) *the environmental and other characteristics of the subject matter of the procurement;*
- (h) *the terms of payment of the procurement;*
- (i) *the guarantees in respect of the subject matter; and*
- (j) *any other matter the procurement entity considers relevant to the procurement.*

(3) *The evaluation criteria shall also include*

- (a) *any criteria authorised or required to be taken into account by the procurement regulations and any other enactment; and*

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<sup>62</sup> Substituted by section 28 of the Public Procurement (Amendment) Act, 2016 (Act 914).

(b) *a margin of preference for the benefit of a domestic supplier or for domestically produced goods or any other preference authorised or required by procurement regulations or any other enactment.*

(4) *The procurement entity shall set out in the tender documents*

(a) *whether the successful tender will be determined on the basis of price or price and other criteria;*

(b) *the evaluation criteria in pursuance of this section, including the price as modified by any preference;*

(c) *the relative weights of the evaluation criteria; and*

(d) *the manner of application of the criteria in the evaluation procedure.*

(5) *A procurement entity shall use only the criteria and procedures in the tender documents and shall apply criteria and procedures in the manner disclosed in the tender documents.*<sup>63</sup>

(6)<sup>64</sup> *A criterion shall not be used that has not been set out in the invitation documents.*

(7)<sup>65</sup> *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.*

(8)<sup>66</sup> *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*

<sup>63</sup> Inserted by paragraph (a) of section 29 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>64</sup> Renumbered by paragraph (b) of section 29 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>65</sup> Renumbered by paragraph (b) of section 29 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>66</sup> Renumbered by paragraph (b) of section 29 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
- (c) the effect *that*<sup>67</sup> 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.

#### **Margin of preference**

60. (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 or any other preference authorised by the Board or required by Regulations or any other enactment.*<sup>68</sup>

(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.

#### **Multiple currency tender prices**

61. 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—

<sup>67</sup> Inserted by paragraph (c) of section 29 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>68</sup> Added by section 30 of the Public Procurement (Amendment) Act, 2016 (Act 914).

according to the rate specified in the invitation documents for the evaluation and comparison tenders.

**Repeat tender qualifications**

62. (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.

**Non-disclosure of tender evaluation details**

63. 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.

**Prohibition of negotiations with suppliers or contractors**

64. (1) Subject to the exception in this section, negotiations shall not 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 *Committee*<sup>69</sup> and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract.

#### **Acceptance of tender and entry into force of procurement contract**

65. (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 thirty 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 thirty days after the notice referred to in subsection (1) is despatched 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 despatched 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 an 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 despatched to the supplier or contractor that submitted the tender, if it is despatched while the tender is in force.

(6) The notice is despatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed

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<sup>69</sup> Substituted by section 31 of the Public Procurement (Amendment) Act, 2016 (Act 914).



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 has been accepted fails to sign a written procurement contract within thirty 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.

(10) 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 the Third Schedule, be published in the Public 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.

## **PART SIX**

### *Methods and Procedures to Procure Consultants*

#### **Notice of invitation of expressions of interest and preparation of shortlists**

66. (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 *in accordance with the Fifth Schedule.*<sup>70</sup>

(2) The notice shall,

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<sup>70</sup> Substituted by section 32 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (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.

#### **Shortlisted candidates**

67. (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.

#### **Content of requests for proposals for consultancy services**

68. (1) The procurement entity shall use the standard invitation for proposals stipulated in the *Sixth Schedule*<sup>71</sup> and the requirements for a specific assignment shall be introduced through information to consultants,

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<sup>71</sup> Substituted by paragraph (a) of section 33 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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 60*<sup>72</sup> 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

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<sup>72</sup> Substituted by paragraph (b) of section 33 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- that the rate published by a specified financial institution prevailing on a specified date will be used;
- (n) a statement on alternatives 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.

#### **Criteria for the evaluation of proposals**

69. (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 the 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; and
- [(vii) Repealed]<sup>73</sup>*

(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.

#### **Clarification and modification of invitation for proposals**

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

- (a) respond to the request within seven working days of the request being made if the request is received by the procurement entity within fourteen working days prior to the deadline for the submission of proposals; and
- (b) where the request is made later than fourteen 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

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<sup>73</sup> Repealed by section 34 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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.

#### **Choice of selection procedure**

71. (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.

#### **Conditions for use of other methods of selection of consultants**

72. (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; and
  - (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 the *Fifth Schedule*<sup>74</sup> 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 the *Fifth Schedule*<sup>75</sup> 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.

### **Receipt of proposals**

73. (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.

### **Evaluation of proposals**

74. (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, *is reviewed and approved by the appropriate approving authority*.<sup>76</sup>

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

<sup>74</sup> Substituted by section 35 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>75</sup> Substituted by section 35 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>76</sup> Substituted by paragraph (a) of section 36 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*(4) The evaluation panel shall open the financial proposals after the approval of the technical evaluation report by the appropriate approving authority and prepare a final evaluation report for approval by the appropriate entity tender committee.<sup>77</sup>*

**Selection procedure where price is a factor**

75. (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 fourteen 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.

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<sup>77</sup> Added by paragraph (b) of section 36 of the Public Procurement (Amendment) Act, 2016 (Act 914).



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

**Selection procedure where price is not a factor**

76. (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.

**Confidentiality in selection procedure<sup>78</sup>**

77. (1) The procurement entity shall treat proposals and the 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 the technical, price or any other information relating to the negotiations without the consent of the other party.

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<sup>78</sup> Added by section 37 of the Public Procurement (Amendment) Act, 2016 (Act 914).

## PART SEVEN

### *Complaints and Administrative<sup>79</sup> Review*

#### ***Right to complaint or administrative review<sup>80</sup>***

78. (1) A 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 *redress*<sup>81</sup> in accordance with this Part.

(2) Despite subsection (1), the following shall not be subject to the *complaint or administrative review*<sup>82</sup>

- (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.

(3) *A complaint may be made by an application to the procurement entity.*

(4) *A request for administrative review may be made by an application to the Board.*

(5) *A tenderer, supplier, contractor or consultant may appeal a decision taken in administrative review in court.*<sup>83</sup>

#### ***Complaint procedure by procurement entity<sup>84</sup>***

79. (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.

(1A) *The procurement entity shall not take any step that will bring into force a procurement contract or framework agreement where the entity*

- (a) *receives a complaint within the time limits specified;*

<sup>79</sup> Inserted by section 38 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>80</sup> Substituted by paragraph (a) of section 39 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>81</sup> Substituted by paragraph (b) of section 39 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>82</sup> Substituted by paragraph (c) of section 39 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>83</sup> Added by paragraph (d) of section 39 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>84</sup> Substituted by paragraph (a) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914).

(b) *receives notice of an application for administrative review from the Board; or*

(c) *receives notice of an application to or appeal from court.*<sup>85</sup>

(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 procurement entity may entertain a complaint or continue to entertain a complaint after the procurement contract has entered into force despite subsection (1).<sup>86</sup>

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

(5) The procurement entity shall, within twenty-one days after the submission of the complaint, issue a written decision.<sup>87</sup>

*(5A) The procurement entity may overturn, correct, vary or uphold any decision or action taken by itself in the procurement proceedings to which the application relates but this shall not apply to decisions taken by the Board or the court.*<sup>88</sup>

(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 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.<sup>89</sup>

*(7A) All decisions taken under this section, shall be in writing and shall state the action taken and the reasons for the decision.*

*(7B) All decisions taken shall promptly be made part of the record of*

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<sup>85</sup> Inserted by paragraph (b) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>86</sup> Amended by paragraph (c) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of "head of the" in line 1.

<sup>87</sup> Amended by paragraph (c) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of "head of the" in line 1.

<sup>88</sup> Inserted by paragraph (d) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>89</sup> Amended by paragraph (c) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of "head of the" in line 1.

*the procurement proceedings and shall include the complaint received by the procurement entity under this section.*<sup>90</sup>

(8) After the institution of the proceedings for administrative review under section 80<sup>91</sup>, the competence of the head of the procuring entity to entertain the complaint ceases.

#### ***Administrative review***

80. (1) *A supplier, contractor or consultant entitled to seek administrative review may submit a petition to the Board if*

- (a) *the head of the procurement entity does not entertain the complaint because the procurement contract has entered into force; or*
- (b) *the supplier, contractor, or consultant claims to be adversely affected by a decision of the head of the procurement entity under section 79.*

(2) *The petition shall be submitted within twenty-one days after*

- (a) *the supplier, contractor or consultant became aware of the circumstances giving rise to the complaint, or*
- (b) *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.*

(3) *On receipt of a complaint, the Authority shall give notice of the complaint promptly to the procurement entity.*

(4) *The Board may*

- (a) *declare the legal rules or principles that govern the subject-matter of the complaint and address any suspension in force;*
- (b) *order that the provisions of this Act be complied with;*
- (c) *prohibit the procurement entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Act;*
- (d) *require the procurement entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Act to take action or make a decision*

<sup>90</sup> Inserted by paragraph (e) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>91</sup> Inserted by paragraph (f) of section 40 of the Public Procurement (Amendment) Act, 2016 (Act 914).

or proceed in a manner that is in compliance with the provisions of this Act;

- (e) overturn in whole or in part an act or decision of the procurement entity that is not in compliance with the provisions of this Act other than an act or decision that brings the procurement contract or framework agreement into force;
- (f) revise a decision by the procurement entity that is not in compliance with the provisions of this Act other than any act or decision that brings the procurement contract or framework agreement into force;
- (g) confirm a decision of the procurement entity;
- (h) require the payment of compensation for reasonable costs incurred by the supplier or contractor who submitted the complaint,
  - (i) in connection with the procurement proceedings as a result of an act, decision or procedure followed by the procurement entity in the procurement proceedings that is not in compliance with the provisions of this Act, and
  - (ii) for any loss or damage suffered; which shall be limited to the costs of the preparation of the tender or the costs related to the application or both;
- (j) order that the procurement proceedings be terminated;
- (k) authorize the procurement entity to enter into the procurement contract or framework agreement where it is satisfied that public interest justifies this;
- (l) dismiss the complaint and require the payment of compensation from the complainant for reasonable costs incurred by the procurement entity or the Board.

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

(6) The decision of the Board and reasons for the decision shall be made part of the record of procurement proceedings.

(7) Correspondence pertaining to a complaint shall be copied to the Board.

(8) Without limiting this section, the Minister may, in consultation with

*the Board by legislative instrument, specify different administrative review procedures for specific sectors or entities.*<sup>92</sup>

#### **Certain rules applicable to review proceedings**

81. (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 fourteen 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 an information shall not 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.

#### **Suspension of procurement proceedings**

82. (1) *The Authority in administrative review proceedings may*

(a) *order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract;*  
*or*

(b) *order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force;*

*for as long as it finds the suspension necessary to protect the interests of the applicant, unless it decides that urgent public interest considerations require the procurement proceedings, the procurement contract or*

<sup>92</sup> Substituted by section 41 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*framework agreement to proceed; or*

*(c) order that any suspension applied be extended or lifted.*

*(2) The Authority shall order the suspension of a procurement proceeding for an initial period of thirty working days or as required under subsection (1).*

*(3) The Authority shall, upon receipt of an application for administrative review, promptly*

*(a) suspend or decide not to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement in accordance with subsection 1(a) and (b);*

*(b) notify the procurement entity and identified participants of the procurement proceedings to which the application relates, of the application and its substance; and*

*(c) notify the identified participants of its decision on the suspension of the procurement proceedings to which the application relates.*

*(4) Where the Authority decides to suspend*

*(a) the procurement proceedings,*

*(b) the performance of a procurement contract, or*

*(c) the operation of a framework agreement,*

*it shall also specify the period of suspension.*

*(5) Where the Authority decides not to suspend the procurement, it shall*

*(a) provide the applicant and procurement entity with the reasons for its decision; and*

*(b) promptly publish a notice of the application on the website of the Authority when the application for administrative review is received.*

*(6) The Board may dismiss the application and shall lift any suspension applied, where it decides that:*

*(a) the application is manifestly without merit or was not presented in compliance with the deadlines in subsection 80 (2) (a) and (b); or*

*(b) the application is without standing;*

*and shall promptly notify the applicant, the procurement entity and any other relevant participants of the dismissal, the reasons for it and that the suspension is lifted.*

(7) *The dismissal by the Board constitutes a decision on the application.*

(8) *The procurement entity shall promptly provide the Board with effective access to documents in its possession related to the procurement proceedings after the lodgment of a complaint.*

(9) *The procurement entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned*

(a) *where it receives notice of an application for administrative review from the Board; or*

(b) *where it receives notice of an application or appeal from court.*

(10) *The prohibition in subsections (9) and 79 (1A) shall expire fourteen working days after the decision of the procurement entity, the Board or the court has been communicated to the applicant, the procurement entity and any other participants in the review proceedings.*

(11) *The procurement entity may request the Board or a court to authorise it to enter into the procurement contract or framework agreement on the grounds of urgent public interest.*

(12) *The Board or court may, upon consideration of the request, authorise the procurement entity to enter into the procurement contract or framework agreement where it is satisfied that urgent public interest considerations justify this.*

(13) *The decision of the Board or court shall be made part of the record of procurement proceedings and promptly communicated to the procurement entity, the applicant and to any other participant in the administrative review proceedings.<sup>93</sup>*

## PART EIGHT

### *Disposal of Stores, Vehicles<sup>94</sup>, Plant and Equipment*

#### **Authority to dispose**

83. (1) The head of a procurement entity shall convene a board of survey comprising representatives of departments with *vehicles<sup>95</sup>*, unserviceable, obsolete or surplus stores, plant and equipment which shall report on the

<sup>93</sup> Substituted by section 42 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>94</sup> Inserted by section 43 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>95</sup> Inserted by section 44 of the Public Procurement (Amendment) Act, 2016 (Act 914).



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.

### **Instructions and guidelines for disposal of vehicles and unserviceable stores**

*83A. (1) The Minister shall, in consultation with the Board, make further Regulations on the disposal of vehicles, unserviceable stores, and obsolete equipment.*

*(2) The Board shall issue detailed instructions and policy guidelines related to the disposal of vehicles, unserviceable stores and obsolete equipment.<sup>96</sup>*

### **Disposal procedures**

84. 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.

## **PART NINE**

### *Miscellaneous Provisions*

### **Instructions and guidelines for disposal of unserviceable stores**

*85. Repealed<sup>97</sup>*

<sup>96</sup> Inserted by section 45 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>97</sup> Repealed by section 46 of the Public Procurement (Amendment) Act, 2016 (Act 914).

### **Code of conduct**

86. (1) *The Board shall, with the approval of the Minister, compile and publish a code of conduct that shall apply to each official of a procurement entity, the members of an evaluation panel, members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.*

(2) *The code of conduct shall address*

- (a) *conflicts of interest in procurement;*
- (b) *measures to regulate matters concerning personnel responsible for procurement;*
- (c) *declarations of interest in particular procurements;*
- (d) *screening procedures and training requirements; and*
- (e) *any other matter related to the ethics of procurement.*

(3) *For the purpose of subsection (2)(a), where a tenderer has a disqualifying conflict of interest, the affected party shall be given the opportunity to remedy the conflict of interest in accordance with the relevant procedures of the procurement entity concerned.*

(4) *A decision of a procurement entity to exclude a tenderer from the procurement process by reason of conflict of interest and the reasons for the exclusion shall be included in the record of procurement proceedings and shall be promptly communicated to the tenderer concerned.*

(5) *The code of conduct shall promptly be made accessible to the public and shall be updated regularly as directed by the Board.<sup>98</sup>*

### **Modifications**

87. (1) *Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of the contract by more than ten percent of the original price, a procurement entity shall inform the appropriate tender review committee<sup>99</sup> in the case of a contract subject to review by the tender review committee<sup>100</sup> of the 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 committee<sup>101</sup>, a proposed modification of contract which will make the revised contract price exceed the procurement method*

<sup>98</sup> Substituted by section 47 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>99</sup> Substituted by section 48 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>100</sup> Substituted by section 48 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>101</sup> Substituted by section 48 of the Public Procurement (Amendment) Act, 2016 (Act 914).

threshold or the threshold of the procurement entity shall be cleared with the appropriate *tender review committee*<sup>102</sup>.

### **Request for information by the Board**

88. A procurement entity shall provide the Board with the information that the Board may require in writing, regarding procurement engaged in by the procurement entity.

### **Investigation by the Board**

89. (1) The Board may appoint a person to conduct an investigation into a 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, consultant *or any other person*<sup>103</sup> concerned with the procurement proceedings under investigation;

(b) require an officer, employee or agent of the procurement entity or tenderer, supplier, contractor, consultant *or any other person*<sup>104</sup> 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, consultant *or any other person*<sup>105</sup>;

(e) remove books, records, accounts or documents of the procurement entity, tenderer, supplier, contractor, consultant *or any other person*<sup>106</sup> for as long as may be necessary to examine them or make extracts from or copies of them, but the

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<sup>102</sup> Substituted by section 48 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>103</sup> Inserted by section 49 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>104</sup> Inserted by section 49 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>105</sup> Inserted by section 49 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>106</sup> Inserted by section 49 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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, consultant, *or any other person*<sup>107</sup>

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

#### **Procedures on completion of investigation**

90. (1) *An investigator shall forward a copy of the investigation report to the Board.*

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

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

*(a) annulment of the procurement proceedings;*

<sup>107</sup> Inserted by section 49 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (b) *cancellation of the procurement contract;*
- (c) *ratification of anything done in relation to the proceedings; or*
- (d) *a declaration consistent with the relevant provisions of this Act.*<sup>108</sup>

### **Statutory audits**

91. (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 on 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 on by the Board to institute measures to improve the procurement system.

### **Offences relating to procurement**

92. (1) A person who contravenes a provision of this Act commits an offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding *two thousand five hundred*<sup>109</sup> penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

(2) The following 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 a procurement document with intent to influence the outcome of a tender proceeding and this includes but is not limited to

<sup>108</sup> Substituted by section 50 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>109</sup> Substituted by paragraph (a) section 51 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- (i) forged arithmetical correction; and
  - (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.

(3) *Despite anything to the contrary in an enactment, a person who contravenes a Regulation made under this Act is liable on summary conviction to a fine of not more than two thousand five hundred penalty units or to a term of imprisonment of not more than five years or to both.*<sup>110</sup>

### **Corrupt practices**

93. (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 Offences Act, 1960 (Act 29).

### **Review of threshold levels**

94. *Repealed.*<sup>111</sup>

### **Public access to legal texts**

95. The Authority shall ensure that administrative rulings and directives of general application under this Act are promptly made available to the public.<sup>112</sup>

### **International obligations**

96. (1) *Despite the extent of the application of this Act to the procurement, procurement with international obligations arising from a grant or concessionary loan to the Government shall be in accordance with the terms of the grant or loan subject to the prior review and "no objection" of procurement procedures by the Authority.*

(2) *Procurement arising from an external loan and commercial facility, secured by Government, other than a concessionary loan and grant*

<sup>110</sup> Added by paragraph (b) section 51 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>111</sup> Repealed by section 52 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>112</sup> Amended by section 53 of the Public Procurement (Amendment) Act, 2016 (Act 914) by the deletion of 'chief executive of the' in line 1.

which specifies particular procurement procedures shall be subject to the prior review and "no objection" of those procurement procedures by the Authority.<sup>113</sup>

### Regulations

97. (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 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;
- (i) to review the levels of method thresholds or approval thresholds;<sup>114</sup> and
- (j)<sup>115</sup> on any other matter connected with public procurement.

(3) Repealed.<sup>116</sup>

### Interpretation

98. In this Act unless the context otherwise requires,

"Auditor-General" includes an auditor appointed by the Auditor-General;

"Authority" means the Public Procurement Authority established by section 1;

"Board" means the governing body of the Authority;

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

<sup>113</sup> Substituted by section 54 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>114</sup> Inserted by paragraph (a) of section 55 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>115</sup> Renumbered by paragraph (b) of section 55 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>116</sup> Repealed by paragraph (c) of section 55 of the Public Procurement (Amendment) Act, 2016 (Act 914).

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

“Commission” includes a committee and an ad hoc body established for a particular purpose;<sup>117</sup>

“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;

“contract administrator” means an individual appointed by the head of entity to administer a contract on behalf of the entity;<sup>118</sup>

“court” means court of competent jurisdiction;<sup>119</sup>

“currency” includes monetary unit of account;

“domestic contractor” means, for the purpose of eligibility for a margin of domestic preference under international competitive tender for Works, a contractor registered and incorporated under the laws of Ghana, having majority shareholding by Ghanaians and not subcontracting more than 50 percent of the total value of Works to foreign contractors;<sup>120</sup>

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

“entity” means procurement entity;

“framework agreement” means a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. Framework agreements are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing

<sup>117</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>118</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>119</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>120</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).



*their revision without further competition;*<sup>121</sup>

“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 chief executive officer;*<sup>122</sup>

“key staff” means important professional staff but excludes support staff;

“least cost selection” 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 the Republic;

*“locally registered supplier” means a business entity registered to do business under the Companies Act, 1963 (Act 179);*<sup>123</sup>

“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;

<sup>121</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>122</sup> Inserted by paragraph (b) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>123</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

- “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 an 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 Act, 1973 (N.R.C.D. 143) or under any other enactment;
- “promptly” means without delay;<sup>124</sup>
- “public funds” include the Consolidated Fund, the Contingency Fund and any other public funds established by Parliament;
- “public interest” includes a right or advantage which enures or is intended to enure to the general benefit of the people of this country;<sup>125</sup>
- “quality and<sup>126</sup> cost based selection” 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 importance of quality in the assignment;
- “Regulations” means the relevant Regulations made under this

<sup>124</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>125</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>126</sup> Inserted by paragraph (c) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

Act;

“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 consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;

“*socio-economic policy*” means *environmental, social, economic and other policies of the Government which promote social or economic impact, authorised or required by the procurement regulations or any other enactment taken into account by the procurement entity in procurement proceedings;*<sup>127</sup>

“*statutory fund*” means *a fund established by Act of Parliament;*<sup>128</sup>

“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;

“entity<sup>129</sup> 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;

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<sup>127</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>128</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

<sup>129</sup> Inserted by paragraph (d) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

“tenderer” means a person who puts in a bid in a procurement contract;

“tender security” includes security provided to the procurement entity to secure the fulfillment of an obligation under this Act and 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” includes work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and 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; and

“vehicle” includes a serviceable and unserviceable means of conveyance for people and goods.<sup>130</sup>

#### **Repeal and savings**

99. (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 (S.M.C.D. 55); and
- (c) the Ghana Supply Commission Law, 1990 (P.N.D.C.L. 245).

(2) Despite the revocation and repeal of the enactments stated in subsection (1), the 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 is valid and shall 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) *Any tender review board and entity tender committee that performed the functions of an entity tender committee or tender review board under the First and Second Schedules of the principal enactment are reconstituted in accordance with the First and Fourth Schedules of this*

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<sup>130</sup> Inserted by paragraph (a) of section 56 of the Public Procurement (Amendment) Act, 2016 (Act 914).

*Act.* <sup>131</sup>

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<sup>131</sup> Substituted by section 57 of the Public Procurement (Amendment) Act, 2016 (Act 914).

**Act 914**      *The Public Procurement (Amendment) Act, 2016*

**“FIRST SCHEDULE  
(Section 20 and 20A)  
CATEGORIES OF ENTITY TENDER COMMITTEES**

**SCHEDULE 1A**

**CATEGORY A (SPECIAL CONSTITUTIONAL BODIES)**

1. Legislature
2. Judiciary
3. Council of State
4. Bank of Ghana

**CATEGORY B**

1. Independent Constitutional Bodies<sup>1</sup>
2. Office of the President
3. Central Management Agencies
4. Ministries
5. State Owned Enterprises
6. Regional Coordinating Councils
7. Statutory fund management bodies

**CATEGORY C**

1. Head Office of subvented agencies and government departments<sup>2</sup>
2. Teaching Hospitals
3. Tertiary Institutions including autonomous schools, institutes, colleges and campuses of universities.

**CATEGORY D**

1. Regional office of subvented agencies and government departments
2. Regional hospitals
3. Colleges<sup>3</sup>

**CATEGORY E**

1. District office of subvented agencies and government departments<sup>4</sup>
2. District hospitals
3. Second cycle schools or institutions

**CATEGORY F**

1. Metropolitan Assemblies
2. Municipal Assemblies and District Assemblies

**(footnotes)**

1. Category B1 includes –Public Services Commission, National Development Planning Commission, Office of the Head of Civil Service, Electoral Commission, Office of the District Assemblies Common Fund Administrator, Commission On Human Rights and Administrative Justice, National Media Commission, Lands Commission and National Commission for Civic Education.
2. Category C1, D1 and E1 includes the Ghana Education Service, Ghana Health Service, Ghana Police Service, Ghana Prisons Service, Ghana Immigration Service, Ghana National Fire Service, Ghana Revenue Service and the Local Government Service.
3. Colleges – Training Colleges (Nursing & Agricultural or similar Colleges).
4. That are not decentralised departments

**SCHEDULE 1B  
(Section 20)**

**SCH. 1B - COMPOSITION OF ENTITY TENDER COMMITTEES – MINISTRIES, DEPARTMENTS & AGENCIES  
1B 1 CATEGORY A**

Item	Legislature	Judiciary	Council of State	Bank of Ghana
1. Chairperson <sup>1</sup>	A Chairperson to be appointed by the Parliamentary Service Board	Judicial Secretary		Governor First Deputy Governor
2. Members	Head of Finance	Head of Finance	Chief Director	
	3 Heads of Department including a user Department	A Justice of a Superior Court	Head of Finance	Head of Legal
		3 Heads of Department, including a user Department	3 Heads of Department	A representative of the Minister of Finance
	2 Members of the House Committee	3 Members of relevant Professional Bodies		Representative of the Office of the President
			2 Members of Professional Bodies	Head of Finance
	2 Members of Parliament from relevant Professional Bodies			1 Departmental Head
				2 Members of Professional Bodies
<b>Total membership</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>9</b>
3. Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
<b>Quorum</b>	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 3 members	Chairperson and 4 members

<sup>1</sup> Chairpersons may delegate to a member of the entity tender committee.

<sup>2</sup> Selected Professional Bodies with skills required in procurement

1B2 CATEGORY B

Item	Central Management Agency, Ministries, Office of the President	Regional Coordinating Council	State Owned Enterprises	Statutory Fund Management Bodies <sup>§</sup>	Independent Constitutional Bodies
Chairperson	Minister/Head of institution	Regional Minister	Chief Executive <sup>¶</sup>	Chief Executive	Head of Administration
Members	Head of Finance	Head of Finance	Head of Finance	Head of Finance	Head of Finance
	An Attorney from the Attorney-General's Office		Head of Legal	Head of Legal	Head of user Department
	3 Heads including Head of user Department/Agency	Head of the Attorney-General's Department in the region	2 Members of Professional Bodies	2 Members of Professional Bodies relating to the area of procurement	
		3 Heads of Department from the Regional Coordinating Council including user Agencies	A Representative from the sector Ministry	A representative from the Ministry of Finance. A representative from the sector Ministry	A representative of the Attorney-General not below the rank of Principal State Attorney
	Chief Director	Regional Coordinating Director	3 Heads of Department/Division including user Department	2 Heads of Department or Division including user Department	2 Members of Parliament
	2 Members of Professional Bodies	2 Members of Professional			A representative of the relevant Professional Body relating to the area of procurement
Total membership	9	9	9	9	7
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit	
Quorum	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 3 members

<sup>¶</sup> This includes any appropriate designation of chief executive such as director general and chief executive officer

<sup>§</sup> Statutory Fund Management Bodies include Ghana Education Trust Fund, Road Fund, Export Development and Investment Fund and such similar institutions



1B 3 CATEGORY C

Item	Head Office of Subvented Agencies and Government Department <sup>a</sup>	Teaching Hospitals	Tertiary Institutions
Chairperson	Chief Executive/Head of Agency or Department	Chief Executive	Vice Chancellor/Principal/Dean/Rector or equivalent
Members	Head of Finance	Head of Finance	Registrar
	Attorney from the Attorney-General's Office	Attorney from the Attorney-General's Office	Head of Finance
	3 Heads of Department or Division including user Department or Division	3 Heads of Department /Division, including user Department or Division	Lawyer appointed by Council
			3 Heads of Department including user Department
	2 members of Professional Bodies	A representative from the Private Sector	1 member of a Professional Body
	Representative of sector Ministry		
		2 members of Professional Bodies	1 member appointed by National Council for Tertiary Education
Total Membership	9	9	9
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Quorum	Chairperson and 4 others	Chairperson and 4 others	Chairperson and 4 others

<sup>a</sup> Subvented Agencies and Government Departments include Ghana Education Service, Ghana Health Service, Ghana Police Service, Ghana Prisons Service, Ghana Immigration Service, Ghana National Fire Service, Ghana Revenue Authority and Local Government Service.

1B 4 CATEGORY D

Item	Regional office of Subvented Agencies and Government Department	Regional Hospitals	Colleges
Chairperson	Head of Regional Department or Government Agency	Regional Medical Superintendent/Director	Principal/Head Master/ Headmistress or equivalent
Members	Head of Finance	Head of Finance	Head of Finance
	Attorney from the Attorney-General's Office	Health Service Administrator	A representative of the applicable Regional Health Directorate
	3 Heads of Department including user Department	Head of Pharmacy	Lawyer appointed by Governing Body
	A Representative from the Regional Co-ordinating Council	Head of Nursing	3 Heads of Department including user Department
		Clinical Head	
		Attorney from the Attorney-General's Office	
		Representative of the Regional Health Directorate	
		Representative of the Regional Co-ordinating Council	
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Total Membership	7	9	7
Quorum	Chairperson and 3 others	Chairperson and 4 others	Chairperson and 3 others

Item	District Office of Subvented Agencies and Government Department	District Hospitals	Secondary Schools/Institutions
Chairperson	Head of District, Department or Government Agency	Medical Superintendent/ Director	Principal/Head Master/ Headmistress or equivalent
Members	Head of Finance	Head of Finance	Bursar/Finance Officer
	An Attorney from the Attorney-General's Office	Head of Pharmacy	Lawyer appointed by governing body
	3 Heads of Unit including user Unit	Clinical Coordinator	3 Heads of Department including user Department
	A Representative of the Regional Office of the Subvented Agency or Government Department	An Attorney from the Attorney-General's Office	A representative of the District Education Directorate
		Hospital Administrator	
		Representative of the District Co-ordinating Council	
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Total Membership	7	7	7
Quorum	Chairperson and 3 others	Chairperson and 3 others	Chairperson and 3 others

## SCHEDULE 1C

(Section 20)

## SCHEDULE 1C - COMPOSITION OF ENTITY TENDER COMMITTEES -METROPOLITAN, MUNICIPAL AND DISTRICT ASSEMBLIES

Item	Metropolitan Assemblies	Municipal and District Assemblies
Chairperson	Metropolitan Chief Executive	Municipal or District Chief Executive
Members	Director of Finance	District Finance Officer
	Legal officer of the Metropolitan, Assembly or a lawyer appointed by the Metropolitan Assembly	Legal officer of the Municipal and District Assembly or lawyer appointed by District Assembly
	2 Chairpersons of committees (Works/Finance) of the Assembly	2 Chairpersons of committees (Works/Finance) of the Assembly
	2 Heads of Department within the Metropolitan Assembly, including user Department	2 Heads of Department within the district including user Department
	Budget Officer of the Metropolitan Assembly	District Budget Officer
	Metropolitan Co-ordinating Director	District Co-ordinating Director
Secretary	Head of Procurement Unit	Head of Procurement Unit
Total membership	9	9
Quorum	Chairperson and others	Chairperson and others

1C 1 CATEGORY F

SECOND SCHEDULE

(Sections 18, 20, 20A, 20B and 20C)

THRESHOLDS FOR MINISTRIES, DEPARTMENTS AND AGENCIES – APPROVING AUTHORITY

Approving Authority	Category A and B			Category C			Category D <sup>1</sup>			Category E <sup>2</sup>		
	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services
Central Tender Review Committee	Above 1,000,000	Above 15,000,000	Above 1,000,000	Above 800,000	Above 1,500,000	Above 800,000	Above 400,000	Above 800,000	Above 400,000	Above 200,000	Above 400,000	Above 200,000
Entity Tender Committee	Above 100,000 to 1,000,000	Above 500,000 to 15,000,000	Above 100,000 to 1,000,000	Above 100,000 to 800,000	Above 150,000 to 1,500,000	Above 100,000 to 800,000	Above 45,000 to 400,000	Above 70,000 to 800,000	Above 45,000 to 400,000	Above 30,000 to 200,000	Above 45,000 to 400,000	Above 30,000 to 200,000
Entity Head	Up to 100,000	Up to 500,000	Up to 100,000	Up to 100,000	Up to 150,000	Up to 100,000	Up to 45,000	Up to 75,000	Up to 45,000	Up to 30,000	Up to 45,000	Up to 30,000

<sup>1</sup> As regards the regional offices of a subvented agency, procurement above the regional entity tender committee threshold shall be handled by their head office entity tender committee

**THIRD SCHEDULE**

(Sections 18, 20, 20B, 20C and 44)

**THRESHOLDS FOR REGIONAL COORDINATING COUNCILS AND METROPOLITAN, MUNICIPAL AND DISTRICT ASSEMBLIES APPROVING AUTHORITIES**

Approving Authority	Category F1 Regional Coordinating Council			Category F2 Metropolitan Assemblies			Category F3 Municipal & District Assemblies		
	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services
Regional Tender Review Committee*	Above 750,000	Above 1,000,000	Above 750,000	Above 550,000	Above 750,000	Above 550,000	Above 400,000	Above 550,000	Above 400,000
Entity Tender Committee	Above 100,000 to 750,000	Above 150,000 to 1,000,000	Above 100,000 to 750,000	Above 75,000 to 550,000	Above 125,000 to 750,000	Above 75,000 to 550,000	Above 50,000 to 400,000	Above 90,000 to 550,000	Above 50,000 to 400,000
Entity Head	Up to 100,000	Up to 150,000	Up to 100,000	Up to 75,000.00	Up to 125,000	Up to 75,000	Up to 50,000.00	Up to 90,000	Up to 50,000

\* Sub-Committee of the Regional Co-ordinating Council

**FOURTH SCHEDULE**

(Section 20F)

**COMPOSITION OF TENDER REVIEW COMMITTEES**

Item	Central Tender Review Committee	Regional Tender Review Committee
Chairperson	An eminent person nominated by the Minister responsible for Finance	An eminent person nominated by the Regional Minister
Members	2 public sector persons conversant with procurement principles and procedures nominated by the Board	Regional Coordinating Director
	3 professionals nominated by the Institute of Engineers, Institute of Chartered Accountants and the Institute of Surveyors	Head of the Attorney-General's Department in the region
	A representative of the Attorney-General's Department not below the rank of Chief State Attorney, nominated by the Attorney-General and Minister for Justice	4 private sector persons with experience in procurement nominated by the Ghana Institute of Engineers, Ghana Institute of Surveyors, Chartered Institute of Purchasing and Supply and Institute of Chartered Accountants, Ghana respectively
	A representative of the National Development Planning Commission, not below the rank of Director, nominated by the Commission	
	A representative of the Ministry of Finance, not below the rank of Director	
Total Membership	9	7
Secretary	A representative of the Ministry of Finance not below the rank of Technical Director, nominated by the Minister	Regional Economic Development Planning Officer
Quorum	Chairperson and 4 others	Chairperson and 3 others

**FIFTH SCHEDULE**  
(Sections 20, 20A, 20C, 34A, 42, 44, 66 and 72)

**THRESHOLDS FOR PROCUREMENT METHODS**

Procurement method	Contract value threshold
1. International Competitive Tender	
a. Goods	Above GH¢10,000,000.00
b. Works	Above GH¢15,000,000.00
c. Technical Services	Above GH¢5,000,000.00
2. National Competitive Tender	
a. Goods	More than GH¢100,000.00 up to GH¢10,000,000.00
b. Works	More than GH¢200,000.00 up to GH¢15,000,000.00
c. Technical Services	More than GH¢50,000.00 up to GH¢5,000,000.00
3. Price Quotation	
a. Goods	Up to GH¢100,000.00
b. Works	Up to GH¢200,000.00
c. Technical Services	Up to GH¢50,000.00
Restricted tender	Subject to approval by the Board
Single source procurement and selection	Subject to approval by the Board
<b>CONSULTANCY SERVICES – NO THRESHOLD LIMITS</b>	
1. Quality Based Selection	Refer to Public Procurement Authority Manual for procedure
2. Quality and Cost Based Selection	Refer to Public Procurement Authority Manual for procedure
3. Consultant's Qualification	Refer to Public Procurement Authority Manual for procedure
4. Fixed Budget Selection	Refer to Public Procurement Authority Manual for procedure
5. Least Cost Selection	Refer to Public Procurement Authority Manual for procedure
6. Individual Consultant	Refer to Public Procurement Authority Manual for procedure
7. Single Source	Subject to Public Procurement Authority Approval



<p>*Mandatory use of Expression of Interest for all except single source</p> <p>*Entities may advertise internationally where the required skills may not be available locally.</p>	
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MANDATORY PREQUALIFICATION	CONTRACT VALUE THRESHOLD
Goods	Above GH¢ 10,000,000.00
Works	Above GH¢15,000,000.00
Technical Services	Above GH¢ 5,000,000.00

**SIXTH SCHEDULE**  
**(Sections 50 and 68)**

**Standard Tender Documents and Standard Requests for Proposals**

1. Standard tender document for procurement of works
2. Standard tender document for procurement of works, smaller contracts
3. Standard tender document for roads - major
4. Standard tender document for roads - minor
5. Standard tender document for procurement of goods
6. Standard tender document for procurement of health goods
7. Standard tender document for procurement of text books
8. Standard tender document for procurement of information technology systems
9. Standard request for proposals for selection of consultants
10. Standard document for prequalification of suppliers, consultants and contractors
11. Standard document for request for expression of interest
12. Sample format request for quotations
13. Disposal of stores, vehicles and equipment
14. Board of survey form/disposal certificate/destruction certificate
15. Standard tender evaluation format and reporting format for goods, works and selection of consultants
16. Standard and sample contracts for consultants services
  - Complex time based assignments
  - Lump-sum remuneration
  - Small assignments time based payments
  - Lump-sum payments."

Date of *Gazette* notification: 12th May, 2016.