

LAWS OF GUYANA

PROCUREMENT ACT

CHAPTER 73:05

**Act
8 of 2003**

Current Authorised Pages

| <i>Pages</i> <i>(inclusive)</i> | <i>Authorised</i> <i>by L.R.O.</i> |
|------------------------------------|---------------------------------------|
| 1 - 67 ... | 1/2012 |

Index

of

Subsidiary Legislation

| | Page |
|--------------------------------|-----------|
| Procurement Regulations | 54 |
| (Reg. 9/2004) | |

CHAPTER 73:05
PROCUREMENT ACT

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title.
2. Interpretation.
3. Application.

PART II
GENERAL PROVISIONS

4. International obligations.
5. Qualifications of suppliers and contractors.
6. Pre-qualification proceedings.
7. Participation by suppliers or contractors.
8. Form of communications.
9. Rules concerning documentary evidence provided by suppliers or contractors.
10. Record of procurement proceedings.
11. Publication of contract awards.
12. Inducements from suppliers or contractors.
13. Rules concerning description of goods, services, or construction.
14. Splitting of contracts.
15. Language of solicitation documents.

PART III
ADMINISTRATIVE STRUCTURE FOR PUBLIC PROCUREMENT

16. Creation and membership of the National Procurement and Tender Administration.
17. Functions of the National Board.
18. Secretariat of the Administration.
19. Creation and membership of Regional Tender Boards.

SECTION

20. Functions of the Regional Boards.
21. Creation and membership of District Tender Boards.
22. Creation and membership of Ministerial, Departmental and Agency Tender Boards.
23. Functions of the Ministerial, Departmental and Agency Tender Boards.
24. Procurement by public corporations and certain other bodies.

PART IV
METHODS OF PROCUREMENT OF GOODS, CONSTRUCTION AND SERVICES AND THEIR CONDITIONS FOR USE

25. Open tendering.
26. Restricted tendering.
27. Request for quotations.
28. Single source procurement.
29. Procurement through community participation.

PART V
PROCEDURE FOR OPEN TENDERING SECTION
INVITATION TO TENDER

30. Invitation to tender.
31. Two-stage tendering.
32. Tender documents.
33. Clarification and modification of tender documents.

SECTION II – SUBMISSION OF TENDERS

34. Language of tenders.
35. Submission of tenders.
36. Period of effectiveness of tenders - modification and withdrawal of tenders.
37. Tender security.

SECTION

SECTION III – EVALUATION OF TENDERS

38. Opening of tenders.
39. Examination and evaluation of tenders.
40. Rejection of all tenders.
41. Prohibition of negotiations.
42. Acceptance of tender and entry into force of procurement contract.
43. Notice to other suppliers or contractors.

PART VI

METHOD FOR PROCUREMENT OF CONSULTING SERVICES

44. Request for proposals.
45. Contents of the request for proposals.
46. Criteria for the evaluation of proposals.
47. Quality-based selection.
48. Clarification and modification of requests for proposals.
49. Single source procurement.
50. Cost verification.
51. Negotiations.

PART VII

ADMINISTRATIVE REVIEW

52. Review by the procuring entity.
53. Review by an independent authority.
54. Review by Cabinet.

PART VIII

MISCELLANEOUS

55. Information to be confidential.
56. Payment for construction contracts.
57. General or special directions of the Minister.
58. Staff.
59. Funds and resources of the Administration.
60. Disclosure by members of a Body of interest in bidding process.
61. Regulations.

62. Saving.

CHAPTER 73:05
PROCUREMENT ACT

8 of 2004

AN ACT to provide for the regulation of the procurement of goods, services and the execution of works, to promote competition among suppliers and contractors and to promote fairness and transparency in the procurement process.

[1ST JANUARY , 2004]

WHEREAS it is considered desirable to regulate, the procurement of goods, services and of construction so as to promote the objective of—

- (a) maximizing economy and efficiency in procurement;
- (b) fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially participation by suppliers and contractors regardless of nationality, thereby promoting international trade;
- (c) promoting competition among suppliers and contractors for the supplying of goods, services, or construction to be procured.
- (d) providing for the fair and equitable treatment of all suppliers and contractors.
- (e) promoting the integrity of, and fairness and

public confidence in, the procurement process; and

- (f) achieving transparency in the procedures relating to procurement.

PART I
PRELIMINARY

Short title. **1.** This may be cited as the Procurement Act.

Interpretation. **2.** In this Act—

“Administration” means the National Procurement and Tender Administration established under section 16.

“appropriate board” means, as the context requires, the National Board, the Ministerial Board, a Regional Board, a District Board, a Departmental Board or an Agency Board;

“construction” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;

“consulting services” means services of an intellectual nature which do not lead to a physically measurable result;

“currency” means monetary unit of account;

“domestic supplier” means a supplier having his principal place of business in Guyana.

“goods” includes raw materials, products, equipment and

other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;

“Minister” means the Minister of Finance;

“National Board” means the National Procurement and Tender Board established under section 16.

“procurement” means the acquisition of goods by any means including purchase, rental, lease or hire-purchase, and the acquisition of construction, consulting, and other services;

“procurement contract” means a contract between the procuring entity and a supplier or contractor resulting from the procurement process;

“procuring entity” means the procuring entity of any ministry, department, agency or other unit, or any subdivision thereof, of the Government, that engages in procurement;

“Public Procurement Commission” means the Public Procurement Commission referred to in article 212W of the Constitution;

“regulations” except the context otherwise requires, means regulations made under this Act;

“services” means services of a general nature other than consulting and construction services;

“supplier or contractor” means, according to the context, any party or potential party to a procurement contract with the procuring entity and includes a consultant;

“tender security” means a security provided to the procuring

entity to secure the fulfillment of any obligation referred to in section 37(2) and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes, and bills of exchange.

Application.

3. (1) This Act applies to all procurement by procuring entities, except as otherwise provided in subsection (2).

(2) Subject to the provisions of subsection (3), this Act does not apply to procurement involving national defence or national security.

(3) This Act applies to the types of procurement referred to in subsection (2) where and to the extent that the procuring entity, subject to the approval of the National Board, expressly so declares to suppliers or contractors when first soliciting their participation in the procurement proceedings.

(4) This Act applies mutatis mutandis to a supplier or contractor who is a person as it does to a supplier or contractor who is a body of persons, corporate or incorporate.

PART II

GENERAL PROVISIONS

International obligations.

4. The provisions of this Act shall apply to any procurement unless they conflict with any provisions made applicable by virtue of an international agreement.

Qualifications of suppliers and contractors.

5. Every supplier or contractor wanting to participate in procurement proceedings must qualify by meeting such of the following criteria as the procuring entity considers appropriate—

(i) that it possesses or has access to the technical competence, financial resources,

LAWS OF GUYANA

10

Cap. 73:05

Procurement

equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the contract;

- (ii) that it has legal capacity to enter into the contract;
- (iii) that it is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;
- (iv) that it has fulfilled its obligations to pay taxes and social security contributions of its employees;
- (v) that it has not, and its directors or officers have not, been convicted of any criminal offence related to its professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of ten years preceding the commencement of the procurement proceedings, or has not been otherwise disqualified pursuant to administrative suspension or debarment proceedings in this or other jurisdictions over the last three years;
- (vi) that its past performance substantiated by documentary evidence would commend it for serious consideration for the award of

the contract.

(2) Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the suppliers or contractors are qualified in accordance with the criteria set forth in subsection (1).

(3) Any requirement mentioned in this section shall be set forth in the prequalification documents, if any, or in the solicitation documents and shall apply equally to all suppliers or contractors. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those set forth in this section or the regulations.

(4) Subject to section 39 (6)(b), the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof on the basis of nationality.

(5) (a) A procuring entity may disqualify a supplier or contractor if it finds at any time that the supplier or contractor knowingly submitted information concerning the qualifications of the supplier or contractor that was materially inaccurate, incomplete, or false. A supplier or contractor that has been disqualified pursuant to this paragraph may be subject to such sanctions as the National Board may impose.

(b) Other than in a case to which paragraph (a) applies, a procuring entity may not

disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractors was inaccurate or incomplete in a non-material respect. The supplier or contractor may be disqualified if it fails to remedy such non-material deficiencies promptly upon request by the procuring entity.

Pre-qualification proceedings.
[12 of 2010]

6. (1) The procuring entity may engage in prequalification proceedings in order to identify, prior to the submission of tenders in procurement proceedings conducted pursuant to PART V, suppliers and contractors that are qualified to participate in such proceedings.

(1) (a) A procuring entity shall solicit invitations to prequalify by causing an invitation to prequalify to be published in newspapers of wide circulation or on a website of free access where Government procurement opportunities are displayed and posted in public places. Such solicitations shall reach the area impacted by the procurement.

(2) If the procuring entity engages in prequalification proceedings, it shall provide, on payment therefor, a set of prequalification documents to each supplier or contractor that requests them in accordance with the invitation to prequalify.

(3) The prequalification documents shall include, the following information—

- (a) instructions for preparing and submitting prequalification applications;
- (b) a summary of the required terms and conditions of the contract to be

entered into as a result of the procurement proceedings;

- (c) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
- (d) the manner and place for the submission of applications to prequalify and the deadline for such submission, expressed as a specific date and time and allowing sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the needs of the procuring entity;
- (e) any other requirements that may be established by the procuring entity in conformity with this Act and the procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings.

(4) The procuring entity shall respond to a valid query by a supplier or contractor for clarification of the prequalification documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by the procuring entity shall be given within a reasonable time so as to enable the supplier or contractor to make a timely submission of its application to prequalify. The response to any query shall, without identifying the source of the query, be communicated to all suppliers or contractors to which the procuring entity provided the prequalification documents.

(5) The procuring entity shall make a decision with respect to the qualifications of each supplier or contractor submitting an application to prequalify. In reaching that decision, the procuring entity shall apply only the criteria set forth in the prequalification documents.

(6) The procuring entity shall promptly notify each supplier or contractor submitting an application to prequalify whether or not it has been prequalified and shall make available to any member of the general public, upon request, the names of all suppliers or contractors that have been prequalified. Only suppliers or contractors that have been prequalified are entitled to participate further in the procurement proceedings.

(7) The procuring entity shall, upon request, communicate to any supplier or contractor that has not been prequalified the grounds therefor.

(8) Should the procuring entity decide that a supplier or contractor does not satisfy the prequalification requirements, the supplier or contractor may, upon request, obtain a review of that decision pursuant to Part VII.

(9) The procuring entity may require a supplier or contractor that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such supplier or contractor. The procuring entity shall disqualify any supplier or contractor that fails to demonstrate again its qualifications if requested to do so. The procuring entity shall promptly notify each supplier or contractor requested to demonstrate again its qualifications as to whether or not the supplier or contractor has done so to the satisfaction of the procuring entity. Where a supplier or contractor is disqualified for failing to demonstrate again its qualifications, the procuring entity shall, upon request, communicate the grounds therefor.

Participation by suppliers or contractors.

7. Suppliers or contractors are permitted to participate in procurement proceedings without regard to nationality.

Form of communications.

8. (1) Subject to the other provisions and any requirement of form specified by the procuring entity when first soliciting the participation of suppliers or contractors in the procurement proceedings, documents, notifications, decisions and other communications referred to in this Act to be submitted by the procuring entity or administrative authority to a supplier or contractor or by a supplier or contractor to the procuring entity shall be in a form that provides a record of the content of the communication. This shall include forms of electronic communication provided that a record of the content is produced.

(2) Communications between suppliers or contractors and the procuring entity referred to in section 6 (4) and (6), and PART V, Sections I and II, may be made by a form of communication that does not provide a record of the content of the communication provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which does provide a record of the confirmation.

(3) The procuring entity shall not discriminate against or among suppliers or contractors on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

Rules concerning documentary evidence provided by suppliers or contractors.

9. (1) If the procuring entity requires the authentication of documentary evidence provided by suppliers or contractors to demonstrate their qualifications in procurement proceedings, the procuring entity shall not impose any requirements as to the authentication of such evidence other than those provided for by law.

(2) The procuring entity may require authentication of documentary evidence only of the lowest evaluated bidder recommended to be awarded the tender.

Record of
procurement
proceedings.

10. (1) The procuring entity shall maintain a record of the procurement proceedings including—

- (a) a brief description of the goods, services, construction, or consulting services to be procured;
- (b) the names and addresses of suppliers or contractors that submitted tenders, proposals, or quotations, and the name and address of the supplier or contractor with which the contract is entered into and the contract price;
- (c) information relating to the qualification, or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations;
- (d) the price and a summary of the other principal terms and conditions of each tender or proposal;
- (e) the means used to solicit suppliers or contractors and a record of any such advertisement;
- (f) the time and place for the opening of tenders;
- (g) the names of the suppliers or contractors or their representatives or members of the public attending the opening of tenders or

proposals;

- (h) the form of tender and those pages containing the original bill of quantities for construction.

(2) Subject to section 38 (3), the portion of the record referred to in subsection (1)(a) and (b) shall, on request, be made available to any person after a tender has been accepted and a public notice as required by section 11, has been published, or after procurement proceedings have been terminated.

(3) Subject to section 38 (3), the record referred to in subsection (1) shall, on request, be made available to suppliers or contractors that submitted tenders, or applied for prequalification, after a tender has been accepted or procurement proceedings have been terminated. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose—

- (a) information 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 other parties or would inhibit fair competition;
- (b) information relating to the examination or evaluation of tender proposals, but this non-disclosure shall not be construed as preventing the disclosure of scoring sheets or rankings, or any other documents that provide a qualitative or quantitative comparison of the tender proposals.

(4) Where the procuring entity has acted in good faith, the procuring entity shall not be liable to suppliers or contractors for damages solely for a failure to maintain a record of the procurement proceedings in accordance with the provisions of this section.

Publication of contract awards.

11. (1) The procuring entity shall publish notice of procurement contract awards within seven days of awarding such contracts.

(2) The procurement regulations shall provide for the manner of publication of the notice required by subsection (1).

Inducements from suppliers or contractors.

12. An appropriate board shall reject a tender, if the supplier or contractor that submitted it offers, gives or agrees to give, to any current or former officer or employee of the procuring entity or other governmental authority directly or indirectly including through a family member, a gratuity in any form, an offer of employment or any other thing or service or value, as an inducement with respect to an act or decision of, or procedure followed by, such appropriate board in connection with the procurement proceedings. Such rejection of the tender or proposal and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.

Rules concerning description of goods, services or construction.

13. (1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods, services, or construction to be procured, and requirements concerning testing and test methods, packing, marking or labelling or conformity certification, any symbols and terminology, that create obstacles to participation, including obstacles based on nationality, by suppliers or contractors in the procurement proceedings shall not be

included or used in the prequalification documents, solicitation documents or other documents for solicitation of tenders.

(2) To the extent possible, any specifications, plans, drawings, designs and requirements shall be based on the relevant objective technical and quality characteristics of the goods, services, or construction to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, services, or construction to be procured and provided that the words such as "or equivalent" are included.

(3) (a) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, services, or construction to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the documents for the solicitation of tenders.

(b) Due regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the documents for solicitation of tenders.

Splitting of contracts.

14. A procuring entity shall not split or cause to split contracts or divide or cause to divide its procurement

into separate contracts where the sole purpose for doing so is to avoid the application of any provision of this Act or any regulations made thereunder.

Language of
solicitation
documents.

15. All documents for the solicitation of tenders shall be in English.

PART III
ADMINISTRATIVE STRUCTURE FOR PUBLIC
PROCUREMENT

Creation and
membership of
the National
Procurement
and Tender
Administra-
tion.

16. (1) There is hereby established an agency reporting to the Minister of Finance to be known as the National Procurement and Tender Administration.

(2) The Administration shall be managed by the National Board which shall consist of seven members, appointed by the Minister from among persons of unquestioned integrity who have shown capacity in business, the professions, law, audit, finance and administration.

(3) The members of the National Board to be appointed by the Minister shall comprise—

- (i) not more than five persons from the Public Service;
- (ii) not more than three persons from the private sector after consultation with their representative organizations.

(4) Two members of the National Board shall serve on a full time basis and the remainder shall serve on a part-time basis. The Minister shall appoint as Chairman one of the full-time members.

(5) Subject to subsection (6), the term of

membership on the Board shall be two years.

(6) The appointment of members to the Board shall be staggered, by making the first appointment of two part-time members for one year only.

(7) Members of the National Board shall receive such remuneration and allowances as may determined by the Minister.

(8) Each member of the National Board shall declare his assets to the Integrity Commission.

(9) Four members including the Chairman shall form a quorum, the Chairman having a casting vote.

(10) The National Board shall meet weekly and taking into account the volume of its adjudication and evaluation may meet at such other times as it may determine.

Functions of
the National
Board.

17. (1) The National Board shall be responsible for exercising jurisdiction over tenders the value of which exceeds such an amount prescribed by regulations, appointing a pool of evaluators for such period as it may determine, and maintaining efficient record keeping and quality assurances systems.

(2) In addition, pending the establishment of the Public Procurement Commission, the National Board shall be responsible for—

(a) making regulations governing procurement to carry out the provisions of this Act;

(b) determining the forms of documents for procurement including, but not limited to—

(i) standard bidding documents;

- (ii) prequalification documents;
 - (iii) contracts;
 - (iv) evaluation forms; and
 - (v) procurement manuals, guidelines, and procedures.
- (c) organizing training seminars regarding procurements;
 - (d) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending therein any amendment to this Act that may be necessary to improve the effectiveness of the procurement process;
 - (e) as provided for in section 53, upon request, reviewing decisions by the procuring entities;
 - (f) adjudicating debarment proceedings.

(3) When the Public Procurement Commission is established, the responsibilities of the National Board shall be limited to those provided for in subsection (1), and all other responsibilities listed in this section shall be the responsibility of the Public Procurement Commission.

(4) For each procurement subject to its jurisdiction, the National Board shall select and appoint from the pool of evaluators appointed pursuant to subsection (1), three individuals with appropriate expertise and experience, to serve as members of an Evaluation Committee for such procurement, and shall transmit to the Evaluation Committee,

in a timely manner, all tenders timely received. The Evaluation Committee shall evaluate the tenders as provided for in section 39.

Secretariat of
the
Administra-
tion.

18. (1) The National Board shall, in consultation with the Minister, establish a Secretariat to be responsible for the operational management of the Administration. The day-to-day activities of the Secretariat shall be managed by a professional staff of proven experience and capabilities.

(2) The Secretariat shall receive the staff, training, and equipment necessary to discharge its responsibilities.

(3) Each member of the Secretariat shall declare his assets to the Integrity Commission.

Creation and
membership
of Regional
Tender
Boards.

19. (1) The National Board shall create within each administrative region a Regional Tender Board, hereinafter referred to as the Regional Board and subject to section 17(1), a Regional Board shall have jurisdiction over procurement by the relevant regional administration the value of which is less than such an amount as may be prescribed by regulations.

(2) Each Regional Board shall consist of five members, as follows—

(a) three members appointed by the National Board;

(b) two members appointed by the regional administration, from among persons with qualifications not dissimilar to those required for appointment to the National Board;

(3) One member of each Regional Board appointed by the National Board shall serve on a full-time basis and he shall be the Chairman; the others on a part-time basis.

(4) The term of membership on a Regional Board shall be two years.

(5) Members of the Regional Board shall receive such remuneration and allowances as may be determined by the Minister.

(6) A member of the Regional Board shall declare his assets to the Integrity Commission.

(7) Three members including the Chairman shall form a quorum.

Function of
the Regional
Boards.

20. (1) Each Regional Board shall nominate for consideration by the National Board qualified individuals to serve on an Evaluation Committee.

(2) Each Regional Board shall in accordance with this Act and the regulations oversee the administration of procurement in its respective administrative region.

(3) Each Regional Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction. A Regional Board may, with the approval of the National Board, make such minor alterations or modifications to such forms and criteria as are deemed necessary on a case- by-case basis.

(4) Each Regional Board shall determine whether suppliers or contractors satisfy such qualification requirements as may be imposed under section 5(1).

(5) For each procurement subject to its jurisdiction, a Regional Board shall select from the pool of evaluators appointed by the National Board under section 17, three evaluators with expertise and experience, to serve as

members of the Evaluation Committee for such procurement.

(6) In selecting evaluators to serve on an Evaluation Committee, a Regional Board is not restricted to selecting individuals from its administrative region.

(7) The Evaluation Committee shall evaluate the tenders pursuant to section 39.

(8) A Regional Board may, on a case-by-case basis, retain the services of agencies, procurement consultants, or, with the approval of the responsible Minister, the staff of a related Ministry, to provide such assistance as may be required in carrying out its responsibilities.

Creation and
membership
of District
Tender Boards.

21. (a) The National Board may, at its discretion, create District Tender Boards for procurement by Neighbourhood Democratic Councils, hereinafter referred to as District Boards, comprising part-time members as follows—

- (i) two members appointed by the relevant Regional Board;
- (ii) one member appointed by the relevant Neighbourhood Democratic Council, from among persons with qualifications not dissimilar from those required for appointment to the National Board.

(b) The term of membership on the District Board shall be stated in the letter of appointment.

(c) The Chairman of a District Board shall be appointed by the Regional Board from among the members appointed under paragraph (a).

(d) Section 19 (5) and (6) shall mutatis mutandis apply to a District Board.

(e) Three members including the Chairman shall form a quorum.

(f) A District Board with the approval of the National Board shall discharge such functions as may be assigned to it by the Regional Board.

Creation and membership of Ministerial, Departmental and Agency Tender Boards.

22. (1) Each Ministry, Department or Agency that engages in procurement shall create a Tender Board and subject to section 17 (1), each such Tender Board shall have jurisdiction over procurement by the relevant Ministry, Department or Agency, the value of which is less than such an amount as may be prescribed by regulations.

(2) Each such Tender Board shall consist of five part-time members, as follows—

(a) three members shall be appointed by the Minister;

(b) two members shall be appointed by the National Board, from among persons with qualifications not dissimilar to those required for appointment to a Regional Board;

(3) The term of membership on each such Tender Board shall be two years.

(4) Section 16 (7) and (8) shall mutatis mutandis apply to such a Tender Board.

(5) Three members including the Chairman shall form a quorum.

Functions of
the Ministerial,
Departmental
and Agency
Tender
Boards.

23. (1) Each Ministerial, Departmental and Agency Tender Board shall nominate for consideration by the National Board qualified evaluators to serve on Evaluation Committees.

(2) Each such Tender Board shall, in accordance with this Act and the regulations, oversee the administration of procurement for its respective Ministry, Department, or Agency.

(3) Each such Tender Board shall prepare, using such standardized forms and criteria as have been prepared by the National Board, solicitation documents for tenders subject to its jurisdiction; and may, with the approval of the National Board, make such minor alterations or modifications to the forms and criteria as are deemed necessary on a case-by-case basis.

(4) Each such Tender Board shall determine whether suppliers or contractors satisfy the qualification requirements in accordance with section 39 (8).

(5) For each procurement subject to its jurisdiction, each such Tender Board shall select from the pool of evaluators appointed by the National Board under section 17, three evaluators with expertise and experience, to serve as members of the Evaluation Committee for such procurement.

(6) Each such Tender Board shall transmit to the Evaluation Committee, in a timely manner, all tenders timely received from contractors or suppliers pursuant to section 35.

(7) The Evaluation Committee shall evaluate the tenders pursuant to section 39.

Procurement
by public
corporations
and certain
other bodies.

24. (1) Public corporations and other bodies in which the controlling interest is vested in the State may, subject to the approval of the National Board, conduct procurement according to their own rules or regulations, except that to the extent that such rules and regulations conflict with this Act or the regulations, this Act and the regulations shall prevail.

(2) If funds are received from the Treasury for a specific procurement, then the corporation or other body shall be obliged to follow the procedure set out in this Act and the regulations.

(3) Employees of any procurement entity who by their job description are responsible for procurement shall declare their assets to the Integrity Commission.

PART IV
METHODS OF PROCUREMENT OF GOODS,
CONSTRUCTION AND SERVICES AND THEIR
CONDITIONS FOR USE

Open
tendering.

25. (1) Subject to subsection (2), public tendering is mandatory. For such tendering an invitation to tender or to prequalify, as applicable, is mandatory.

(2) A procuring entity may use a method of procurement other than tendering proceedings in accordance with sections 26 through 29, in which case the procuring entity shall include in the record required under section 10 a statement of the grounds and circumstances on which it relied to justify the use of that particular method of procurement.

Restricted
tendering.

26. (1) The procuring entity may engage in procurement by means of restricted tendering in accordance with this section when—

(a) the goods, construction or services by

reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors, in which case all such suppliers or contractors shall be invited to submit tenders;

- (b) if the estimated cost of the contract is below the threshold set forth in the regulations.

(2) When the restricted tendering procedure is used, only suppliers or contractors invited by the procuring entity due to their qualifications can submit tenders. All other steps and requirements applicable to open tendering, as set forth in Part V of this Act, shall be complied with.

Request for quotations.
[12 of 2010]

27. (1) The procuring entity may engage in procurement by means of a request for quotations provided that the estimated value of the procurement contract does not exceed such amount as may be prescribed by regulations.

(2) Before awarding a contract under this section, the procuring entity shall obtain and compare quotations from as many qualified suppliers or contractors as feasible, but not fewer than three.

(3) The procuring entity shall make its best efforts to check prices on the Internet to ensure the reasonableness of quoted prices and shall publish the price of its most recent procurement at least once a quarter in a newspaper of national circulation or on a website of free access where Government procurement opportunities are displayed.

(4) Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor.

(5) The procurement contract shall be awarded to the supplier or contractor that submitted the lowest-priced quotation that complied with the requirements of the invitation.

Single-source procurement.

28. The procuring entity may engage in single-source procurement when—

- (a) the goods or construction are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights with respect to the goods or construction, and no reasonable alternative or substitute exists;
- (b) the services, by reason of their highly complex or specialized nature, are available from only one source;
- (c) owing to a catastrophic event, there is an urgent need for the goods, services or construction, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) the procuring entity, having procured goods, services, equipment or technology from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, services, equipment or technology, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the

proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods in question; or

- (e) the procuring entity applies section 3 (2), to procurement involving national defence or national security and determines, as a result of national security concerns, that single-source procurement is the most appropriate method of procurement.

Procurement
through
community
participation.

29. In circumstances where procurement is conducted in poor remote communities, where the competitive procedures described in this Act are not feasible, goods, works and services the value of which does not exceed such an amount as may be prescribed by regulations, may be procured, either—

- (a) in accordance with procedures that promote efficiency through participation of community organizations; or
- (b) through single source procurement from direct contracting of suppliers or contractors located near the community.

PART V
PROCEDURE FOR OPEN TENDERING
SECTION I - INVITATION TO TENDER

Invitation to
tender.
[12 of 2010]

30. (1) A procuring entity shall solicit tenders by causing an invitation to tender to be published in newspapers of wide circulation or on a website of free access where Government procurement opportunities are displayed and posted in public places. The invitation to tender or to prequalify, as applicable, shall contain a brief description of the goods or construction to be procured and shall state the deadline for submission and where the solicitation documents

and additional information regarding the tender may be obtained.

(2) The invitation to tender or invitation to prequalify, shall be published in at least a newspaper of wide circulation or in at least one journal of wide international circulation dedicated to publishing international tendering whenever foreign tenderers are expected to be interested in the contract or on a website of free access where Government procurement opportunities are displayed. Contracts in which only national tenderers are expected to be interested may be advertised only nationally, pursuant to subsection (1).

Two-stage
tendering.

31. (1) A procuring entity may engage in open tendering by means of two-stage tendering when it is not feasible for the procuring entity to formulate detailed specifications due to the complex nature of the contract in order to obtain the best performing solution for the procurement contract. Two-stage tendering may be preceded by pre-qualification proceedings pursuant to section 6.

(2) During the first stage of a two-stage tender, suppliers and contractors shall be invited to submit technical proposals on the basis of a conceptual design or performance-based specifications provided in the tender documents, without submitting prices. These proposals may then be subject to further specification on technical and commercial requirements. During the second stage, suppliers and contractors shall be invited to submit final technical proposals with prices on the basis of the tender documents, as revised by the procuring entity following the first stage.

Tender
documents.

32. (1) The procuring entity shall provide tender documents to suppliers or contractors subject to the payment of the cost of printing and providing them. If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of bid documents to each prequalified supplier or contractor.

(2) The tender documents shall include such information as may be determined by the National Board.

Clarification
and modifica-
tion of tender
documents.

33. (1) A supplier or contractor may request a clarification of the tender documents from the procuring entity. The procuring entity shall respond within a reasonable time to any query by the supplier or contractor for clarification of the tender documents that are received by the procuring entity so as to enable the supplier or contractor to make a timely submission of its tender and shall, without identifying the source of the query, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the solicitation documents.

(2) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the tender documents.

(3) If the procuring entity convenes a pre-bid meeting of suppliers or contractors, it shall prepare minutes of that meeting containing the queries submitted at the meeting for clarification of the tender documents, and its responses to those queries, without identifying the sources of the queries. The minutes shall be provided promptly to all suppliers or contractors to which the procuring entity provided the tender documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders. All modifications of tender conditions made by the procuring entity whether on its own initiative, as a result of clarification requested by the tenders, or provided during a pre-tender meeting, shall be issued in the form of amendments to the tender documents, which shall be provided to all prospective bidders who purchased the tender documents. Such addendum shall be binding upon all tenders.

SECTION II – SUBMISSION OF TENDERS

Language of
tenders.

34. Tenders must be formulated and submitted in English.

Submission of
tenders.

35. (1) The procuring entity shall fix the place for, and a specific date and time as the deadline for, the submission of tenders. For every submission there shall be the original and two copies of the tender.

(2) If pursuant to section 33, the procuring entity issues a clarification or modification of the tender documents, or if a meeting of suppliers or contractors is held, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers or contractors reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.

(3) The procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline where it considers, based on documentary evidence, that supplier or contractors were prevented from meeting the deadline by factors beyond their control.

(4) Notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring entity provided the solicitation documents.

(5) (a) Subject to paragraph (b), a tender shall be submitted in writing, signed and in a sealed envelope clearly marked "Tender For ...". The name of the tenderer must not be stated on the envelope.

(b) Without prejudice to the right of a supplier or contractor to submit a tender in the form referred in a paragraph (a), a tender may alternatively be submitted in any

other form specified in the solicitation documents that provided a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

(c) The procuring entity shall record the time and date when the tender was received, and on request, provide to the supplier or contractor a receipt showing that information.

(6) A tender received by the procuring entity after the deadline for the submission of tenders shall be so marked and shall not be opened except for the purpose of ascertaining the name and address of the bidder for the return of the tender.

(7) No bid shall be rejected at the public opening ceremony.

Period of effectiveness of tenders; modification and withdrawal of tenders.

36. (1) Tenders shall be in effect during the period of time specified in the solicitation documents.

(2) (a) Prior to the expiration of the period of effectiveness of tenders, the procuring entity may request a supplier or contractor to extend such period for an additional specified period of time. A supplier or contractor may refuse the request without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiration of the unextended period of effectiveness.

(b) Suppliers or contractors that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender security provided by them or provide new tender security to cover the extended period of effectiveness of their tenders. 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.

(3) Unless otherwise specified in the solicitation documents, a supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

Tender security.

37. (1) When the procuring entity requires suppliers or contractors submitting tenders to provide a tender security—

- (a) the requirement shall apply equally to all such suppliers or contractors;
- (b) the solicitation documents may stipulate that the issuer of the tender security and the confirmee, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
- (c) notwithstanding paragraph (b), a tender shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in Guyana if the tender security and the issuer otherwise conform to the requirements set forth in the solicitation documents.

(2) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security; any

requirement that refers directly or indirectly to conduct by the supplier or contractor submitting the tender shall not relate to conduct other than—

- (i) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the solicitation documents.
- (ii) failure to sign the contract if required by the procuring entity to do so;
- (iii) failure to provide a required performance bond for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the contract specified in the solicitation documents.

(3) The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, at such time as whichever of the following occurs earliest—

- (a) the expiration of the tender security;
- (b) the entry into force of a contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
- (c) the termination of the tendering proceedings without entry into force of a procurement contract; or

(d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

(4) Tender securities in an amount between one and two percent of the estimated cost of the contract shall be required only for contracts the value of which exceeds an amount as may be prescribed by regulations.

SECTION III – EVALUATION OF TENDERS

Opening of tenders.

38. (1) Tenders shall be opened in public at the time specified in the solicitation documents as the deadline for the submission of tenders, or at the deadline specified in any extension of the deadline, at the place and in accordance with the procedures specified in the solicitation documents.

(2) All suppliers or contractors that have submitted tenders, or their representatives, may attend the opening of tenders.

(3) The name, address and bid number of each supplier or contractor whose tender is opened and the tender price shall, in accordance with the bid documents be announced to those persons present at the opening of tenders, and communicated to suppliers or contractors that have submitted tenders but are not present or represented at the opening of tenders, and recorded immediately in the record of the tendering proceedings.

Examination and evaluation of tenders.

39. (1) The procuring entity shall transmit to the Evaluation Committee all tenders timely received from contractors or suppliers promptly following the bid opening ceremony for the evaluation.

(2) The Evaluation Committee shall, using only the evaluation criteria outlined in the tender documents, evaluate all tenders, determine which tenderer has submitted the lowest evaluated tender, and convey its recommendation to the procuring entity within a reasonable period of time, but not longer than fourteen days.

(3) The procuring entity shall, if it agrees with the Report of the Evaluation Committee, publicly disclose the name of the tenderer identified by the Evaluation Committee as the lowest evaluated tenderer. If the procuring entity does not agree with the Evaluation Committee's determination, the procuring entity shall issue an advisory recommendation to the Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe.

(4) (a) The procuring entity may ask, within a reasonable period of time, suppliers or contractors for clarifications of their tenders in order to assist in the examination and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making a nonresponsive tender responsive, shall be sought, offered or permitted.

(b) Notwithstanding paragraph (a), the Evaluation Committee shall correct purely arithmetical errors that are discovered during the examination of tenders except that any such correction shall in no manner influence the outcome of the evaluation process. The Evaluation Committee shall give prompt notice of any such correction to the supplier or contractor that submitted the tender.

(c) Subject to paragraph (b), the Evaluation Committee may regard a tender as responsive only if it conforms to the requirements set forth in the tender documents; the Evaluation Committee may regard a tender as

responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or if it contains errors or over sights that are capable of being corrected without touching on the substance of the tender.

(5) A tender shall be rejected –

- (a) if the supplier or contractor that submitted the tender is not qualified;
- (b) if the supplier or contractor that submitted the tender does not accept a correction of an arithmetical error made pursuant to subsection (4) (b);
- (c) In the circumstances referred to in section 12.

(6) (a) All evaluation criteria for the procurement of goods, works and services in addition to price, will be qualified in monetary terms and the tender will be awarded to the lowest evaluated.

(b) The procuring entity may grant a margin of reference not exceeding ten percent to tenders submitted by domestic contractors or for the benefit of tenders for domestically produced goods, provided that such preference is specified in the tender documents. If the lowest evaluated tender was submitted by a foreign tenderer, the evaluating committee will apply the margin of preference to the prices submitted by all foreign tenderers, for evaluation purpose. If, after applying the margin of preference, the lowest evaluated tender was submitted by a domestic tenderer, such tenderer shall be awarded the contract. Otherwise, the

foreign tenderer who has submitted the lowest evaluated tender shall be awarded the contract.

(7) The currency of the bid shall be in accordance with the bid documents.

(8) Whether or not it has engaged in prequalification proceedings pursuant to section 6, the appropriate board may require the supplier or contractor submitting the tender that has been found to be the successful tender pursuant to subsection (2) to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of section 5 (1) (i) and (vi). The criteria and procedures to be used for such further demonstration shall be set forth in the solicitation documents. Where prequalification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(9) If the lowest evaluated tenderer is requested to demonstrate again its qualifications in accordance with subsection (5) (1) (i) and (vi) but fails to do so, the Evaluation Committee shall reject its tender and determine which of the remaining tenders is the second lowest evaluated tender. The second lowest evaluated tender shall also be required to demonstrate again its qualification.

Rejection of all tenders.

40. (1) Subject to approval by the National Board, if so specified in the solicitation documents, the appropriate board may reject all tenders at any time prior to the acceptance of a tender. The appropriate board shall upon request, communicate to any supplier or contractor that submitted a tender the grounds for its rejection of all tenders, but is not required to justify those grounds.

(2) The appropriate board shall incur no liability, solely by virtue of its invoking subsection (1), towards suppliers or contractors that have submitted tenders.

Prohibition
of
negotiations.

(3) Notice of the rejection of all tenders shall be given promptly to all suppliers or contractors that submitted tenders.

41. There shall be no negotiation between the procuring entity and any of the bidders.

Acceptance of
tender and
entry into
force of
procurement
contract.

42. (1) Subject to sections 39 (8) and 40, the tender that has been identified as the lowest evaluated tender shall be accepted. Notice of acceptance of the tender shall be given within fourteen days to the supplier or contractor submitting the tender.

(2) (a) Notwithstanding subsection (4), the solicitation documents may require the supplier or contractor whose tender has been accepted to sign a written contract conforming to the tender. In such cases, the procuring entity and the supplier or contractor shall sign the contract within a reasonable period of time after the notice referred to in subsection (1) is dispatched to the supplier or contractor.

(b) Subject to subsection (3), where a written contract is required to be signed pursuant to paragraph (a), the contract enters into force when the contract is signed by the supplier or contractor and by the procuring entity. Between the time when the notice referred to in subsection (1) is dispatched to the supplier or

contractor and the entry into force of the contract, neither the procuring entity nor the supplier or contractor shall take any action that interferes with the entry into force of the contract or with its performance.

(3) Where the solicitation documents stipulate that the contract is subject to review by the Cabinet, the contract shall not enter into force before such review is completed as provided for in the section 54.

(4) Except as provided in subsections (2)(b) and (3), a contract in accordance with the terms and conditions of the accepted tender enters into force when the notice referred to in subsection (1) is dispatched to the supplier or contractor that submitted the tender, provided that it is dispatched while the tender is in force. The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor, or conveyed to an appropriate authority for transmission to the supplier or contractor, by a mode authorized by section 8.

(5) If the supplier or contractor whose tender has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the contract, the appropriate board shall refer the matter to the Evaluation Committee to determine which of the remaining tenders is the second lowest evaluated tenders is the second lowest evaluated tender based on the evaluation criteria outlined in the bid documents subject to its right, in accordance with section 40 (1), to reject all remaining tenders. The notice provided for in subsection (1) shall be given to the supplier or contractor that submitted that tender.

**43. Upon the entry into force of the contract and, if
Notice to
other suppliers**

or
contractors.

required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract, notice shall be given to other supplier or contractors, who had tendered specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.

PART 1V- METHOD FOR PROCUREMENT FOR CONSULTING SERVICES

Request for
proposals.
[12 of 2010]

44. (1) Subject to section 46, the procuring entity shall request proposals from consulting services firms, which have been included in a short list. Short lists shall be prepared on the basis of expressions of interest received in response to an invitation to express interest published in the newspapers of wide circulation or on a website of free access where Government procurement opportunities are displayed. The notice shall include the name and address of the procuring entity, and a brief description of the services to be procured.

(2) When foreign firms are expected to be interested in providing the services, the notice shall also be published in a newspaper of wide circulation or in an appropriate trade or professional publication of wide international circulation or on a website of free access where Government procurement opportunities are displayed.

Contents of
the request for
proposals.

45. The request for proposals shall include—

- (a) the manner in which the proposals shall be prepared and submitted;
- (b) the evaluation criteria and the manner in which they will be applied;
- (c) the minimum qualifying technical score;
- (d) a statement informing the consultants that they may be excluded from future

participation in procurement of goods, works, services or consulting services resulting from the assignment for which the Request for Proposals was issued; and

- (e) the draft contract.

Criteria for
the evaluation
of proposals.

46. The Evaluation Committee shall evaluate the proposals based on technical quality of the proposal, including such considerations as the consultant's relevant experience and the expertise of its staff, the proposal work methodology and the price of the proposal. The method of selection stated in the Request for Proposals may be based on either—

- (a) a combination of quality and price, according to the relative weights stated in the Request for Proposals;
- (b) the quality of the technical proposal within a predetermined fixed budget specified in the Request for Proposals; or
- (c) the best financial proposal submitted by a bidder that has obtained the minimum qualifying score.

Quality-based
selection.

47. Where the consulting services are of an exceptionally complex nature, will have a considerate impact on future projects, or may lead to the submission of proposals, which are difficult to compare, the procuring entity may select the consultant based exclusively on the technical quality of the submitted proposal.

Clarification
and modifica-
tion of
requests for
proposals.

48. (1) A consultant may request a clarification of the request for proposals from the procuring entity. The procuring entity shall respond to any of request for proposals that is received by the procuring entity within a reasonable

time prior to the deadline for submission of proposals. The procuring entity shall respond within a reasonable time so as to enable the consultant to make a timely submission of its proposal and shall, without identifying the source of the request, communicate the clarification to all consultants to which the procuring entity has provided the request for proposals.

(2) At any time prior to the deadline for submission of proposals, the procuring entity may, for any reason, whether on its own initiative, or as a result of a request for clarification by the consultant, modify the request for proposals by issuing an amendment. The amendment shall be communicated promptly to all consultants to whom the procuring entity has provided the request for proposals and shall be binding on them.

(3) If the procuring entity convenes a pre-bid meeting, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all consultants participating in the procurement proceedings, so as to enable those consultants to take the minutes into account in preparing their proposals.

(4) In addition to this Part, the other relevant provisions of this Act shall, as they apply to the procurement of goods or construction, apply mutatis mutandis to the procurement of services.

Single source procurement.

49. The procuring entity may engage in single source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

Cost verifica-
tion .

50. Contracts may be awarded following the procedures set forth in sections 47 and 49 only if the selected contractor agrees to be subjected to cost verification during the performance of the services. The contract shall indicate the accounting obligations of the contractor including the obligation to present appropriate accounts or documents allowing the determination of the cost of the services.

Negotiations.

51. The procuring entity may negotiate the terms of the contract with the selected consultant. Under no circumstances may the procuring entity, engage in negotiations with more than one candidate simultaneously.

PART VII ADMINISTRATIVE REVIEW

Review by the
procuring
Entity..

52. (1) A bidder whose tender or proposal has been rejected may submit a written protest to the procuring entity.

(2) The protest may pertain to the pre-qualification or tendering proceedings or to the method of procurement selected by the procuring entity.

(3) The protest must be submitted within five business days following publication of the contract award decision.

Review by an
independent
authority.

53. (1) If the protest is not reviewed by the procuring entity within five business days from the date of the protest's submission, the bidder may submit a request for review to the authority specified in section 17 (2).

(2) Upon receipt of a request for review, the authority specified in section 17 (2) shall give prompt notice of the request for review to the procuring entity.

(3) The procuring entity shall make its records in

respect of the review available to the authority specified in section 17 (2).

(4) The authority specified in section 17 (2) shall conduct bid protest reviews through an independent, three person Bid Protest Committee comprising one member appointed by the Minister, one by the Association appearing to the Minister to represent contractors and one by the Attorney General. The members shall be appointed from among professionals who are particularly competent in the field of procurement. The conditions for appointment of the committee's members and its functioning shall be prescribed by the regulations.

(5) The committee shall issue a written decision within fifteen business days of the conclusion of a review, stating the reasons for the decision and the remedies granted, if any. Damages may include only compensation to recover the cost of the bid preparation. Final contract award is suspended during this period.

(6) The decision of the Bid Protest Committee shall be final and immediately binding upon the procuring entity.

Review by
Cabinet.

54. (1) The Cabinet shall have the right to review all procurements the value of which exceeds fifteen million Guyana dollars. The Cabinet shall conduct its review on the basis of a streamlined tender evaluation report to be adopted by the authority mentioned in section 17 (2). The Cabinet and, upon its establishment, the Public Procurement Commission, shall review annually the Cabinet's threshold for review of procurements, with the objective of increasing that threshold over time so as to promote the goal of progressively phasing out Cabinet involvement and decentralising the procurement process.

(2) In conducting a review under subsection (1),

the Cabinet may object to the award of the procurement contract only if it is determines that the procuring entity failed to comply with applicable procurement procedures.

(3) If the Cabinet objects to an award, the matter shall be referred to the procuring entity for further review.

(4) This section shall not be construed as authorizing the Cabinet to award a tender to any other supplier or contractor.

(5) The Cabinet may not object later than twenty-one days after an award.

(6) Cabinet's involvement under this section shall cease upon the constitution of the Public Procurement Commission except in relation to those matters referred to in subsection (1) which are pending.

PART VIII

MISCELLANEOUS

Information to
be confidential.

55. (1) It shall be an offence for the National Board, a Ministerial Board, a Regional Board, a District Board, a Departmental Board, an Agency Board, an Evaluation Committee (each hereinafter in this Part to referred to as a Body), or a person concerned with the administration of this Act, not to regard as secret and confidential all documents, information and things disclosed to them in the execution of any provisions of this Act or to divulge such information or the contents of any document to any person except to the extent necessary to discharge its or his functions under this Act or any other written law or for the purpose of prosecution for any offence or other legal proceedings.

(2) A body or person referred to in subsection (1) who violates subsection (1) commits an offence and shall on summary conviction be liable—

LAWS OF GUYANA

50

Cap. 73:05

Procurement

- (i) in case of a Body, to a fine of five hundred thousand dollars and to imprisonment for six months and every member of such Body who participated in the commission of such offence shall be liable to be removed therefrom;
- (ii) in the case of a person, to a fine of two hundred thousand dollars and to imprisonment for three months.

(3) Any person who receives any information or anything contained in a document, knowing or having reasonable ground to believe at the time he receives it, that it is communicated to him in contravention of this section shall, unless he proves that the communication to him of the information or anything contained in the document was contrary to his desire, be guilty of an offence and shall be liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for six months.

(4) Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers—

- (a) a member of a Body or an officer thereof, or
- (b) a person referred to in subsection (1)

a gift of money or other thing with respect to a matter that is expected to come before the Body or person commits an offence and shall, in addition to being disqualified from being awarded a contract, be liable to a fine of five hundred thousand dollars and to imprisonment for six months.

(5) Notwithstanding anything contained in any other written law, a person who—

- (a) attempts to commit;
- (b) conspires with any other person to commit;
- (c) solicits, incites, aids, abets or counsels any other person to commit or;
- (d) causes or procures or attempts to cause or procure the commission of,

an offence under subsection (4) shall, in addition to being disqualified from being awarded a contract, be liable to be charged, tried, convicted and punished in all respects as if he were a principal offender.

(6) A member of a Body shall not be personally liable for any act or omission of the Body done or omitted in good faith in the course of the operations of the Body; a person concerned with the administration shall not be personally liable for any act or omission done or committed in good faith in the course of such administration.

Payment for construction contracts.

- 56.** (a) Contracts for construction works shall be paid in instalments at least monthly, as certified in accordance with the contract, except for contracts providing an execution period of less than three months, in which case payment of instalments is optional.
- (b) The amount of the installment shall not exceed the value of the services for which the contract is awarded, once the sum

required for the reimbursement of advance payments, if any, is deducted.

- (c) Where the instalments are paid according to the predetermined execution phases and not according to material execution, the contract may determine, in the form of a percentage of its initial price, the amount of each installment.
- (d) The specification of general administrative terms determine the periods of technical phases of the execution according to which the instalments shall be paid.
- (e) The contractor may not use the supplies for which any advance payments or instalments have been paid for any work other than those provided in the contract. Any breach of this provision may lead to the termination of the contract fully and entirely.

General or
special
directions of
the Minister.

57. In the exercise of its powers and the performance of its duties, the Administration shall conform to any general or special directions given to it by the Minister.

Staff.

58. (1) Except as otherwise provided in this Act, the staff required to administer this Act shall be made available by the Minister.

Funds and
resources of
the Administra-
tion..

59. (1) The Funds and resources of the Administration shall comprise—

- (a) all moneys appropriated from time to

Disclosure
members of a
Body of
interest in
bidding
process.

time by the National Assembly for the purposes of the Administration;

- (b) all moneys paid to the Administration by way of grants or donations.

60. (1) It shall be the duty of a member of a body who is in any way whether directly or indirectly interested in any deliberations of that Body regarding the bidding process to declare the nature of his interest at a meeting of the Body.

(2) The declaration required to be made by this section shall be made by a member of the Body at the meeting of the Body at which the matters referred to in subsection (1) are being considered or at the earliest opportunity thereafter.

(3) A Member of a Body shall not vote in respect of any of the matters referred to in subsection (1) in which he is interested either directly or indirectly and if he shall so vote his vote shall not be counted nor shall it be counted in the quorum at the meeting.

(4) Any member of a Body who fails to comply with or contravenes this section shall on summary conviction be liable to a fine of two hundred thousand dollars and to imprisonment for six months.

Regulations.

61. The Minister shall, with the advice of the National Board or the Procurement Commission, make any regulation that may be necessary for the administration of this Act.

Saving.
c. 73:01

62. Subsidiary legislation in relation to procurement, continued in operation by the Financial Administration and Audit Act and not inconsistent with this Act or any regulations made under this Act, shall continue in force as if they were regulations made under this Act to the extent that their continuance is necessary for the administration of this Act, subject to amendment or revocation by this Act.

SUBSIDIARY LEGISLATION

reg. 9/2004

PROCUREMENT REGULATIONS

made under section 61

ARRANGEMENT OF REGULATIONS

**PART 1
GENERAL PROVISIONS**

REGULATIONS

1. Citation.
2. Interpretation.
3. Objective.

**PART II
PUBLICITY**

4. Publication of contract awards and other data.

**PART III
THRESHOLD VALUES**

5. Review by Tender Boards.
6. Exceptions to open tendering.
7. Adjustment of threshold values.

**PART IV
PROCUREMENT PROCEDURES**

8. Forms of documents for procurement.
9. Tender security.

**PART V
ADMINISTRATIVE REVIEW**

10. Right to complain.
11. Complaints to the procuring entity.
12. Bid Protest Committee.
13. Procedure for review by the Bid Protest Committee.
14. Suspension of procurement proceedings.
15. Support provided by the Administration to the Bid Protest Committee.

SCHEDULES

SCHEDULE 1: Thresholds for review by Tender Boards

SCHEDULE 2: Exceptions to open tendering.

PART 1

GENERAL PROVISIONS

Citation

1. These Regulations may be cited as the Procurement Regulations 2004.

Interpretation.

2. (1) In these Regulations, "Website" means the Internet Website to be created by the Administration under regulation 4.

(2) Words and phrases defined in the Act which are used in these Regulations have the meanings given to them under the Act.

Objective.

3. The objective of these Regulations is to ensure proper administration of the Act by adding specific instructions on the implementation of various provisions in the Act.

LAWS OF GUYANA

56 Cap. 73.05

Procurement

[Subsidiary]

Procurement Regulations

PART II PUBLICITY

Publication of
contract
awards
and other
data.

4. (1) The Administration shall create an Internet Website for the purpose of giving publicity to contract awards and to otherwise disseminate information about public procurement.

(2) Within five days of dispatching notice concerning the award of any contract exceeding \$200,000. in value, the procuring entity shall provide a report to the Administration with the following information about the contract—

- (a) name of the procuring entity;
- (b) date of award;
- (c) name of the party to whom the contract was awarded;
- (d) object of the contract(short description and classification);
- (e) amount and currency of the contract;
- (f) procurement method used;
- (g) number of tenders, proposals or quotations received;
- (h) contract identification number/letter.

(3) Within two days of receiving any report of the type mentioned in the preceding paragraph, the Administration shall publish the information obtained on the Website.

(4) The information contained on the Website shall

be freely available to the general public.

(5) The Administration shall devise a coding and classification system for goods, works and services acquired in public procurement with a view to enabling statistical data from the Website to be made available to interested officials and the general public.

(6) The Administration shall organise the Website in such a manner as to provide information on public procurement in general, including business opportunities, and to facilitate access to standard forms and documents in use by the Government.

PART III THRESHOLD VALUES

Review by
Tender
Boards.
Schedule 1.

5. Procuring entities shall submit contract award recommendations for review by the various Tender Boards with respect to contracts of the types and values set forth in Schedule 1.

Exceptions to
open tender.
Schedule 2.

6. The threshold values below which procurement methods other than open tendering may be used shall be as set forth in Schedule 2.

Adjustment of
threshold
values.
Schedules 1
and 2.

7. The Administration shall compile information obtained under regulation 4 and other relevant data demonstrating the workload of the various Tender Boards, and shall prepare an annual report to the Minister indicating the need, if any, to adjust the threshold values set forth in Schedules.

PART IV PROCUREMENT PROCEDURES

Forms of

8. Pending the establishment of the Public

LAWS OF GUYANA

58 **Cap. 73.05**

Procurement

[Subsidiary]

Procurement Regulations

documents for procurement. Procurement Commission, the National Board shall prepare and make available on the Website and through the dissemination of printed copies, free of charge to procuring entities, the following forms of documents for procurement—

- (a) standard bidding documents, including forms for invitations to tender, instructions to tenderers and general conditions of contract, for—
 - (i) goods; and
 - (ii) works;
- (b) standard pre-qualification documents;
- (c) standard request for proposals for consulting services, including general conditions of contract;
- (d) guidelines for the preparation of specific provisions in documents of the kind referred to in sub-paragraphs (a) - (c), such as models for bid evaluation criteria;
- (e) forms for evaluation reports;
- (f) other forms of documents, as well as accompanying explanatory guidelines, in response to demand from procuring entities, suppliers or contractors.

Tender security.

9. (1) Tender security shall be required whenever the estimated value of the contract exceeds, in the case of contracts for goods and services (other than consulting services), \$3,000,000., and in the case of contracts for construction, \$15,000,000.

(2) Whenever tender security is required, the procuring entity shall determine, and specify in the invitation to tender, the amount in Guyana dollars in which the security shall be expressed, which amount shall correspond to not less than one and not more than two percent of the estimated value of the contract.

(3) Unless the National Board otherwise decides in response to a request from the procuring entity, the tender security shall be in the form of an on-demand guarantee by a bank or other reputable financial institution, which institution shall be independent of the tenderer.

PART V ADMINISTRATIVE REVIEW

Right to complain.

10. (1) Any supplier or contractor who claims to have suffered, or who may suffer, loss or damage due to a breach of a duty imposed on a procuring entity by the Act, including any subsidiary legislation, may complain in accordance with the provisions of this Part.

(2) Notwithstanding the provisions of paragraph (1), a supplier or contractor is not permitted to complain against a decision taken by the Cabinet under section 54 of the Act.

(3) The following shall not constitute valid grounds for a complaint—

- (a) a refusal by a procuring entity to short-list an applicant in response to an Expression of Interest under section 44 of the Act;
- (b) a decision by a procuring entity to reject all tenders, proposals or quotations under section 40 of the

LAWS OF GUYANA

60 **Cap. 73.05**

Procurement

[Subsidiary]

Procurement Regulations

Act.

(4) If the procurement proceedings have not led to an effective contract, the complainant shall —

- (a) in the first instance, submit its complaint for consideration by the procuring entity in accordance with regulation 11; and
- (b) where the complainant is dissatisfied with the entity's response to the complaint, or fails to receive a response from the entity within the time limit mentioned under regulation 11, paragraph (1), the complainant may complain to the Bid Protest Committee in accordance with the procedure set out in regulation 12.

(5) If the procurement proceedings have already led to an effective contract, the complainant may complain directly to the Bid Protest Committee in accordance with the procedure set out in regulation 12.

(6) Complaints under paragraphs 4(a) and 5 shall be submitted within seven working days of when the complainant became aware of the circumstances giving rise to the complaint or when it should have become aware of those circumstances, whichever is earlier.

Complaints to
the procuring
Entity.

11. (1) Whenever a complaint is submitted to a procuring entity, the entity shall consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action in order to bring the procurement proceedings in conformity with the Act. Within five working days of receipt of the complaint, the procuring entity shall issue a written decision to the

complainant, stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken.

(2) If the complainant is not satisfied with the decision of the procuring entity, or if the procuring entity fails to issue its decision within the period stated in paragraph (1), and the complainant wishes to pursue its complaint, it must within three working days seek review by the Bid Protest Committee in accordance with the procedure set out in regulation 13.

Bid Protest Committee.

12. (1) The Administration shall establish a Bid Protest Committee to deal with alleged breaches of the Act by procuring entities.

(2) The Bid Protest Committee shall consist of three persons nominated in accordance with section 53(4) of the Act. The Administration may request the nomination of one or more personal deputies for each member of the Bid Protest Committee. The member nominated by the Attorney General shall act as Chairperson of the Committee.

Procedure for review by the Bid Protest Committee.

13. (1) If a supplier or contractor wishes to seek review by the Bid Protest Committee of any decision, act or omission by a procuring entity, it shall submit its complaint in writing to the Administration within the period stated in regulation 11, paragraph (2).

(2) The complaint shall be accompanied by the registration fee determined by the Administration and published on the Website.

(3) A copy of the complaint shall be sent simultaneously by the complainant to the procuring entity concerned.

(4) The complaint shall contain—

LAWS OF GUYANA

62 Cap. 73.05

Procurement

[Subsidiary]

Procurement Regulations

- (a) an identification of the procuring entity and the procurement proceedings against which the complaint is directed;
- (b) a succinct description concerning the alleged breach by the procuring entity of the Act and the remedy sought from the Bid Protest Committee; and
- (c) a statement verifying that the registration fee required according to paragraph (2) has been deposited with the Administration and that a copy of the complaint has been sent to the procuring entity.

(5) Upon receipt of the complaint and the registration fee, the Administration shall pass over the complaint to the Chairperson of the Bid Protest Committee. At the same time, the Administration shall advise the complainant and the procuring entity concerned of the action it has taken.

(6) Promptly after receiving the complaint, the Chairperson of the Bid Protest Committee shall cause the Committee to meet. The Bid Protest Committee shall conduct its review proceedings in accordance with these Regulations and with such detailed procedural rules as the Committee decides in the interest of giving a fair hearing to parties concerned, while at the same time observing the need for urgency referred to in paragraph (8).

(7) Unless it dismisses the complaint as being frivolous, in which case the complainant may lose the registration fee, the Bid Protest Committee may grant any of the following remedies—

- (a) reject the complaint, stating its reasons and advising the procuring entity to continue with the procurement process;
- (b) state the rules or principles that govern the subject matter of the complaint and instruct both parties to act accordingly;
- (c) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- (d) annul in whole or in part an unlawful act or decision by the procuring entity, other than any act or decision bringing the procurement contract into force;
- (e) order the procuring entity to compensate the complainant for any reasonable costs incurred by the complainant as a result of an unlawful act or decision of, or procedure followed by, the procuring entity;
- (f) order that the procurement proceedings be terminated.

(8) The Bid Protest Committee shall proceed urgently with the review of the complaint and shall make every effort to reach its award decision within ten working days from receipt of the complaint. The award of the Committee shall be communicated in writing to the complainant, copied to the Administration and the procuring entity, stating the reasons for the decision and any remedies granted.

LAWS OF GUYANA

64 Cap. 73.05

Procurement

[Subsidiary]

Procurement Regulations

(9) The award of the Bid Protest Committee shall not be open to administrative review.

(10) Once the complaint has been finally dealt with by the Bid Protest Committee, the complaint and the award shall be promptly made available by the Administration for inspection to the general public, provided, however, that no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of
procurement
proceedings.

14. (1) The timely submission of a complaint under regulation 11 suspends the procurement proceedings until such time as either—

- (a) the complaint is settled amicably between the complainant and the procuring entity concerned;
- (b) the complainant fails to submit its complaint to the Bid Protest Committee within the time period stated in regulation 11, paragraph (2);
- (c) the complaint is dismissed or rejected by the Bid Protest Committee;
- (d) the decision of the Bid Protest Committee has been announced and the procuring entity has taken any corrective action ordered by the Bid Protest Committee;
- (e) the Bid Protest Committee decides for some other reason to lift the suspension.

(2) Upon the Administration receiving a complaint from a complainant seeking review by the Bid Protest Committee, and the Administration having been satisfied that the fee has been properly provided, the Administration shall remind the procuring entity to continue the suspension until it may be lifted on any of the grounds set out in paragraph (1).

(3) The suspension provided for by paragraph (1) shall not apply if a procuring entity certifies that public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such considerations exist and which shall be made a part of the record of the procurement proceedings, is not open to complaint and review in accordance with the provisions of this Part.

(4) Any decision by a procuring entity or by the Bid Protest Committee in response to a complaint, and the grounds and circumstances thereof, shall be made part of the record of the procurement proceedings.

Support
provided by
the admini-
stration to the
Bid Protest
Committee.

regs. 5 and 7

15. The Administration shall not be involved in the resolution a complaint but shall provide logistic support to the Bid Protest Committee in the discharge of its functions.

SCHEDULE 1

THRESHOLDS FOR REVIEW BY TENDER BOARDS

Procuring entities shall submit award recommendations for review by the various Tender Boards with respect to contracts of the following types and values—

LAWS OF GUYANA

66 **Cap. 73.05**

Procurement

| [Subsidiary] | <i>Procurement Regulations</i> | |
|--|--|--|
| Type of Board | Type of Contract | Contract value (in G \$m) |
| (a) Natural | All types | All contracts exceeding the maximum for other boards |
| (b) Regional | Goods and services (other than consulting) | 0.25– 6.0 |
| | Construction | 0.6– 9.0 |
| | Consulting Services | 0.4– 0.5 |
| (c) Ministerial/ Department/ Agency | Goods and services (other than consulting) | 0.25– 0.6 |
| | Construction | 0.6– 1.0 |
| | Consulting services | 0.4– 0.5 |
| (d) Ministry of Public Works and Communication | Goods and services (other than consulting) | 1.0– 4.0 |
| | Construction | 1.0– 8.0 |
| | Consulting services | 1.0– 3.0 |
| (e) Ministry of Agriculture | Goods and services (other than consulting) | 1.0– 4.0 |
| | Construction | 1.0– 8.0 |
| | Consulting services | 1.0– 3.0 |

Contract award decisions below the stated values are the responsibility of the procuring entity and shall be taken in the manner determined by the Head of the Procuring Entity.

regs. 5 and 7

SCHEDULE 2

EXCEPTIONS TO OPEN TENDERING

1. The threshold foreseen in section 26(1)(b) of the Act for use of the restricted tendering method of procurement shall be \$1,000,000. in the case of contracts for goods and services (other than consulting services) and \$5,000,000. in the case of contracts for construction.

2. The threshold foreseen in section 27(1) of the Act for use of the request for quotations method of procurement shall be \$800,000.

3. The threshold foreseen in section 29 of the Act for use of the community based method of procurement shall be \$1,500,000.
