

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL 2021

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COMMONWEALTH OF DOMINICA

A

BILL

FOR

AN ACT to modernise public procurement in Dominica and to provide for the retention and disposal of public property, in accordance with the principles of good governance, to establish the Public Procurement Board and the Procurement Review Council and for related matters; and to repeal the Public Procurement and Contract Administration Act 2012, (No.11 of 2012).

(Gazetted)

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

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the –

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY ACT 2021.

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

Interpretation

2. In this Act –

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

"bidder" means a natural or legal person or a consortium or joint venture of several legal persons who participate in procurement proceedings conducted by a procuring entity under this Act;

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

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

"Board" means the Public Procurement Board established under section 9;

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

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

"collusion" means an arrangement among two or more parties, before or at any stage during the procurement proceedings, designed to manipulate the procurement proceedings, establish bid prices at artificial, non-competitive levels or deny the procuring entity of the benefits of free and open competition;

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

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

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

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

"day" means a calendar day;

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

"domestic bidder" means a bidder that is legal entity that is registered in the Commonwealth of Dominica or a natural person who is a citizen of the Commonwealth of Dominica;

"electronic means of communication" means the use of electronic equipment, including digital compression and storage of data, which are transmitted, conveyed and received by wire, wirelessly, radio or by optical or other electromagnetic means;

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

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

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

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

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

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

- (a) a Ministry, the Permanent Secretary;
- (b) a department of Government, the head of the department; and
- (c) a statutory corporation or other public body, the head of the statutory corporation or public body;

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

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

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

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

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

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

"Minister" means the Minister responsible for finance;

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

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

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

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

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

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

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

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

“Procurement Procedures Manual” means the manual prescribed in Regulations;

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

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

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

“public procurement website” means the dedicated website to be established and maintained by ...;

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

“Regulations” means regulations made under this Act;

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

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

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

"services" in relation to the procurement of goods, works or services, means –

- (a) services of a physical or technical nature resulting in the production of measurable outputs, including printing, drilling, data surveys, aerial photography, mapping, satellite imagery or the provision of insurance coverage;
- (b) labour, time or effort not involving the provision of a tangible end-product other than a report or goods or tangible property produced or supplied incidental to labour, time or effort;
- (c) reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services if the value of those goods does not exceed the value of the services;

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

“standard bidding documents” means the prescribed standardised documents;

"standstill period" means a period of no less than fourteen days, starting from the date of publication of a notice of intention to award a procurement contract, as required by section 44(7);

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

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

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

Purposes

3. (1) The purposes of the Act are –

- (a) to clarify and modernise public procurement;
- (b) to maximize economy, efficiency and value for money in public procurement;
- (c) to promote competition in public procurement;
- (d) to encourage broad participation of suppliers, contractors and consultants in public procurement proceedings;
- (e) to provide for the fair and equitable treatment of all bidders participating in public procurement procedures;

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

Application

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

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

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

(3) Where the procurement of goods, works, services or consulting services is funded in whole or in part by a donor on the condition or on the understanding that the Commonwealth of Dominica uses or causes to be used the procurement procedures of the donor or the procurement procedures approved or agreed to by the donor, the procurement shall be conducted in accordance with the procurement procedures of the donor or, as the case may be, the procurement procedures approved or agreed to by the donor.

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

(5) Subject to subsection (6), any procurement of goods, works, services, consulting services or disposal of public property that is not done in accordance with this Act or Regulations and any procurement contract or agreement that is not entered into in accordance with this Act and Regulations made under this Act is void and illegal.

(6) Subsection (5) does not affect the rights of an innocent third party.

Exemptions

5. (1) This Act does not apply to –

- (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
- (b) the procurement of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the procurement or acquisition of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (c) the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time;
- (d) arbitration and conciliation services;
- (e) public employment contracts;
- (f) research and development services the purpose of which is to create a prototype product not intended for commercial exploitation;
- (g) works of art and cultural performances or products associated with creative expressions, for the express purposes of official functions;
- (h) goods and services relating to the staging of official national productions in support of or associated with creative expressions and cultural events, including, but not limited to artistic co-ordination, direction and management; the management of artistic works or events; the management of intellectual property rights; venue rental; infrastructure and technical effects; design and technical direction of cultural performances; and the engagement of artistes and performers;
- (i) services by medical professionals;
- (j) casual hospitality or catering services;
- (k) medallions and insignias to be used pursuant to the Meritorious Service Honours Act;
- (l) goods, works or services of a type involving security considerations for the President or the Prime Minister;
- (m) goods, works, services or consulting services of a type involving national defence or national security considerations;
- (n) services relating to the management of employee pension funds;
- (o) postal services;
- (p) procurement of utility services, i.e., electricity, telecommunications and piped water where such services are supplied by a public monopoly as legislated under national law;
- (q) goods, services and works by embassies and consulates overseas;
- (r) intra-government procurement; and
- (s) legal services.

PART I ADMINISTRATION

Division 1 Minister of Finance

Responsibilities of the Minister of Finance

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

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

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

Division 2 Financial Secretary

Responsibilities of the Financial Secretary

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

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

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

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

(4) The Financial Secretary may require any procuring entity, Procurement and property disposal officer or Bid Evaluation Committee member to furnish him or her with such information or documentation as the Financial Secretary considers necessary for the purposes of section 7(1).

Division 3 Chief Procurement Compliance Officer

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

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

- (a) undertaking a review of the documentary record of the procurement proceedings conducted by a procuring entity prior to the procuring entity's issuing a notice of intention to award a procurement contract under section 44(7) or, where no standstill period applies, prior to the procuring entity's award of the procurement contract;
- (b) where the Chief Procurement Compliance Officer determines that the procurement proceedings as conducted by a procuring entity comply with the relevant provisions of this Act or Regulations and no standstill period applies the Officer shall –
 - (i) in the case of a public procurement within Threshold B indicate in writing that he confirms the compliance of the procurement proceedings with this Act and the Regulations and approve the procuring entity's recommendations for the award of the procurement contract in accordance with this Act and Regulations; or
 - (ii) in the case of a public procurement within Threshold C indicate in writing that he confirms the compliance of the procurement proceedings with this Act and the Regulations and refer the matter to the Board; or
- (c) where the Chief Procurement Compliance Officer determines that the procurement proceedings conducted by the procuring entity do not comply with the relevant provisions of this Act or Regulations and no standstill period applies, decline to indicate his confirmation of compliance to the procuring entity's publication of the intention to award the procurement contract or, where no standstill period applies, to the award of the procurement contract and advise the procuring entity in writing of the measures to be taken by the procuring entity to bring the procurement proceedings into compliance with this Act or Regulations.

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

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

Division 4 Public Procurement Board

Establishment of Public Procurement Board

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

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

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

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

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

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

- (a) dies;
- (b) resigns by instrument in writing addressed to the Minister and transmitted through the Chairperson;
- (c) is absent from meetings of the Board for a continuous period exceeding three months;

(d) is unable to perform the functions of the office due to illness;

(e) ceases to become a member by reason of revocation of membership under subsection (7); or

(f) ceases to be a public officer.

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

(7) The membership of a member of the Board shall be revoked by the Minister if the member:

(a) becomes bankrupt;

(b) is convicted of an offence under the Act;

(c) has engaged in or is engaging in conduct which, in the opinion of the Minister, disqualifies the member from holding office, including conduct reasonably considered to be prejudicial to the interest of the Board; or

(d) otherwise fails to carry out the functions of the office in accordance with this Act and Regulations.

(8) The quorum at a meeting of the Board shall be three members and decisions shall be taken by majority vote.

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

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

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

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

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

(14) Recommendations of the Board, together with the reasons therefor, with respect to the approval of the award of procurement contracts and disposal of public property shall be communicated in writing to the relevant procuring entity within three days of the conclusion of the meeting at which the decision of the Board is taken.

(15) The provision of an appropriate meeting venue, equipment and machinery and other supplies necessary for the performance of the functions of the Board is the responsibility of the Ministry of Finance.

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

Responsibilities of the Board

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

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

- (a) assess the functioning of public procurement and disposal of public property and make proposals to the Minister, through the Financial Secretary, for improving its efficiency and effectiveness, as necessary;
- (b) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold C, as specified in the Fourth Schedule, following confirmation of compliance provided by the Chief Procurement Compliance Officer under section 8(2), examine recommendations made to it by procuring entities for the award of procurement contracts or disposal of public property;
- (c) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold C, as specified in the Fourth Schedule, following confirmation of compliance provided by the Chief Procurement Compliance Officer under section 8(2), approve or, as the case may require, deny or endorse recommendation made by procuring entities for the award of procurement contracts or the disposal of public property within the prescribed thresholds;
- (d) examine and decide on the suspension or debarment of bidders based on applications made to the Board under the procedure established in section 80;
- (e) not later than three months after the end of each financial year, submit an annual report on the functioning of public procurement and disposal of public property under this Act to the Minister, through the Financial Secretary, in the manner prescribed; and
- (f) perform any other functions assigned to it under this Act or Regulations.

- (3) The Board may co-opt expertise on an ad-hoc basis, from the private or public sector, as it sees fit, in the performance of its functions and remuneration for such expertise shall be as prescribed.
- (4) In the performance of its functions, the Board shall have the power to:
 - (a) call for and examine such records, documents or information and take and retain copies or extracts of them as it may require from any procuring entity;
 - (b) perform all other acts as it may consider incidental or conducive to the exercise of its functions.

Secretariat

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

Remuneration

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

Procedure

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

Seal

14. (1) There shall be a common seal of Board which shall:

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

Division 5 Procuring Entities

Responsibilities of procuring entities

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

Responsibilities of head of procuring entity

16. (1) The head of a procuring entity has overall responsibility for the conduct of all public procurement and disposal of public property by the procuring entity in compliance with this Act and Regulations.

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

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

Procurement and property disposal officers

17. (1) A procuring entity shall be adequately staffed with one or more public procurement and property disposal officers whose qualifications, competence and professional certification shall meet the standards prescribed in Regulations.

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

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

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

- (a) preparation of a procurement plan in accordance with the requirements of section 24;
- (b) publish invitations to participate in procurement in accordance with the requirements of section 31;

- (c) prepare and distribute bidding documents, requests for quotation, and requests for proposals in accordance with section 32;
- (d) respond to requests for clarification of invitations to bid, bidding documents, requests for quotation and requests for proposals documents in accordance with section 34;
- (e) receive and safeguard bids, quotations and proposals;
- (f) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Fourth Schedule, conduct the opening of bids, quotations and proposals, in accordance with section 38;
- (g) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Fourth Schedule, carry out the evaluation of bids, quotations and proposals in accordance with section 39;
- (h) in respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold A, as specified in the Fourth Schedule, prepare and submit procurement contract award recommendations for approval by the head of the procuring entity;
- (i) ensure that procurement contracts are performed in accordance with procurement contract terms and conditions;
- (j) debrief unsuccessful bidders in accordance with section 47;
- (k) initiate suspension or debarment proceedings;
- (l) prepare and submit to the Financial Secretary, through the head of the procuring entity, quarterly reports on the procuring entity's procurement and property disposal activities no less than two weeks after the end of each quarter;
- (m) undertake procurement contract administration;
- (n) manage the performance of suppliers, contractors and consultants under procurement contracts awarded by the procuring entity;
- (o) maintain Inventory Registers in accordance with the Part XIV of the Finance and Audit Act; and
- (p) undertake disposal of public property in accordance with this Act.

Bid Evaluation Committees

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

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

Functions of Bid Evaluation Committees

19. (1) In respect of procurement contracts with an estimated value, calculated in accordance with section 25, fall within Threshold B or C, as specified in the Fourth Schedule, the bid evaluation

committee shall evaluate bids, proposals or quotations applying only those criteria that are specified in the bidding documents, in accordance with section 39, and in the manner set out in the bidding documents.

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

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

(b) making recommendation(s) for the award of procurement contract(s).

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

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

Division 6 Miscellaneous

Qualifications

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

Protection of staff of procuring entity

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

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

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

(i) notified the Director of Audit, the Police, the Financial Secretary or other authority that his employer or any other person has contravened or is about to contravene this Act; or

(ii) done or stated the intention of doing anything that is required to be done in order to prevent a person from contravening this Act; or

(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or

- (b) the officer's employer or any other person believes that the officer will do something described in paragraph (a).

Confidentiality

22. All public officers, members of the Board and any committee established under section 19 and the Review Council and any other person conducting procurement proceedings on behalf of the Government shall take the Oath of Confidentiality as defined in the Second Schedule.

Declaration of interest

23. (1) A procurement and property disposal officer, member of the Board or a committee established under section 18, or any public officer who is involved in the conduct of the procurement proceedings or may influence the outcome of the proceedings and who has a direct or indirect financial, economic or personal interest in a matter under consideration by the procuring entity or the Board which might compromise or be perceived to compromise their impartiality and independence in the context of the procurement proceedings, such that it might damage the integrity or fairness of the procurement proceedings as required under section 3(h), shall disclose the fact of his or her interest in writing to the Financial Secretary without delay and shall not participate in the consideration of, or vote on, any question relating to the matter.

(2) A procurement and property disposal officer, member of the Board or a committee or any person who fails to disclose his or her interest in accordance with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars and imprisonment for three months.

PART II GENERAL PROCUREMENT PROVISIONS

Procurement planning

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

- (a) its operational requirements for goods, works, services and consulting services;
- (b) its available financial resources;
- (c) the required delivery times for goods and completion times for works, services and consulting services; and

- (d) the benefits which are planned to accrue to the procuring entity from the planned procurement.

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

- (a) plan the quantity and quality of its procurement requirements to meet but not to exceed its operational requirements;
- (b) prepare a detailed cost estimate for each procurement in accordance with the rules on procurement contract valuation in section 25;
- (c) commit the amount of the total estimated cost of its procurement requirements in the budget of the procuring entity in accordance with the Finance (Administration) Act and Finance Regulations;
- (d) plan to procure its requirements using the most appropriate procurement method as specified in Part III;
- (e) record the justification for each use of a procurement method other than open competitive bidding in the record of procurement proceedings; and
- (f) record its justification for the use of prequalification or two-stage bidding.

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

(4) A procuring entity shall, not less than 14 days after the beginning of each financial year arrange for the publication of its annual procurement plan on the procurement website in the prescribed form.

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

Procurement contract valuation

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

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

(3) Notwithstanding subsection (1), a procuring entity may divide a procurement requirement into lots within a single procurement transaction in the interests of promoting social sustainability in accordance with any measures prescribed under section 86(2)(a)(xv) or in the interests of promoting the

participation of domestic micro, small and medium-sized bidders in public procurement in accordance with any measures prescribed under section 86(2)(a)(xvii).

Description of procurement requirements

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

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

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

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

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

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

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

Participation of bidders

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

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

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

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

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

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

Qualifications of Bidders

28. (1) A person qualifies as a bidder if the person meets any of the following qualification requirements that the procuring entity considers appropriate and relevant to the circumstances of the particular procurement –

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

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

(3) A procuring entity shall ensure that all qualification requirements established under this section are set out in the prequalification documents or bidding documents and apply equally to all bidders.

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

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

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

(7) A procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again if requested to do so under subsection (6).

(8) The procuring entity shall promptly notify each bidder requested to demonstrate its qualifications again under subsection (6) as to whether or not the bidder has done so to the satisfaction of the procuring entity.

Prequalification of bidders

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

- (a) large or complex procurement contracts;
- (b) custom-designed equipment or plant;
- (c) specialized services;
- (d) complex information technology systems;
- (e) procurement under turnkey design and build procurement contracts; or
- (f) management contracting.

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

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

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

- (a) the name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, the required time for the supply of the goods, the completion of the construction or the provision of the services;
- (c) the criteria, requirements and procedures to be used for establishing the qualifications of bidders, in conformity with section 28;
- (d) the means and location by which interested bidders may obtain the prequalification documents;
- (e) the fee, if any, to be charged by the procuring entity for the prequalification documents, as well as the currency and means of payment of the fee; and
- (f) the manner, place and deadline for submitting applications to prequalify and, if already known, the manner, place and deadline for submitting bids, in conformity with section 38.

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

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

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

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

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

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

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

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

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

(11) Where a procuring entity provides a response to a request for clarification under subsection (10), the procuring entity shall, without identifying the source of the request, communicate the response simultaneously and in writing to all bidders to which the procuring entity has provided the prequalification documents.

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

(13) A procuring entity shall apply only the criteria and procedures set out in the invitation to prequalify and in the prequalification documents in making a decision under subsection (12).

(14) Only bidders that have been prequalified shall be entitled to participate further in the procurement proceedings.

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

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

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

Register of Bidders

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

(2) The Financial Secretary shall, in the operation of a register established under subsection (1), invite applications to register from bidders by giving wide publicity in accordance with section 31 and shall register all bidders who meet the qualification requirements in the prescribed manner and in compliance with the criteria set out in the bidder registration document.

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

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

Publication of invitations to participate in public procurement

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

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

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

(4) Where a procuring entity uses the limited competitive bidding procurement method to conduct the procurement proceedings, the procuring entity shall directly invite bids from all bidders from which the subject matter of the procurement requirement is available.

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

(6) Notwithstanding subsection (5), where a procuring entity is unable to identify a minimum of three bidders to invite to submit quotations, it shall seek approval from the Chief Procurement Compliance Officer before issuing the request for quotations to fewer than three bidders but in no case shall a procuring entity issue a request for quotations to fewer than two bidders.

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

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

Contents of bidding documents

- 32.** (1) A procuring entity shall ensure that bidding documents contain the following information:
- (a) a description of the procurement requirement in accordance with section 26, in the case of the procurement of –
 - (i) goods, the quantity, technical specifications, required time and place of delivery;
 - (ii) works, the scope and nature of the works, bills of quantities and materials or schedule of activities, location and work programme and schedule for the completion of the works;
 - (iii) non-consulting services, a definition of the required scope, performance and outputs of the services; and
 - (iv) consulting services, the scope and objective of the services, terms of reference, definition of the range of skills to be provided by the consultant and proposed number of staff months or the estimated cost of the procurement contract;
 - (b) the procedure and time limits for submission by bidders of a request for clarification of the bidding documents;
 - (c) the time, date, place and manner for the submission of bids;
 - (d) the required form, amount and principal terms and conditions of any required bid security;
 - (e) the criteria to be used in the evaluation of bids and the manner in which the criteria will be applied, including any proposed margin of domestic preference, in accordance with section 39(3);
 - (f) the terms and conditions of the procurement contract; and
 - (g) any other prescribed information.

Single-envelope and two-envelope bids

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

- (a) the first envelope shall form the technical component of the bid, containing the technical, performance and quality components of the bid, as well as the commercial terms and conditions; and
- (b) the second envelope shall form the financial component of the bid, containing the bid price and other financial information.

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

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

Clarification of bidding documents

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

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

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

Modification of bidding documents

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

(2) If a procuring entity considers it necessary, the procuring entity shall postpone the deadline for submission of bids in order to provide bidders with adequate time to take into account the contents of a modification under subsection (1) in the preparation of their bids.

Bid securities

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

- (a) the requirement to provide a bid security applies equally to all bidders; and

- (b) the required form, amount and principal terms and conditions of the bid security are specified in the bidding documents.
- (2) When a procuring entity requires bidders to provide a bid security, the procuring entity may, in the bidding documents, require that the issuer of the bid security shall be acceptable to the procuring entity.

Time limits for submission of bids

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

- (a) the time reasonably required by bidders to prepare and submit their bids;
 - (b) the complexity and estimated cost of the procurement requirement; and
 - (c) the objective of promoting competition in accordance with section 3(c).
- (2) A procuring entity shall calculate the period of time provided to bidders to submit their bids from the date of publication of the invitation to bid or, where no invitation to bid is published, from the date of issuance of the bidding documents.
- (3) A procuring entity shall provide all bidders with the same period of time to submit their bids.
- (4) A procuring entity shall ensure that the minimum time periods provided to bidders for submission of their bids is not less than the minimum periods specified in the Third Schedule.

Bid submission and opening

38. (1) A procuring entity shall open all bids on the deadline date for submission of bids or shortly after the deadline date for submission of bids and the date and location of the opening of the bids must be specified in the bidding documents.

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

(3) A procuring entity shall:

- (a) open in public all bids received by the deadline for submission of bids;
- (b) read aloud and record the name of each bidder that submitted a bid, the total bid price of each bid, any discounts offered in the bid, the presence and amount of any required bid security and the same information relating to any alternative bid offered if such has been requested or permitted by the bidding documents; and
- (c) record the information disclosed under (a) and (b) in the record of public opening in the prescribed form.

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

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

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

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

- (a) use a single-stage procedure in accordance with section 57(1) and invite two-envelope bids in accordance with section 33(1).
- (b) require bidders to submit the technical and financial components of their bids simultaneously by the deadline stipulated in the bidding documents in accordance with subsection (1);
- (c) during the public opening of bids, open only the envelope containing the technical component of each duly submitted bid; and
- (d) following the evaluation of the technical components of the bids, conduct a second public bid opening, at which it shall publicly open the envelopes containing the financial components of those bids that have been evaluated as technically response, read aloud the technical scores of those bids, open the envelopes containing the financial components of those bids and read aloud the prices of those bids and recording them in the record of public opening.

(8) Notwithstanding subsection (2), a procuring entity is not required to open bids in public if the procurement contract is awarded as a result of the use of the request for quotations procurement method or the single source procurement method.

Evaluation criteria

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

(2) Evaluation criteria may include the following:

- (a) price;
- (b) the cost of operating, maintaining and repairing goods or works;
- (c) the time for delivery of goods, completion of works or provision of services;
- (d) the characteristics of the subject matter of the procurement, such as the functional characteristics, environmental or sustainability characteristics of the goods or works;

- (e) the terms of payment and of guarantees in respect of the subject matter of the procurement;
- (f) in the procurement of consulting services, the experience of the bidder relative to the procurement requirement, the technical quality of its proposed methodology and the qualifications of its key staff, such requirement being evaluated using rated criteria; and
- (g) where relevant, the experience, reliability and professional and managerial competence of the bidder and of the personnel to be involved in providing the subject matter of the procurement.

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

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

- (a) the procuring entity may afford a margin of preference for the benefit of bids offering to supply domestically-produced goods or using domestic labour or service; and
- (b) the margin of preference must be calculated in the prescribed manner; and the procuring entity shall disclose the margin of preference in the bidding documents and record it in the record of the procurement proceedings.

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

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

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

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

Rejection of bids

40. A procuring entity shall reject a bid if –

- (a) the bidder is not qualified;

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

Rejection of abnormally low bids

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

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

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

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

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

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

Price negotiations

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

Cancellation of procurement

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

- (a) at any time prior to the publication of a notice of intention to award a procurement contract under section 44(4); or
- (b) after the publication of a notice of award of procurement contract under section 46 if

–

- (i) the supplier whose bid has been accepted fails to meet the conditions for signature of the procurement contract, prescribed in Regulations, or fails to sign the procurement contract as required; and
- (ii) the procuring entity's attempt to award the procurement contract to the next-ranked substantially responsive bidder proves unsuccessful or no other substantially responsive bid has been submitted.

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

(3) A procuring entity shall include the decision of the procuring entity to cancel the procurement and the reasons for its decision in the record of the procurement proceedings and promptly communicate the decision to all bidders that submitted a bid.

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

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

Award of procurement contract

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

(2) A bid is the successful bid –

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

(3) A procuring entity shall not award a procurement contract unless where the estimated value of a procurement contract, calculated in accordance with section 25, falls within –

- (a) Threshold A as specified in the Fourth Threshold, the head of the procuring entity has approved the procurement and property disposal officer's recommendation for the award of the contract in accordance with section 16(2)(c);
- (b) Threshold B as specified in the Fourth Threshold, the head of the procuring entity has approved the recommendation of the Bid Evaluation Committee for the award of the contract in accordance with section 16(2)(d) and the Chief Procurement Compliance Officer has provided his confirmation of compliance in accordance with section 8(2);
- (c) Threshold C as specified in the Fourth Threshold, the head of the procuring entity has approved the recommendation of the Bid Evaluation Committee for the award of the contract in accordance with section 16(2)(d), the Chief Procurement Compliance Officer has provided his confirmation of compliance in accordance with section 8(2) and the Board has provided its approval for the award of the contract in accordance with section 10(2)(c).

(4) Subject to subsection (6), when a procuring entity identifies a successful bid the procuring entity shall promptly issue a notice to each bidder that submitted a bid of its intention to award a procurement contract at the end of the standstill period.

(5) A notice issued under subsection (3) must contain the following information –

- (a) the name and address of the bidder that submitted the successful bid;
- (b) in respect of each bidder whose bid was evaluated as unsuccessful, a brief explanation of the reason(s) for the bid being evaluated as unsuccessful;

- (c) a brief description of the goods, works, services or consulting services;
- (d) the procurement contract price or, where the successful bid was determined on the basis of price and other non-price criteria, the procurement contract price and a summary of other characteristics and relative advantages of the successful bid; and
- (e) the duration and specific end date of the standstill period specified in the bidding documents and in accordance with the prescribed requirements and the standstill period runs from the date of the publication of the notice under subsection (3).

(6) Subsection (4) does not apply if –

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

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

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

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

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

Terms and conditions of procurement contract

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

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

Publication of notice of award of procurement contract or framework agreement

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

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

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

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

Debriefing of unsuccessful bidders

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

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

(3) The discussions at a debriefing must not include –

- (a) any reference to or comparison with a bid submitted by another bidder; or
- (b) information that is confidential or commercially sensitive to any other bidder.

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

Record of procurement proceedings

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

- (a) a brief description of the subject matter of the procurement;
- (b) the names and addresses of every supplier or contractor who presented bids, the name and address of the supplier or contractor who entered the procurement contract and the procurement contract price;
- (c) copies of published invitations to prequalify or bid;

- (d) the prequalification documents and bidding documents used in the conduct of the procurement proceedings, as well as all modifications and clarifications thereto;
- (e) in procurement proceedings in which the procuring entity limits the participation of suppliers or contractors, a statement of the reasons and circumstances relied upon by the procuring entity for imposing such a limit;
- (f) if the procuring entity uses a method of procurement other than Open competitive bidding, a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of such other method;
- (g) in the case of procurement by means of an electronic reverse auction, a statement of the reasons and circumstances relied upon by the procuring entity for the use of the auction and information about the date and time of the opening and closing of the auction;
- (h) in the case of a framework agreement procedure, a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected;
- (i) if the procurement is cancelled under section 43, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision to cancel the procurement;
- (j) if no standstill period was applied, a statement of the reasons and circumstances relied upon by the procuring entity in deciding not to apply a standstill period;
- (k) in the case of a challenge or appeal, a copy of the application for reconsideration or review and the appeal, as applicable, and a copy of all decisions taken by the procuring entity, the Review Council in the relevant challenge and review proceedings and the reasons therefor;
- (l) information relating to the qualifications, or lack thereof, of suppliers or contractors that presented applications to pre-qualify or bids;
- (m) if a submission is rejected on the basis of an abnormally low bid, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (n) if a supplier or contractor is excluded from the procurement proceedings on the basis of fraudulent or corrupt practice, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (o) a copy of the notice of the standstill period given under section 44(4);
- (q) the procurement contract or, in the case of a framework agreement procedure, in addition a summary of the principal terms and conditions of the framework agreement or a copy of any written framework agreement that was concluded;
- (r) for each bid, proposal or quotation submitted, the price and a summary of the other principal terms and conditions;
- (s) a report of the evaluation of bids, including the application of any domestic preference, and the reasons on which the procuring entity relied to justify any rejection of bids submitted during the bidding or auction;

- (*t*) a declaration of interests disclosed by a procurement and property disposal officer, member of the Board or Bid Evaluation Committee disclosed under section 23 and by members of the Review Council in accordance with section 63;
- (*u*) bids, proposals and quotations submitted;
- (*v*) copies of contract award notices published; and
- (*w*) other prescribed information.

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

Electronic government procurement

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

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

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

PART III PROCUREMENT METHODS

Procurement methods

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

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

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

- (*a*) open competitive bidding;

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

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

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

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

(5) When a procuring entity uses a procurement method other than open competitive bidding to conduct public procurement of goods, works or services, the procuring entity shall –

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

Open Competitive Bidding

51. (1) Except as otherwise provided in sections 52 to 58, a procuring entity shall use open competitive bidding for the public procurement of goods, works, or services.

(2) When a procuring entity uses open competitive bidding, the procuring entity shall invite bids by advertising and invitation for bids in accordance with section 31(1).

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

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

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

Limited Competitive Bidding

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

- (a) the goods, works and services to be procured are, by reason of their highly complex or specialized nature, available from only a limited number of suppliers; or
- (b) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement.

Requests for Quotations

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

- (a) procuring readily available goods, works or services, that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market; or
- (b) when the estimated value of the procurement contract is less than the prescribed threshold in the Regulations.

Requests for Proposals

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

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

- (a) quality alone;
- (b) quality and cost;
- (c) quality within a fixed budget; or
- (d) least cost with an acceptance level of quality.

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

- (a) invite expressions of interest by publishing an invitation to participate in public procurement in accordance with section 31;
- (b) prepare a shortlist of no fewer than three and no more than eight fully-qualified consulting firms from among those firms that expressed interest;
- (c) ensure that all shortlisted firms have the necessary staffing, managerial and organisational capabilities and relevant specific experience required to perform the services satisfactorily;

- (d) issue a request for proposals to all shortlisted firms, using a single-stage, two-envelope procedure under section 33, inviting them to submit technical only or technical and financial proposals, as required according to subsection (2);
- (e) evaluate each submitted technical proposal on the basis of the evaluation criteria specified in the request for proposals, including:
 - (i) the consultant's specific experience relevant to the assignment;
 - (ii) the quality of the consultant's proposed technical methodology for the delivery of the assignments; and
 - (iii) the qualifications, experience and expertise of the key staff proposed by the consultant for the assignment.

Electronic Reverse Auction

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

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

Single Source Procurement

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

- (a) goods, works or services:
 - (i) the goods, works and services to be procured are available from a particular supplier only, or a particular supplier holds exclusive rights in respect of such goods, services and works, such that no reasonable alternative or substitute exists and, as a result, the use of any other procurement method would not be possible;
 - (ii) the procuring entity, having procured products from a supplier, determines that additional products must be procured from that supplier for reasons of standardisation or a need for compatibility with previously procured products;
 - (iii) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security and defence interests of the State and its citizens; or

- (iv) a catastrophic event has occurred and the circumstance of the procurement is one of extreme urgency that has not been caused by the action or omission of the procuring entity, and engaging in any other method of procurement may be detrimental to the procuring entity or other beneficiaries of the procurement.

(b) consulting services:

- (i) only one consultant is qualified or one consultant has experience of exceptional worth for the assignment;
- (ii) an existing procurement contract for consulting services may be extended to provide additional consulting services of a similar nature where such extension is properly justified, the performance of the consultant is satisfactory and no advantage may be obtained by competition;
- (iii) for a task that represents a natural continuation of previous work recently carried out by a consultant, where continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the original consultant preferable to a new competition and the performance of the consultant in the original assignment is satisfactory; or
- (iv) a catastrophic event has occurred and the circumstance of the procurement is one of extreme urgency that has not been caused by the action or omission of the procuring entity, and engaging in any other method of procurement may be detrimental to the procuring entity or other beneficiaries of the procurement.

Single-stage and two-stage bidding

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

(2) A procuring entity may use two-stage bidding by means of the open competitive bidding procurement method or limited competitive bidding when it is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement in accordance with section 29 including procurements of –

- (a)* large complex facilities for which a turnkey procurement contract will be awarded for the design and build of a plant;
- (b)* works of a complex and specialised nature; or
- (c)* complex information and communication technology that is subject to rapid technological advances.

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

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

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

Framework Agreements

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

(a) the need for the subject matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time; or

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

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

PART IV DISPOSAL OF PUBLIC PROPERTY

Application

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

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

Prohibition of disposal within Government

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

PART V CHALLENGE AND REVIEW

Division 1 Procurement Review Council

Establishment of Procurement Review Council

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

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

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

Functions of Procurement Review Council

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

Declaration of interest

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

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

Remuneration

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

Reporting

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

Secretariat

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

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

Seal

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

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

Division 2 Review Process

Right to challenge and review

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

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

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

Effect of a challenge

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

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

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

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

Review by procuring entity

70. (1) A bidder who wishes to exercise his right to challenge a decision or action under section 68(1) shall in the first instance make an application in writing in the prescribed form to the procuring entity in the case of an application for review of:

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

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

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

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

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

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

(6) The applicant may within twenty days from the first submission of a challenge to the procuring entity under subsection (1) commence proceedings in the Review Council under section 71 if:

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

(7) When such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

Review by the Review Council

71. (1). Subject to subsection (2), a bidder may apply to the Review Council for review of a decision or an action taken by the procuring entity in the procurement proceedings, or of the failure of the procuring entity to issue a decision under section 70.

(2) A bidder who wishes to make an application for review under subsection (1) shall make an application for review in the case of an application for review of:

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

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

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

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

Remedies

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

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

Judicial Review

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

PART VI ETHICAL STANDARDS AND PROCUREMENT INTEGRITY

Interpretation

74. (1) In this Part –

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

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

“financial interest” includes a financial liability;

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

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

- (a) planning or conducting public procurement proceedings or contract administration;
- (b) a decision, approval, determination or recommendation;
- (c) the preparation of any bidding document;
- (d) the exercise of influence;
- (e) giving any advice; or
- (f) conducting an investigation or audit;

“public official” means –

- (a) a member of the Board or the Review Council; or
- (b) a public officer or other person employed by a procuring entity.

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

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

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

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

Effect of breach of ethical standard

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

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

General duty

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

Conduct of procurement officials

77. (1) A procurement official shall –

- (a) exercise his public procurement functions –

- (i) diligently, impartially, conscientiously and fairly in accordance with the procedures set out in this Act and the Regulations; or
 - (ii) in a manner so as to promote the purposes set out in section 3;
 - (b) discharge his duties impartially so as to ensure participation in public procurement by bidders in accordance with section 27;
 - (c) at all times in the execution of his duties, act in the public interest;
 - (d) in carrying out his duties and conducting himself or herself, avoid conflicts of interest, whether actual, perceived or potential;
 - (e) not commit or abet any corrupt or fraudulent practice;
 - (f) subject to this Act, not disclose any information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information; and
 - (g) where applicable, declare his assets in accordance with the Integrity in Public Office Act.
- (2) In the discharge of his public procurement functions, a procurement official shall –
- (a) keep up-to-date with advances and changes in his or her area of expertise;
 - (b) comply with the legislative or administrative requirements related and relevant to the proper exercise of his or her functions;
 - (c) treat members of the public and other staff members with courtesy and sensitivity to their rights;
 - (d) provide all necessary and appropriate assistance to members of the public;
 - (e) make decisions objectively on the basis of the relevant criteria and information;
 - (f) maintain adequate documentation to support any decision that he or she makes in accordance with section 48;
 - (g) at all times in the discharge of his or her procurement functions, behave in such a way so as not –
 - (i) to discredit his or her position, and
 - (ii) to reflect adversely on the Public Service or, as the case may be, the relevant procuring entity;
 - (h) strive to obtain value for public money spent;
 - (i) strive to avoid waste and extravagance in the use of public resources;
 - (j) not take or seek to take improper advantage of any official information gained in the course of employment;
 - (k) not wilfully supply incorrect or misleading information to bidders, suppliers contractors, consultants or other members of the public and to staff; and
 - (l) not indulge in favouritism or nepotism.
- (3) It is expected that every procurement official is –
- (a) is efficient and economical in the use and management of public resources;
 - (b) is scrupulous in the use of public property and services; and
 - (c) will not permit abuse of such property and services by other persons.

Conduct of bidders, suppliers and contractors

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

- (a) influence any procurement proceedings or the execution of any procurement contract; or
 - (b) interfere in the ability of any other person to participate in procurement proceedings.
- (2) A bidder or a supplier, contractor or consultant shall not engage in coercion or collusion.
- (3) A procuring entity shall –
- (a) reject a bid if the procuring entity determines that the bidder has engaged in a corrupt practice, fraudulent practice, coercion or collusion ; and
 - (b) promptly, notify the bidder concerned and the Board of the rejection of the bid.

Conflicts of interest

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

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

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

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

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

- (a) any directorship, partnership, agency or any shareholding in any business entity;
- (b) any interest in any activity or business in which or with which the business entity is engaged; or
- (c) any interest in goods, services, consulting services or works recommended or supplied by the business entity under this Act.

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

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

- (a) immediately cease to exercise his public procurement functions in relation to the procurement;
- (b) without delay, give notice of disqualification from public procurement functions to any person specified by the Regulations.

Suspension and debarment

80. (1) The Board may, on an application by [a procuring entity through] the Financial Secretary suspend or debar a person from participating in procurement proceedings on one or more of the following grounds:

- (a) furnishing false information in the process of submitting a bid or pre-qualification application;
- (b) collusion with another bidder or a procurement official concerning the formulation of any part of the bidding documents;
- (c) unlawful interference, directly or indirectly, with the participation of competing bidders in procurement proceedings under this Act;
- (d) conviction for an offence involving obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract;
- (e) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity in a professional activity;

- (f) conviction for an offence involving corruption in a professional activity;
- (g) engaging in anti-competitive practices;
- (h) deliberate neglect or failure to perform a procurement contract; or
- (i) the person failed to comply with a provision in this Part.

(2) A person who is liable to be suspended or debarred under subsection (1) may be—

- (a) suspended for a period not exceeding six months; or
- (b) debarred for a period not exceeding three years.

(3) The suspension or debarment of a person under this section shall not be effected unless the Board –

- (a) gives to the person concerned—
 - (i) a notice under subsection (4), and
 - (ii) a reasonable opportunity to respond to the notice and its contents; and
- (b) reviews, considers and investigates the application for suspension or debarment.

(4) The Board shall specify in the notice—

- (a) the intention of the Board to suspend or, as the case may be, to debar the person for the period specified in subsection (2);
- (b) the grounds for the intended suspension or debarment;
- (c) the effect of the suspension or debarment;
- (d) the period, not being less than seven days, within which and the place at which the person may make any representation in writing or in person respecting the intention of the Board;
- (e) the effect of the failure to make the necessary representation;
- (f) the power of the Board to grant an extension of time under paragraph (d); and
- (g) the right of the person to seek a review under section 73.

(5) The Board may extend the period given under subsection (4)(d), but the total period given for making the representation shall not exceed twenty-one days from the date of service of the notice.

(6) Where the Board—

- (a) on the balance of probabilities, is satisfied that the grounds for suspension or debarment are proven, the Board shall suspend or, as the case may be, debar the person; or
- (b) is not satisfied that the grounds for suspension or debarment are proven, the Board shall dismiss the application.

(7) The Board shall—

- (a) give its decision and the reasons for the decision, in writing;
- (b) submit to the person concerned a copy of the reasoned decision; and
- (c) inform that person of the right of the person to seek a review under section 73.

(8) A person who is suspended or debarred under this section, is not eligible to participate in procurement proceedings or be awarded any procurement contract during the period of the suspension or debarment.

(9) A decision of the Board to suspend or debar has effect from the time it is served.

PART VII MISCELLANEOUS

Language of documents

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

Publication of legal texts

82. (1) The Financial Secretary shall promptly publish and systematically maintain on the procurement website this Act, Regulations, standard bidding documents and standard forms of procurement contract and all other standard documents of general application to procurement governed by this Act.

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

Non-disclosure of information

83. Nothing in this Act shall be construed –

(a) to prevent a procuring entity, the Financial Secretary, the Board or the Review Council from taking any action or not disclosing any information that it considers necessary for the protection of the essential security interests of the State relating to, inter alia, the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or defence purposes; or

(b) as a requirement to release confidential information where release –

(i) would impede law enforcement;

(ii) might prejudice fair competition among suppliers;

- (iii) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (iv) would otherwise be contrary to the public interest.

Offences

84. (1) A person who:

- (a) is involved in or participates in collusion; or
- (b) submits fraudulent documentation or otherwise directly or indirectly influences or attempts to influence in any manner or attempts to influence in any manner any supplier registration proceedings in order to obtain an unfair advantage; or
- (c) directly or indirectly influences in any manner or attempts to influence in any manner any procurement proceedings in order to obtain an unfair advantage in the award of a procurement contract; or
- (d) alters any procurement document with intent to influence the outcome of procurement proceedings;
- (e) breaches the Oath of Confidentiality;

is guilty of an offence.

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

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

Review of procurement and public property disposal system

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

Regulations

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

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

(a) respecting:

- (i) a Public Procurement Procedures Manual ;
 - (ii) procurement planning;
 - (iii) handbooks, rules of procedure, directives and other mandates governing procurement, retention and disposal of public property, standard bidding documents, forms of contract, procedural forms and formats;
 - (iv) methods of procurement;
 - (v) electronic government procurement;
 - (vi) acceptable forms of bid security and performance security;
 - (vii) recordkeeping, including record of public bid opening;
 - (viii) reporting;
 - (ix) domestic preferences;
 - (x) procurement contract administration;
 - (xi) procedural rules governing the disposal of public property;
 - (xii) inventory and disposal of stores;
 - (xiii) suspension and debarment.
 - (xiv) measures in the area of the promotion of economic sustainability, including the development of domestic industry, through public procurement;
 - (xv) measures in the area of the promotion of social sustainability, including gender equality, through public procurement;
 - (xvi) measures in the area of the promotion of environmental sustainability through public procurement;
 - (xvii) measures intended to promote the participation of domestic micro, small and medium-sized bidders;
 - (xviii) thresholds within which participation in procurement proceedings may be limited to domestic bidders; and
 - (xix) thresholds to govern the use of the procurement methods specified in Part III;
 - (xx) form of publication of invitations to participate in public procurement; and
 - (xxi) evaluation of bids for goods, works, services and consulting services.
- (b) prescribing a code of conduct; and
- (c) prescribing anything that is required or authorised to be prescribed by this Act.

(3) Regulations made under this section are subject to negative resolution of the House.

Finance Regulations to apply

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

Amendment of Schedules

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

Savings and transitional

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

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

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

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

(2) Where –

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

(b) the procurement contract is still subsisting,

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

Repeal Act No. 11 of 2012

90. (1) The Public Procurement and Contract Administration Act 2012 is repealed.

FIRST SCHEDULE

(Section 61(2))

PROCUREMENT REVIEW COUNCIL

Constitution of the Procurement Review Council

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

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

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

Chairperson of the Review Council

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

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

Tenure of membership

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

Vacancy on the Procurement Review Council

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

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

Revocation of appointment.

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

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

Quorum

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

Expert Assistance

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

Secretariat

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

Minutes

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

Decisions of the Review Council

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

Meetings

13. The Review Council shall meet as often as may be necessary for the performance of its functions, such meetings to be held at such place subject to consultation with the Financial Secretary, and at such times and on such days as the Review Council may determine.

Venue

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

Authentication of Review Council documents

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

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SECOND SCHEDULE

(Section 22)

OATH OF CONFIDENTIALITY

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

So help me God

Name:

Signature:

Date:

.....

THIRD SCHEDULE

(Section 37(4))

MINIMUM BID SUBMISSION PERIODS

1. Procuring entities shall set a minimum time period for submission of bids, proposals or quotations in order to allow sufficient time for bidders to prepare and submit their bids, proposals or quotations so as to promote competition in public procurement.
2. The minimum periods are:
 - (a) For applications to prequalify in advance of Open competitive bidding: 21 days.
 - (b) For Open competitive bidding and Request for Proposals limited to domestic bidders: 21 days.
 - (c) For Open competitive bidding and Request for Proposals advertised internationally: 30 days.
 - (d) For Limited competitive bidding: 21 days.
 - (e) For Request for Quotations: 14 days.

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FOURTH SCHEDULE

(Sections 8, 10, 16, 17)

Confirmation of Compliance and Approval of Recommendation for Award of Contracts

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

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

Passed in the House of Assembly this day of 20...

January 5, 2021

.....
Clerk of the House of Assembly

OBJECTS AND REASONS

This Bill seeks to modernise public procurement in Dominica and to provide for the retention and disposal of public property, in accordance with the principles of good governance, to establish the Public Procurement Board and the Procurement Review Council and for related matters; and to repeal the Public Procurement and Contract Administration Act 2012, (No.11 of 2012).

The Bill is divided into eight parts.

Preliminary - Clauses 1 to 5 are set out in the Preliminary part. The short title is set out in clause 1. Clause 2 is the interpretation clause in which a number of words and terms used throughout the Bill are defined. The purposes of the Bill are set out in clause 3 and include clarifying and modernising public procurement; maximising economy, efficiency and value for money in public procurement and promoting competition in public procurement. The Act would apply to every public body and the procurement of goods, works, services or consulting services financed in whole or in part from public funds (clause 4(1)).

Part I, Administration - This Part provides for the administration of the Bill. This Part is divided into six divisions. The responsibilities of the Minister in relation to public procurement are set out in Division 1. The Minister would be responsible for formulating policy relating to public procurement. The responsibilities of the Financial Secretary are set out in Division 2. The responsibilities of the Financial Secretary would include informing and proposing policy formulation, legislative and regulatory actions, revisions and amendment to legislation for the better implementation of public procurement, retention and disposal of public property.

Provision is made for the public office of the Chief Procurement Compliance Officer in Division 3. The responsibilities of the Chief Procurement Compliance Officer would include undertaking a review of the documentary record of the conduct of procurement proceedings undertaken by procuring entities prior to the procuring entity issuing notice of the intention to award a procurement contract.

Division 4 provides for the establishment of the Public Procurement Board and the responsibilities of the Board. The Board would be required to promote and facilitate the attainment of the purposes of the Act set out in clause 3 (clause 10(1)).

Division 5 addresses procuring entities. The responsibilities of procuring entities and the head of a procuring entity are set out in clauses 15 and 16 respectively.

Division 6 addresses miscellaneous matters of administration. Clause 21 would extend protection to the staff of procuring entities. Clause 25 would require all public officers, members of the Board, the Review Council and any committee established under clause 19 to take an oath of confidentiality. Clause 23 would require procurement and property disposal officers, members of the Board or a committee to declare their interests in procurement proceedings.

Part II, General Procurement Provisions – The general provisions relating to public procurement are set out in this part. Clause 24 would require procuring entities to engage in procurement planning. Clause 26 sets out is expected to be included in procurement requirements. Clause 28 specifies the requirement to be met by a person to qualify to participate in procurement proceedings. Clauses 31 to 39 provide for the procedures to be followed from invitation to participate in procurement proceedings, submission of bids and evaluation of bids. The award of a procurement contract and debriefing of unsuccessful bidders are addressed in clauses 44 and 47 respectively. Procuring entities would be required to maintain a record of procurement proceedings (clause 48).

Part III, Procurement Methods – The procurement methods that may be utilised by procuring entities in their conduct of public procurement are set out in this part. Where the appropriate circumstances exist, a procuring entity would be authorised to use open competitive bidding (clause 51), limited competitive bidding (clause 52), requests for quotations (clause 53), requests for proposals (clause 54), electronic reverse auction (clause 55), single source procurement (clause 56), single stage and two-stage bidding (clause 57) or framework agreements (clause 58).

Part IV, Disposal of Public Property – This part provides for the disposal of public property. A procuring entity would be prohibited from disposing of unserviceable, obsolete or surplus stores, equipment or other public property to an employee of Government or a member of a board or committee of a procuring entity, the Board of the Procurement Review Council, except as is expressly prescribed in regulations.

Part V, Challenge and Review – This part is divided into two divisions. Division 1 provides, inter alia, for the establishment of the Procurement Review Council (clause 61). The function of the Procurement Review Council would be to hear and review the challenges of bidders under this part.

Division 2 deals with the review process. A right of challenge is conferred on a bidder that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of a procuring entity with the provisions of this Act (clause 70). Clause 71(1) would require the aggrieved bidder to initiate the review proceedings by making an application to the procuring entity. An aggrieved bidder would be able to make an application for review to the Procurement Review Council for a review of a decision or an action taken by a procuring entity in procurement proceedings or where the procuring entity fails to make a decision under clause 70. Where the Procurement Review Council decides in favour of an applicant the Council may grant certain remedies, including prohibiting the procuring entity from acting or making a decision in an unauthorised manner or from following an incorrect procedure an annulling in whole or in part any unauthorised act of the procuring entity (clause 72(a) and (b)).

Part VI, Ethical Standards and Procurement Integrity - This part deals with the conduct expected from procurement officers as well as bidders and other persons who may be involved in procurement proceedings. A general duty is imposed on every person involved with public procurement to be governed by principles of honesty accountability, transparency, fairness and equity (clause 76). The

conduct required of procurement officials is specified in clause 77. Conduct prohibited by bidders, supplier, contractors and consultants is set out in clause 78. Conduct prohibited on the part of bidders includes engagement in corrupt practices or fraudulent practices. Clause 79 provides some guidance as to what would constitute conflict of interest in relation to procurement officials. Clause 84 provides for suspension or debarment of a person from participating in procurement proceedings. The grounds for suspension or debarment and the process are specified in this clause.

Part VII, Miscellaneous - A number of offences are created by clause 84.

Clause 89 would require the Minister of Finance to cause an independent review of the procurement and property disposal system to be undertaken with a view to identifying challenges and recommendations for optimization, no later than three years after the entry into force of this Act and at regular intervals.

Clause 86 would authorise the Minister to make regulations, after consultation with the Board, for giving effect to the provisions of the Act.

Clause 90 would repeal the Procurement and Contract Administration Act 2012.