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No. 28 of 2012.

*Procurement and Contract
(Administration) Act, 2012.*

Saint Christopher
and Nevis.

I assent,



CUTHBERT M SEBASTIAN
Governor-General.

4th October, 2012.

SAINT CHRISTOPHER AND NEVIS

No. 28 of 2012

AN ACT to provide for a system of Procurement and Contract Administration.

[Published 4th October 2012, Official Gazette No. 46 of 2012.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

PART I

PRELIMINARY

1. Short title.

This Act may be cited as the Procurement and Contract administration Act, 2012.

2. Application to Nevis.

The provisions of this Act shall be of equal application to the island of Nevis as provided in section 104 of the Constitution.

3. Interpretation.

In this Act, unless the context otherwise requires,

“Accountant General” means the Accountant General of Saint Christopher and Nevis, and includes every person for the time being acting as Accountant General in his or her stead;

“accounting officer” has the same meaning as set out in section 8 of the Finance Administration Act;

“accounting officer” means a public officer designated as such under section 8.(1) of the Finance Administration Act;

“bidder” means a person who submits a bid;

“Board” means the Procurement Board established under section 23.(1);

“competitive quotations” means the solicitation procedure commenced by a request for quotations and in response to which a person solicited submits a quotation;

“competitive sealed bids” means the solicitation procedure commenced by the issue of an invitation to bid and in response to which a bidder submits a bid;

“competitive sealed proposals” means the solicitation procedure commenced by the issue of an request for proposals and in response to which an offeror submits a sealed proposal;

“co-operative procurement agreement” means an agreement or arrangement under which the Government agrees with one or more

- (a) other governments; or
- (b) statutory bodies or public authorities inside or outside Saint Christopher and Nevis;

to purchase goods or services through a central organization, or a regional organization using the procurement procedures of the central organization;

“designated procurement” means a procurement of specialised goods as set out in section 7.(4);

“emergency procurement” means the solicitation procedure referred to in section 11 of this Act;

“Financial Secretary” means as defined in the Finance Administration Act, 2012;

“goods” includes tangible and intangible personal property as well as services incidental to the supply of goods if the value of those services does not exceed the value of the goods;

“Government” means the Government of Saint Christopher and Nevis;

“Minister” means Minister of Finance;

“offeror” means a person who submits a proposal;

“person” means a corporation, association, individual, sole proprietorship, partnership or joint venture and includes their assigns and heirs, executors and administrators or other legal representatives;

“procurement” means

- (a) all activities that pertain to a solicitation,
- (b) all activities from the decision to award or not to award or to discontinue the procurement and includes the execution of a contract and other activities related to the finalisation or failure to finalise a contract; and
- (c) where the context permits, includes the actual construction, purchase, lease, rental or acquisition of goods or services procured;

“procurement officer”, in relation to a procurement, means the person appointed under section 7 in relation to that procurement and includes any person authorised to act on his or her behalf;

“public money” means money belonging or payable to or received, collected or held by, for or on behalf of the Government and includes

- (a) all revenues or other money raised or received for the purposes of the Government; and
- (b) all money held, whether temporarily or otherwise, by a public officer in his or her official capacity, either alone or jointly with any other person whether or not that other person is a public officer;

“public officer” means a person holding or acting in any public office as provided in section 119.(1) of the Constitution and, for greater certainty, includes a person who has a contract of employment with the Government;

“regulations” means regulations made under section 42;

“Secretary” means the secretary of the Board appointed under section 25;

“services” means the supply of

- (a) labour, time or effort which may include a tangible end-product produced or supplied as an incident of that labour, time or effort;
- (b) insurance coverage or other similar services; or
- (c) electricity, telecommunications, water and other similar services and includes goods, products or other tangible property supplied in connection with electricity, telecommunications, water and other similar services;

“sole source procurement” means the solicitation procedure referred to in section 11 of this Act;

“solicitation”, in relation to

- (a) construction;
- (b) the purchase, lease, rental, or acquisition of goods; or
- (c) the rendering of services;

means the activities from the preparation of solicitation documents up to the decision to award or not to award the contract or to discontinue the procurement.

“works” means the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works and includes services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection therewith if the value does not exceed the value of the construction, reconstruction, erection, installation, repair, renovation or extension of the building, structure or works;

4. Purposes.

The purposes of this Act and the regulations are to simplify, clarify, modernize and make transparent procurement by the Government and more particularly to

- (a) require public competition in the procurement process except to the extent that the circumstances or size of the procurement make it impracticable;
- (b) foster and encourage broad participation in the procurement process by persons in St. Christopher and Nevis and, when required under international agreement, to persons outside the Federation;
- (c) provide for increased public confidence in the Government procurement process by maintaining safeguards to ensure its integrity, fairness, accountability, transparency and good governance;
- (d) ensure fair and equitable treatment of all persons who participate in the procurement process; and
- (e) provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government.

5. Exempt procurements.

Subject to regulations in respect of reporting information, the following procurements are exempted from this Act

- (a) a procurement made under a co-operative procurement agreement;
- (b) a procurement the funding for which, or part of the funding for which, is furnished to the Government by an international or regional agency, whether the funding is by loan, donation or otherwise, on the condition or on the understanding that the procurement procedures of the international or regional agency, or procurement procedures approved or agreed to, by the international or regional agency will be used;
- (c) a procurement for *bona fide* hospitality and promotional expenditure that does not exceed a maximum amount to be prescribed by the Minister;
- (d) books and magazine subscriptions.

PART II

PROCUREMENT PROCEDURES

6. General procurement requirements.

All procurements shall be made in accordance with this Act and the regulations.

7. Appointment of procurement officers.

- (1) Subject to section 9, all procurements of works, goods and services shall be made by the procurement officer authorized under this section.
- (2) The Director of Public Works shall be the procurement officer for works, heavy equipment and tools and architectural, engineering and land-surveying services.
- (3) The Manager of Procurement in the Ministry of Finance shall be the procurement officer for goods, other than designated procurements referred to in subsection (4).

(4) Subject to subsection (2) and subsection (4), the accounting officer for the ministry, department or entity requiring the procurement shall be the procurement officer for the following designated procurements

- (i) food;
- (ii) pharmaceuticals;
- (iii) vehicles;
- (iv) explosives
- (v) firearms;
- (vi) petroleum products;
- (vii) water equipment, and fixtures;
- (viii) restricted goods pursuant to the Customs, Control and Management Act; and
- (ix) such other goods as the Minister may, by Order, prescribe.

8. Duties and powers of procurement officers.

A procurement officer

- (a) shall perform the duties and exercise the powers conferred on him or her under this Act and the regulations;
- (b) shall monitor the quantity and type of goods procured to be held in inventory.
- (c) may enter into contracts or arrangements with statutory bodies or other entities to procure goods or services on their behalf; and
- (b) shall perform any other duties assigned to him or her by the Minister.

9. Delegation of authority.

- (1) A procurement officer may delegate his or her authority to
 - (a) to any public officer who reports to him or her;
 - (b) another procurement officer; or
 - (c) to a public officer outside the office of the procurement officer on such terms and conditions as the Minister may specify.

(2) Where, pursuant to subsection (1), a procurement officer delegates his or her authority to another person, that person shall not further delegate that authority and, shall be directly responsible for his or her actions in executing the powers granted to him or her.

(3) Notwithstanding subsection (2), the procurement officer, who delegates his or her authority shall be responsible, in addition to the person to whom the authority is delegated, for ensuring that the exercise of the delegated authority is consistent with this Act and the regulations.

10. Methods of procurement.

- (1) A procurement shall be made by one of the following methods of solicitation

- (a) tender, which shall be done by either
 - (i) competitive sealed bids; or
 - (ii) by competitive sealed proposals;
 - (b) sole source procurement;
 - (c) emergency procurement;
 - (d) by competitive quotations.
- (2) A sole source procurement, as determined under section 11.(5), may be negotiated by the procurement officer.
- (3) A solicitation for an emergency procurement, as determined under section 11.(7), shall be made with such competition as is practicable in the circumstances.
- (4) Nothing in subsection (3) shall be interpreted to affect the Emergency Powers Act.
- (5) A solicitation by competitive quotations shall be made by request for quotations.

11. Financial limits on solicitations.

- (1) Before commencing a solicitation, the procurement officer shall ensure that an accurate estimate of the amount of the contract award for the procurement has been prepared.
- (2) A solicitation shall be made by way of tender where the estimated amount of the contract award in question is equivalent to or exceeds an amount prescribed by the Minister as a threshold.
- (3) Notwithstanding subsection (2), the Minister may establish a separate threshold for the Government's centralised purchasing unit.
- (4) Where the estimated amount of the contract award for a procurement is less than the threshold referred to in subsection (2), the procurement may be solicited as a competitive quotation.
- (5) A sole source procurement may be made when the goods, services or works required may only reasonably be had from a single source.
- (6) The decision to use a sole source procurement shall be determined either by
 - (a) the Board, where the amount of the contract award is equal to or exceeds the threshold; or
 - (b) the procurement officer, in the case of a procurement that is less than the threshold.
- (7) An emergency procurement may be made only when there exists a threat to public health, welfare or safety by reason of an emergency situation and the procurement is for the purpose of eliminating or mitigating the threat as determined by
 - (a) the Board, in the case of a procurement that is equal to or exceeds the threshold; or
 - (b) the Financial Secretary, in the case of a procurement that is less than the prescribed amount for emergency procurements.”.

12. Artificial division of procurement prohibited.

No procurement shall be artificially divided so as to cause it to fall below the threshold and thus qualify it as a competitive quotation.

13. Notice of solicitation or pre-qualification.

Subject to section 16, the procurement officer shall ensure that notice of

- (a) a solicitation for a procurement by tender; or
- (b) an invitation to pre-qualify for a procurement by tender,

is given in at least two newspapers of general circulation in the Federation no less than six weeks before the day and time for the close of bids or proposals or invitations to pre-qualify, as the case may be.

14. Details of Submission and Content of Bids to be prescribed in regulations.

The submission and content of all bids, proposals and quotations shall be in accordance with such terms and conditions as shall be prescribed by the Minister in regulations.”.

15. Opening bids and proposals.

(1) Subject to section 17, all competitive sealed bids and competitive sealed proposals submitted by tender shall be opened publicly

- (a) by the procurement officer or his or her delegate;
- (b) on the day and at the time and place specified in the invitation to bid or the request for proposals, as the case may be; and
- (c) in the presence of
 - (i) at least one member of the Board or his or her designate,
 - (ii) any person submitting a competitive sealed bid or a competitive sealed proposal who wishes to be present, and
 - (iii) any member of the public.

(2) Subject to any further conditions the Minister may prescribe in regulations, in the case of tenders that are submitted, the procurement officer or his or her delegate shall

- (a) read aloud in the case of competitive sealed bids
 - (i) the name and address of each bidder, and
 - (ii) the amount of his or her bid or, when there is more than one amount in the bid, each amount bid.

(3) In the case of competitive sealed proposals that are submitted, the procurement officer or his or her delegate shall

- (a) read aloud the name and address of each offeror, and
- (b) keep confidential any amount proposed and any other information contained in the proposal.

16. Exception to sections 13 and 15.

- (1) Sections 13 and 15 shall not apply to
 - (a) a procurement that involves national security when, in the written opinion of the Minister responsible for national security, confidentiality is necessary to preserve the national interest; or
 - (b) a designated procurement where, in the written opinion of the procurement officer, circumstances require the maintenance of confidentiality.
- (2) Where the Minister responsible for national security determines that confidentiality is necessary to preserve the national interest or when a procurement officer requires the maintenance of confidentiality, no person shall disclose any information or document about a procurement referred to in subsection (1)
 - (a) to any public officer inside Government except to a person who needs to have that information or documentation to perform his or her functions; or
 - (b) outside government except where required to do so under an Act or by the written authorisation of the Minister responsible for national security.

17. Award of contract following solicitation by tender.

- (1) A contract for a procurement that is awarded following a solicitation by tender shall be awarded to the qualified bidder or offeror who submits the best responsive evaluated tender in accordance with such terms as are prescribed in the regulations.
- (2) For the purposes of subsection (1), the expression “responsive” in relation to a tender, means compliant in all material respects with the requirements of the invitation to tender..
- (3) For the purposes of subsection (1), the expression “evaluated” means evaluated in accordance with objective evaluation criteria set out in the form of the tender to determine if the goods, services or works meet the description of what is being procured and having regard to the relative importance of quality, availability, capability and price.
- (4) The procedure for the reviewing and evaluation of all bids, proposals and quotations shall be in accordance with such terms and conditions as shall be prescribed by the Minister in regulations.”.

18. Fair treatment of persons tendering and confidentiality.

- (1) Every person submitting a tender shall be accorded fair and equal treatment with respect to any opportunity for discussions, revision of any terms in the tender and submission of best and final offers.
- (2) No person conducting or privy to discussions with any person submitting a tender, shall disclose any information related to the tender, to any other person submitting a tender, or in any other manner to prejudice or compromise the tender being made by or on behalf of the person submitting the tender.
- (3) Any person acting in contravention of subsection (2) commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirty thousand dollars.

19. Terms for contract award following solicitation as sole source procurement.

A contract for a procurement that is awarded following a solicitation as sole source procurement shall be on the best terms that can be negotiated in the circumstances.

20. Terms for contract award following solicitation as emergency procurement.

A contract for a procurement that is awarded following a solicitation as an emergency procurement shall be awarded to the qualified person who, in the opinion of the procurement officer, is best able to eliminate or mitigate the threat to public health, welfare or safety arising from the emergency condition.

21. To whom a contract may be awarded following solicitation for competitive quotations

(1) A contract for a procurement that is awarded following a solicitation for competitive quotations shall be awarded to the qualified person who submits the best evaluated quotation.

(2) For the purposes of subsection (1), “evaluated” means evaluated in accordance with the evaluation criteria, if any, set out in the request for quotations.

22. Who may award contracts

(1) With the exception of competitive quotations, each contract to be awarded shall be subject to the approval of the Board.

(2) In the case of competitive quotations, the award of a contract for procurement or refusal to award such a contract shall be determined by the procurement officer.

(3) Subject to subsections (1) and (2), the award of a contract for procurement shall be evidenced in writing under the hand of the procurement officer..

PART III**PROCUREMENT BOARD****23. Procurement Board established**

(1) There is hereby established a Procurement Board consisting of

(a) the following *ex officio* members

- (i) the Financial Secretary;
- (ii) the Accounting officer of the Ministry responsible for public works;
- (iii) the Accountant General;

(b) two other members who are public officers appointed by the Minister of Finance on such terms as the Minister considers appropriate.

(2) A member may in writing designate a person to represent him or her at any meeting of the Board, but no designate of an *ex officio* member shall be entitled to sit as Chairperson or Deputy Chairperson if an *ex officio* member is present.

(3) The Board shall be deemed to be properly constituted notwithstanding that there is a vacancy or defect in the appointment of a member or designation of a person to represent a member.

(4) A previous appointment under subsection (1)(b) does not affect a public officer's eligibility to be reappointed as a member.

24. Chairperson and Deputy Chairperson.

(1) The Financial Secretary shall be Chairperson of the Board.

(2) The Minister shall designate a member referred to in section 23.(1)(a)(ii) or (iii) to be Deputy Chairperson.

(3) The Deputy Chairperson shall, in the absence of the Chairperson, discharge his or her duties and exercise his or her powers.

(4) In the absence of the Chairperson and the Deputy Chairperson

- (a) the remaining *ex officio* member, if personally present, shall discharge his or her duties and exercise the powers of the Chairperson; and
- (b) if he or she is not personally present, the members and the designates of members may select a Chairperson for the meeting from among themselves.

(5) In the event of a tie vote, the Chairperson has a second or casting vote.

25. Secretary to Board.

The Minister shall appoint a Secretary to the Board, who shall provide administrative support to the Board and more particularly

- (a) prepare the agenda for each meeting of the Board and give notice of the meeting that shall contain the agenda and the date, time and place of the meeting;
- (b) take accurate minutes of each meeting of the Board including attendance by each member and each person designated as the representative of a member under section 24.(2);
- (c) provide copies of minutes to members of the Board and to affected procurement officers;
- (d) prepare the correspondence of the Board;
- (e) carry out such other tasks in relation to procurement as are assigned to him or her by the Board or the regulations.

26. Quorum.

A quorum of the Board shall be a majority of the members and their designates.

27. Authority of Chairperson to act on behalf of the Board.

(1) When a matter that requires a decision of the Board cannot, in the opinion of the Chairperson, await the next meeting of the Board without causing substantial prejudice to

the Government, the Chairperson may, after such consultations with other members of the Board as are reasonable in the circumstances, communicate the decision made by the Board.

(2) The decision and a summary of the consultations by the Chairperson shall be reported to the Board and recorded in the minutes at the next meeting following the decision that was taken pursuant to subsection (1).

28. Board may hold meeting by signing resolution.

(1) When all the members of the Board or their designates sign a resolution, a meeting of the Board relative to the resolution is deemed to have been held.

(2) The Secretary shall insert the resolution in the minutes of the Board.

29. Committees.

(1) The Board may appoint committees, either generally or with respect to a specific matter, to furnish advice to the Board.

(2) A committee may consist of members of the Board, public officers who are not members of the Board, or both members and non-members.

30. Duties and powers of Board.

(1) Subject to the regulations, the Board, in addition to the duties and powers assigned to it under this Act and the regulations, has the authority to

- (a) determine, for the purposes of section 11.(5), whether a procurement should qualify as a sole source procurement where the estimated amount is equal to or exceeds the prescribed threshold;
- (b) determine, for the purposes of section 11.(7), whether there exists a threat to public health, welfare or safety by reason of an emergency situation and whether a procurement, of which the estimated amount is of the prescribed amount or more in respect of emergency procurements, will eliminate or mitigate the threat;
- (c) grant or refuse its consent to the award of a contract based on whether it is satisfied that the procedure for the award of the contract was commenced in good faith;
- (d) suspend or debar a person from participating in solicitations or from entering into contracts for procurement;
- (e) determine, in consultation with the Attorney-General and subject to the rights of the person who furnished a performance security, the course of action to be taken in the event of a breach of a contract awarded by the Board; and
- (f) exercise the powers in respect of contract administration and any associated matters assigned to it under the regulations.

(2) Nothing in subsection (1) shall permit the Board to review its own actions.

(3) The Board may make rules governing its procedure.

31. Annual assessment and report.

(1) The Board shall annually, without delay, after the tabling of the Report of the Director of Audit on the Public Accounts in the National Assembly, or more often as necessary,

- (a) do an assessment of procurement and contract administration under this Act and regulations, having regard to
 - (i) the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year, and
 - (ii) the cost and other measures necessary to address those issues and problems; and
- (b) prepare a report setting out its findings and its recommendations to address the issues and problems identified in the assessment, including a summary of the steps that need to be taken, and by whom.

(2) The report shall be sent to the Minister who, after such consultations as appear to him or her to be appropriate, shall determine what action shall be taken in relation to the report.

**PART IV
REVIEW****32. Right to review.**

(1) For the purpose of this Part, “procurement authority” means the Procurement Officer or the Procurement Board who has the power to award a contract in relation to a procurement.

(2) Subject to subsection (2), any bidder, offeror, supplier or contractor, that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procurement authority by this Act or the regulations may seek review in accordance with sections 33, 34, 35, 36 and 38.

- (3) The following shall not be subject to the review referred to in subsection (2):
- (a) the determination made by the Minister under section 16(1)(a) or by the procurement officer under paragraph 16(1)(b);
 - (b) the selection of a solicitation procedure pursuant to sections 10 and 11; and
 - (c) a decision of a procurement authority to reject all bids, proposals, offers or quotations.

33. Right by procurement authority.

(1) Unless the procurement contract has already entered into force, a complaint shall, in the first instance, be submitted in writing to the head of the procurement authority.

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

(3) The head of the procurement authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force.

(4) Unless the complaint is resolved by mutual agreement between the bidder, offeror, supplier or contractor that submitted it and the procurement authority, the head of the procurement authority shall, within thirty days after the submission of the complaint, issue a written decision which shall include:

- (a) a statement of the reasons for the decision; and
- (b) if the complaint is upheld in whole or in part, an indication of the corrective measures that are to be taken.

(5) If the head of the procurement authority does not issue a decision by the time specified in subsection (4), the bidder, offeror, supplier or contractor submitting the complaint shall be entitled immediately thereafter to institute proceedings under section 40.

(6) The decision of the head of the procurement authority shall be final unless proceedings are instituted under section 34 or section 38.

34. Administrative review.

(1) A bidder, offeror, supplier or contractor entitled under section 32 to seek review may submit a complaint to an Administrative Review Board established under section 35

- (a) if the complaint cannot be submitted or entertained under section 33 because of the entry into force of the procurement contract, and provided that the intention to submit a complaint is notified to the Chairperson within 20 days after the earlier of the time when the bidder, offeror, supplier or contractor bringing it became aware of the circumstances giving rise to the complaint or the time when that bidder, offeror, supplier or contractor should have become aware of those circumstances;
- (b) if the head of the procurement authority does not entertain the complaint because the procurement contract has entered into force, provided that the intention to submit a complaint is notified to the Chairperson within 20 days after the issuance of the decision not to entertain the complaint;
- (c) pursuant to subsection 33.(5), provided that the intention to submit a complaint is notified to the Chairperson within 20 days after the expiry of the period referred to in subsection 32.(4); or
- (d) if the bidder, offeror, supplier or contractor claims to be adversely affected by a decision of the head of the procurement authority under section 33, provided that the intention to submit a complaint is notified to the Chairperson within 20 days after the issuance of the decision.

(2) Upon receipt of a complaint, the Administrative Review Board shall forthwith give notice of the complaint to the procurement authority.

(3) The Administrative Review Board, after making or causing to be made such investigation as it thinks necessary, may grant one or more of the following remedies, unless it dismisses the complaint:

- (a) make a declaration on the legal rules or principles governing the subject-matter of the complaint;
- (b) prohibit the procurement authority from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procurement authority that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- (d) annul in whole or in part an unlawful act or decision of the procurement authority, other than any act or decision bringing the procurement contract into force;
- (e) revise an unlawful decision by the procurement authority or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
- (f) require the payment of compensation for any reasonable costs incurred by the bidder, offeror, supplier or contractor submitting the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of, or procedure followed by, the procurement authority;
- (g) order that the procurement proceedings be terminated.

(4) The Administrative Review Board shall determine its own procedure, but shall give full opportunity to the parties to present evidence and make representations.

(5) Without restricting the generality of subsections (3) and (4), the Administrative Review Board may by a notice require any person

- (a) to attend before the Board to give evidence under oath or, where permitted by law, on affirmation with respect to any matter related to the examination; and
- (b) to produce any records respecting the matter referred to in the notice.

(6) If a person fails or refuses to comply with a notice under subsection (5), the High Court, on the application of the Chairman of the Administrative Review Board, may issue an order requiring the person to attend before the Administrative Review Board in compliance with the notice.

(7) If a witness refuses

- (a) to give evidence in compliance with a notice under subsection (5);
- (b) to answer any questions before the Administrative Review Board pursuant to the notice; or
- (c) to produce any records referred to in the notice,

the High Court may commit the witness for contempt in accordance with the rules of the Eastern Caribbean Supreme Court Civil Procedure Rules or any other law.

(8) The Administrative Review Board shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.

(9) The decision shall be final unless an action is commenced under section 38.

35. Administrative Review Board.

(1) Upon being notified of the intention to submit a complaint pursuant to section 34, the Minister shall, within fourteen days of receipt of the notification, cause to be constituted an *ad hoc* Administrative Review Board.

(2) The intention to submit a complaint accompanied by a copy of the complaint shall be transmitted to the Administrative Review Board upon its constitution.

(3) The Administrative Review Board shall consist of three members appointed by the Minister.

(4) The Minister shall select members of the Administrative Review Board from amongst persons declared appropriately qualified to be appointed to such Board according to the matter being reviewed.

(5) A list of the persons appointed to the Review Board shall be recorded and kept by the Ministry of Finance.

36. Certain rules applicable to review proceedings under sections 33 and 34.

(1) Promptly after the submission of a complaint under section 33 or 34, the head of the procurement authority, or the Administrative Review Board, as the case may be, shall notify all bidders, offerors, suppliers or contractors participating in the procurement proceedings to which the complaint relates, of the submission of the complaint and of its substance.

(2) Any such bidder, offeror, supplier or contractor or any governmental authority whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings.

(3) A bidder, offeror, supplier or contractor that fails to participate in the review proceedings shall be barred from subsequently making the same type of claim.

(4) A copy of the decision of the head of the procurement authority, or of the Administrative Review Board, as the case may be, shall be furnished within ten days after the issuance of the decision to the bidder, offeror, supplier or contractor submitting the complaint, to the procurement authority and to any other bidder, offeror, supplier or contractor or governmental authority that has participated in the review proceedings.

(5) Where the decision has been issued, both the complaint and the decision shall be promptly made available for inspection by the general public, provided, however, that no information shall be disclosed if its disclosure would

- (a) be contrary to law;
- (b) impede law enforcement;
- (c) not be in the public interest,
- (d) prejudice legitimate commercial interests of the parties; or
- (e) would inhibit fair competition.

37. Suspension of procurement proceedings.

(1) The timely submission of a complaint under section 33 or the timely notification of an intention to complain under section 34 shall have the effect of suspending the procurement proceedings for a period of seven days, provided that the complaint is not frivolous and contains a declaration the contents of which, if proven, demonstrate that the bidder, offeror, supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the complaint will succeed and the granting of the suspension would not cause disproportionate harm to the procurement authority or to other bidders, offerors, suppliers or contractors.

(2) Where the procurement contract enters into force, the timely notification of an intention to complain under section 34 shall suspend performance of the procurement contract for a period of seven days, provided the complaint meets the requirements set forth in subsection (1).

(3) The head of the procurement authority, or the Administrative Review Board, may extend the suspension provided for in subsection (1), and the Administrative Review Board may extend the suspension provided for in subsection (2) in order to preserve the rights of the bidder, offeror, supplier or contractor submitting the complaint or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed 30 days.

(4) The suspension provided for by this section shall not apply if the procurement authority certifies that urgent public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such urgent considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of review except judicial review.

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

38. Judicial Review.

Where

- (a) a person is dissatisfied with the decision of the Administrative Review Board;
or
- (b) the Administrative Review Board has failed to make a decision within the prescribed time-limit

application may be made to the High Court by the aggrieved person for judicial review of the actions of the Administrative Review Board.

PART V
SANCTIONS

39. Sanctions.

(1) A public officer who contravenes any of the provisions of section 12, subsection 16(2) or takes any other actions contrary to this Act commits an offence and shall be liable as follows:

- (a) in the case of a first conviction to a fine of five thousand dollars and to imprisonment for a term not exceeding one year;
- (b) in the case of a second or subsequent conviction, to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years.

(2) A person who,

- (a) being a public officer, corruptly
 - (i) accepts or obtains;
 - (ii) agrees to accept; or
 - (iii) attempts to obtain;

any payment, offer of employment, gratuity or other reward for himself or herself another person in connection with a procurement; or

- (b) gives or offers, corruptly, to a person referred to in paragraph (a) any payment, offer of employment, gratuity or other reward in connection with a procurement;

commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years.

(3) Any person who,

- (a) being a public officer, knowingly
 - (i) gives; or
 - (ii) agrees to give;

confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement; or

- (b) knowingly solicits or obtains confidential information or attempt to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement;

commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years.

40. Party to the offence.

A person who does or omits to do something in order to assist a person in committing an offence against this act or who counsels, encourages or incites a person to commit an offence, also commits the offence and is liable to the same penalty.

41. Report to Public Service Commission.

(1) Notwithstanding anything in this Part, whenever a case of the following type comes or is brought to the notice of an accounting officer, that accounting officer shall forthwith report the circumstances of this case to the Public Service Commission through the appropriate Minister

- (a) artificial division of a procurement so as to be procured as a small procurement;
- (b) failure to take all necessary steps to keep all bids or proposals received from being opened or tampered with until the date and time for the opening of bids or proposals;
- (c) disclosing any information derived from a proposal or discussions with an offeror to another offeror while conducting or privy to discussions with an offeror;
- (d) accepting or obtaining, agreeing to accept or attempting to obtain any payment, offer of employment, gratuity or other reward in connection with a procurement;
- (e) giving or agreeing to give confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement.

(2) A copy of the report shall be transmitted to the Financial Secretary.

(3) Notwithstanding anything in this Part, whenever a case of the type referred to in subsection (1) comes or is brought to the notice of the Financial Secretary, the Financial Secretary shall forthwith report the circumstances of the case to the Public Service Commission through the appropriate authority.

PART VI**REGULATIONS AND MISCELLANEOUS****42. Regulations.**

(1) The Minister may make regulations for the purpose of giving effect to the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations

- (a) any matters stated or required by this Act to be prescribed.
- (b) respecting the procurements by tender, as sole source, as emergency procurement, and by competitive quotations, including

- (i) defining or determining the meaning of qualified, responsive, and evaluated in relation to tenders and solicitations for designated procurements; and
- (ii) further defining “emergency condition;
- (c) respecting the award and execution of contracts;
- (d) respecting the confidentiality of solicitations, awards of contract and contract performance;
- (e) respecting the course of action to be taken when no contract can be awarded after a solicitation, including a further solicitation in accordance with section 10 or the waiver of those solicitation procedures and the negotiation of a contract;
- (f) respecting the grounds for suspension and debarment; and
- (g) respecting contract administration and the role of the Board therein.

(2) Regulations made under this section shall be published in the *Gazette* and shall be subject to negative resolution of the National Assembly.

43. Transitional provision.

A procurement commenced before the coming into operation of this Act shall continue as if this Act had not been passed until a contract is awarded or a decision is made not to continue with it.

CURTIS A. MARTIN
Speaker

Passed by the National Assembly this 14th day of September, 2012.

JOSÉ LLOYD
Clerk of the National Assembly