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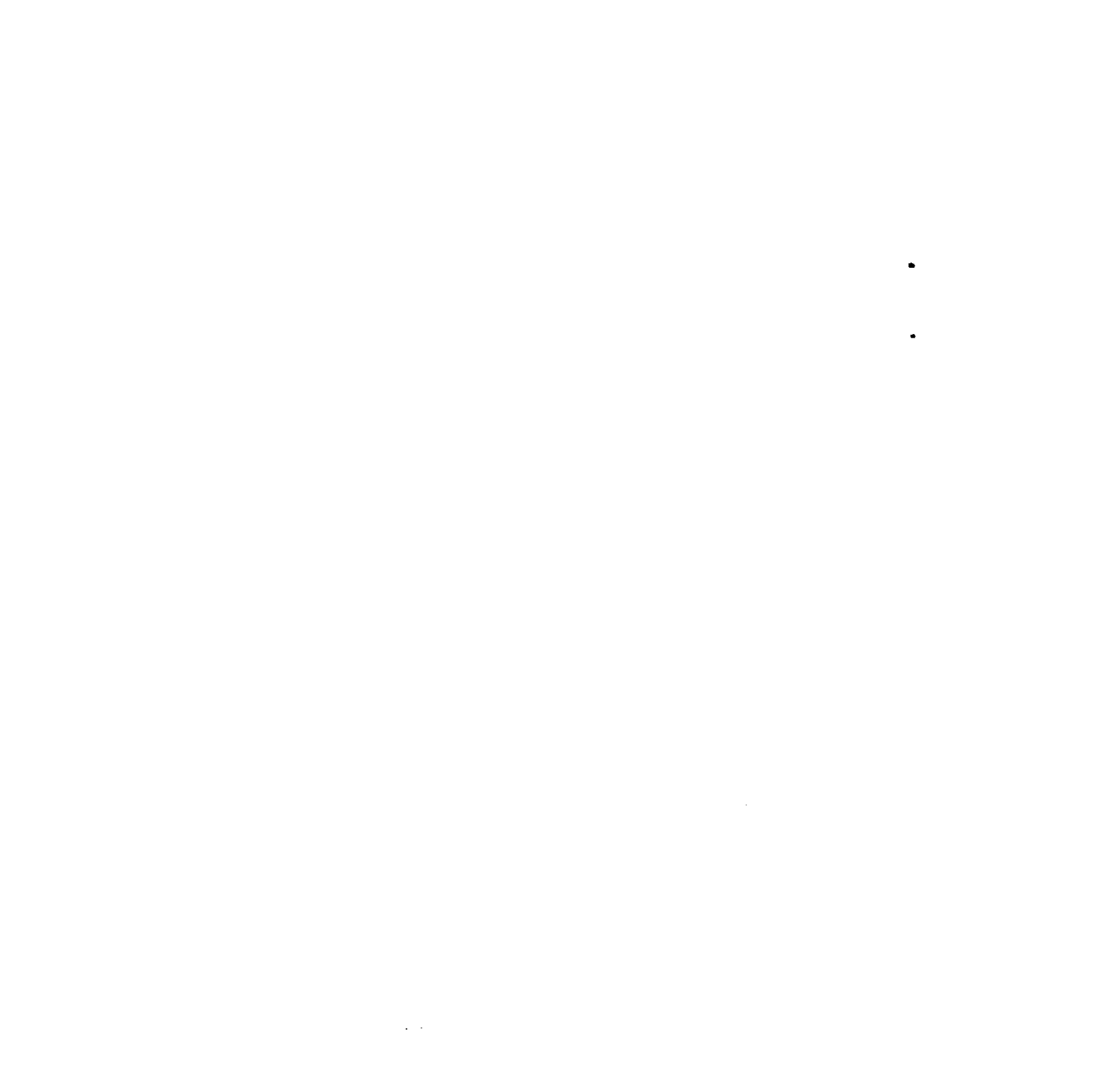
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GRENADA

ACT NO. 25 OF 2007

I assent,

14th September, 2007.

DANIEL CHARLES WILLIAMS
Governor-General.

AN ACT to provide for the general requirements in relation to procurement, to establish the Public Procurement Authority to regulate and harmonise public procurement processes in the Public Service, to promote economic development, including capacity building in the field of public procurement by ensuring value for money in public expenditures and the participation in public procurement by qualified suppliers, contractors, consultants and other qualified providers of goods, works and services and to provide for other related matters.

[21st September, 2007].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Senate and the House of Representatives of Grenada and by the authority of the same as follows—

1. This Act may be cited as the

PUBLIC PROCUREMENT AND CONTRACT
ADMINISTRATION ACT, 2007.

Short title and
commence-
ment.

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- (b) This Act shall come into force on such a day as the Governor-General may appoint by notice in the *Gazette*.

Interpretation.

2. In this Act—

“Authority” means the Public Procurement Authority established pursuant to Part IV;

“Board” means the Public Procurement Board established pursuant to section 15;

“bid” means, according to the type of procurement method being used, a proposal or quotation submitted by a bidder in response to an invitation by a procurement department;

“centralized procurement” means the procurement of—

- (a) building materials on the building materials list kept by the Ministry of Communications, Works and Transport;
- (b) stationery and office supplies on the stationery and office supplies list kept by the Chief Procurement Officer;
- (c) drugs, medical supplies and equipment on the list of drugs, medical supplies and equipment kept by the Ministry of Health;
- (d) computers and related equipment on the list of computers and related equipment kept by the Chief Procurement Officer;

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- (e) office furniture and equipment on the list of office furniture and equipment kept by the Chief Procurement Officer;
 - (f) vehicles and related equipment on the list of vehicles and related equipment kept by the Chief Procurement Officer; and
 - (g) text books and other supplies on the list of text books and other supplies kept by the Ministry of Education;

“consultant” means the provider of intellectual services;

“contractor” means a physical or juridical person under contract with a procuring department to provide work;

“co-operative purchasing” means the combining of requirements of two or more departments to obtain the benefits of volume purchases and a reduction in administrative expenses;

“department” means a department of Government and includes a Ministry;

“Department Procurement Committee” means a Department Procurement Committee established pursuant to Part V;

“goods” means objects of every kind and description, including commodities, raw materials, products and equipment and objects in solid, liquid or gaseous form as well as services incidental to the

supply of goods, if the value of these incidental services does not exceed that of the goods themselves;

“Government” means the Government of Grenada;

“Intellectual Services” means any activity of an intellectual nature that does not lead to measurable physical output;

“member” means a member of the Board appointed pursuant to section 15;

“Minister” unless the context requires otherwise, means Minister responsible for Finance;

“Permanent Secretary” unless the context requires otherwise, means the Permanent Secretary responsible for the Ministry of Finance;

“procurement” means all activities that pertain to the solicitation and entering into a procurement contract by the Government for the supply of goods and services;

“procurement contract” means a supply agreement between a procurement department and a supplier or contractor resulting from procurement proceedings;

“public officer” has the meaning assigned to it under section 111 of the Constitution;

“secretary” means the secretary of the Board appointed pursuant to section 26;

“services” means an object of procurement and includes the supply of—

- (a) professional services or other labour, time or effort and includes, 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;
- (b) subject to section 10 (1) (c), the supply of electricity, telecommunications, water and other similar services; or
- (c) insurance coverage and other similar services,

but does not include engaging an employee;

“small procurement” means a procurement for an amount which the Minister may by order prescribe;

“supplier” means a person or financial person under a procurement contract with a procuring entity to supply goods, construct works or provide other services;

“tenderer” means a person who submits a tender pursuant to solicitation by the relevant public department;

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and furnishing as well as services incidental to construction such as drilling, mapping, satellite, photography, seismic investigations and similar services provided pursuant to the contract if the value of those services does not exceed that of the construction itself.

Application.

3.—(1) This Act applies to—

- (a) the procurement of goods, works and services financed in whole or in part from public funds except where the Minister decides that it is the national interest to use a different procedure;
- (b) functions that pertain to the procurement of goods, works and services including the description of requirements and invitation of sources, preparation, selection and award of procurement contracts and the phases of contract administration.

(2) Without limiting the provisions of subsection (1), this Act applies to all government departments.

(3) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory pursuant to or under an obligation entered into

by the Government, the requirements of those rules shall prevail; but in all other respects, procurement shall be governed by the provisions of this Act.

(4) The Permanent Secretary of the ministry responsible for a procurement made pursuant to subsection (3) shall send to the Board a statement setting out the condition or understanding relevant to the procurement.

(5) The procurement shall be made and the procurement contract shall be entered into in the prescribed manner and be executed on behalf of the Government in accordance with the provision of Part VI except as modified pursuant to the provision of subsection (3).

4. The purposes of this Act are—

Purposes.

- (a) to simplify, clarify and modernize procurement by the Government;
- (b) to provide for increased public confidence in the procurement procedures followed by the Government;
- (c) to ensure fair and equitable treatment of all persons who deal with the procurement system of the Government;
- (d) to provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government; and

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- (e) to provide safeguards for the maintenance of a procurement system of quality, integrity and transparency.

PART II

GENERAL PROCUREMENT REQUIREMENTS

Application of
this Part.

5. This Part applies to all procurements made by the Government save and except to the extent that they are exempted pursuant to Part III.

Requirements
before
solicitation.

6. A procurement department shall, before commencing a solicitation—

- (a) inquire as to whether or not its requirements can be met by the transfer of goods from another department;
- (b) ensure that an accurate estimate of the cost of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and
- (c) commit the amount of the estimate in accordance with the provisions of the Public Finance Management Act.

Artificial
division of
procurement.

7. A person shall not divide a procurement with the intention of avoiding the monetary thresholds which the Minister may by order prescribe.

8. The Minister may prescribe—Use of form for
agreements.

- (a) the use of forms for procurement contracts and purchases order for construction, the supply of goods and the rendering of services; and
- (b) financial limits within which those procurement contracts or purchase orders shall or may be used.

9.—(1) A procurement contract awarded by the Board shall be executed on behalf of the Government by the Permanent Secretary of the procuring department.

Execution of
agreements.

(2) A procurement contract awarded by a Departmental Procurement Committee shall be executed on behalf of the Government by the Permanent Secretary under whom the Department Procurement Committee falls.

(3) A procurement contract awarded for a small procurement shall be executed by the Permanent Secretary under which the Department Procurement Committee falls.

PART III**EXEMPT AND PARTIALLY EXEMPT
PROCUREMENTS**

10.—(1) The following procurements are exempted from the provisions of Part VI—

Procurements of
professional
health and legal
services.

- (a) a procurement of the professional services by a health professional or a legal professional;

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- (b) the acquisition of a work of art or object of historical or cultural interest;
 - (c) the supply of electricity, telecommunications, water or other similar services by a supplier that has a monopoly on the supply of those services.

(2) A procurement contract for services referred to in subsection (1)(a) or (b) may be negotiated, be in the form prescribed, be entered into, and executed, on behalf of the Government by the Permanent Secretary of the department responsible for the procurement.

(3) A procurement contract for services referred to in subsection (1) (c) may be negotiated and entered into by the Permanent Secretary.

(4) Where a procurement contract referred to in subsection(1) (a) or (b) is entered into between a contractor and a procuring department the Permanent Secretary of the department responsible for the procurement shall give written notice to the Board setting out—

- (a) the basis on which the procurement is exempted;
- (b) particulars of the nature of the procurement and its terms and conditions;
- (c) the name and address of the contractor.

(5) Subsection (1)(b) may be satisfied by attaching a copy of the procurement contract.

11.—(1) The Minister may, where he or she is of the opinion that it is in the interest of national security to do so, and after consulting with the Board, make an order—

Procurements relating to matters of national security.

- (a) wholly or partly exempting any procurement involving matters relating to national security from the provisions of Part VI; and
- (b) requiring the procurement to be kept confidential.

(2) An order under subsection (1) shall exempt procurement from the provision of Part VI only to the extent that is necessary to protect the national interest and where the exemption is partial the order shall specify the extent of the exemption.

(3) The procurement shall be made and the procurement contract shall be entered into, be in the prescribed form and executed on behalf of the Government in accordance with the provisions of Part VI except to the extent that it is exempted by an order under subsection (1).

(4) An order made pursuant to subsection (1) shall be sent to the Board within seven days of the order being made.

(5) When an order is made under subsection (1) (b) a person shall not disclose any information or document about the procurement—

- (a) to a public officer save and except where that information or documentation is needed to assist the public officer in the performance of his or her functions; or

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- (b) to any other person save and except when required to do so under an Act or when authorized to do so, in writing by the Minister.

Procurements
under co-oper-
ative purchasing
agreements.

12.—(1) A procurement agreement for the procurement of goods or services entered into by the Minister with any one or more of the following shall be exempted from the provisions of Part VI—

- (a) a government other than the Government of Grenada;
- (b) a statutory body or public authority inside or outside Grenada;
- (c) any regional organization in the Caribbean.

(2) The Minister shall furnish a copy of an agreement made under subsection (1) or an agreement to vary or cancel a co-operative procurement purchasing agreement to the Board within seven days after the co-operative purchasing agreement is made.

Maintenance of
Register.

13. The Secretary shall, for each financial year, maintain a Register—

- (a) for procurements referred to in section 10 for which notices referred to in subsection (4) of that section shall be filed;
- (b) for procurements referred to in section 11, for which orders referred to in subsection (1) of that section shall be filed;

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- (c) for procurements referred to in section 3 (5) for which all statements referred to in subsection (4) of that section shall be filed;
 - (d) of co-operative procurements agreements referred to in subsection 12 in which agreements and variations and cancellations referred to in that section shall be filed.

PART IV

PUBLIC PROCUREMENT AUTHORITY

14.—(1) There is hereby established a body known as the Public Procurement Authority.

Establishment
of Public
Procurement
Authority.

(2) The Authority shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Authority shall have a common seal, the use of which shall be authenticated by the signature of—

- (a) the Chairperson or other member of the Board authorized either generally or specially by the Board in that behalf; and
- (b) the Chief Procurement Officer or some other person authorized by the Board in that behalf.

Board of
Authority.

15.—(1) The governing body of the Authority shall be a Board consisting of the following persons appointed by the Minister upon prior approval of Cabinet—

- (a) a Chairperson, who shall be a person competent and knowledgeable in public procurement and the public service;
- (b) a senior legal representative from the Ministry of Legal Affairs;
- (c) the Permanent Secretary of the Ministry of Finance;
- (d) the Permanent Secretary of the Ministry of Works;
- (e) two persons who shall represent the private sector community; and
- (f) the Chief Procurement Officer.

(2) The members of the Board shall be persons of high personal probity.

Tenure of
members of the
Board.

16.—(1) The Chairperson and other members shall hold office for a period of three years and shall be eligible for re-appointment.

(2) The Minister shall, upon prior approval of Cabinet terminate the appointment of a member on the following grounds:

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- (a) for his or her inability to perform the functions of his or her office by reason of infirmity of mind or body;
 - (b) for proven misconduct;
 - (c) if he or she becomes bankrupt or insolvent;
 - (d) if he or she is convicted of an offence involving fraud or dishonesty;
 - (e) if he or she fails to attend three consecutive meetings of the Board without reasonable cause; or
 - (f) if he or she resigns his or her office by written notice to the Minister;
 - (g) becomes incapable, willful or otherwise of carrying out his or her functions pursuant to the provisions of this Act.

(3) The appointment of a member shall not be terminated unless that member has been given a reasonable opportunity to be heard.

17.—(1) Subject to this Act, the Board shall have the control and supervision of the Authority. Functions of the Board.

(2) It shall also be the responsibility of the Board to provide such policy guidance and advice as will secure the efficient implementation of the functions of the Authority and enhance the overall performance of the Authority.

(3) In addition to the function under subsection (2) the Board shall have the sole responsibility for—

- (a) centralized procurement irrespective of value;
- (b) procurement of the amount as may be prescribed other than those procurements delegated to a Departmental Procurement Committee.

Remuneration of
members.

18.—(1) The Chairperson and the other members of the Board shall be paid such remuneration, fees and allowances and shall be reimbursed by the Authority for expenses incurred in connection with the discharge of their functions as the Minister may determine.

Filling of
vacancies.

19.—(1) Where the Chairperson or a member dies, resigns, ceases to be a member pursuant to section 16 (2) or is absent from Grenada for a continuous period exceeding three months or is by reason of illness unable to perform the functions of his or her office—

- (a) the members of the Board shall, as the case may be, elect one of their number to act as Chairperson until such time as the Chairperson resumes his or her office or another is appointed in his stead; and
- (b) the Minister shall appoint a person to act from the same category from which the member was appointed in the first instance.

(2) Where a person is elected as Chairperson or appointed as a member to fill a vacancy, he or she shall hold office for the remainder of the term of the previous Chairperson or member, as the case may be and shall, subject to this Act, be eligible for re-appointment.

20.—(1) The Board shall hold its first meeting on such date and at such place as the Minister, after consultation with the Board, may determine; and thereafter, the Board shall meet for the dispatch of business at such time and place as the Chairperson may decide but shall meet at least once every month.

Meetings of
Board.

(2) At any meeting of the Board where he or she is present, the Chairperson shall preside and, in his or her absence, the members present may elect one of their member to preside.

(3) The quorum at a meeting of the Board shall be five, including the Chief Procurement Officer.

(4) Each member including the Chief Procurement Officer shall have one vote but in the case of an equality of votes, the Chairperson shall have a casting vote.

(5) Notwithstanding subsection (1), the Minister may request the Board to convene an urgent meeting to deal with a matter which he or she deems to be of national importance and requires urgent attention.

(6) The Board may at any time co-opt any person to provide special or additional technical knowledge or advise or otherwise assist the Board at any of its meetings but the person co-opted shall not vote on any matter for decision by the Board.

(7) All acts, matters or things authorized or required to be done by the Board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of at least five members, including the Chairperson.

(8) Any proposal circulated among all members and agreed to in writing by a two-third majority of all 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.

(9) The Board shall cause minutes of all its meetings to be taken by the Secretary to the Board and signed by the Chairperson and kept in the proper form as a public document.

(10) Subject to this Act, the Board shall regulate its meetings and procedure as it thinks fit.

Disclosure of
interest.

21. A member of the Board who has any interest, direct or indirect, in any matter to be considered by the Board, shall disclose the nature of his or her interest to the Board and such disclosure shall be recorded in the minutes of the Board and such member shall not take part in any deliberation or decision of the Board relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the Board.

Powers of Board.

22. In the discharge of its functions under this Act, the Board may—

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- (a) direct the Chief Procurement Officer to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
 - (b) give instructions to the Chief Procurement Officer in connection with the management and performance of the functions of the Authority;
 - (c) on the recommendation of the Chief Procurement Officer, approve such organizational structures as the Chief Procurement Officer may consider necessary for the efficient discharge of the functions of the Authority.

23.—(1) The Authority shall have a secretariat which shall provide administrative, secretarial and other support for the Authority and the Procurement Review Tribunal.

Secretariat of
Authority.

(2) The secretariat shall be headed by a Chief Procurement Officer who shall be appointed by the Minister upon prior approval by Cabinet subject to such terms and conditions as the Minister may determine, and shall have such structures and organization as the Authority may determine necessary for the efficient performance of its functions.

(3) In addition to the Chief Procurement Officer, the secretariat shall have such other staff as is required for the efficient performance of the functions of the Authority.

(4) As head of the secretariat, the Chief Procurement Officer shall be responsible for—

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- (a) the day to day management of the affairs of the Authority;
 - (b) the administration, organisation and control of the staff of the Authority;
 - (c) the management of funds and other property of the Authority;
 - (d) the performance of such other functions as the Board may determine.

Functions of the
Authority.

24.—(1) The object for which the Authority is established is to regulate and monitor public procurement in Grenada and to advise the Government on issues relating to public procurement.

(2) Without prejudice to the generality of subsection (1) it shall be the responsibility of the Authority to—

- (a) implement policies and standards on public procurement and to ensure compliance therewith by all parties to procurement contracts;
- (b) assess the operations of the public procurement process and submit proposals for the improvement of the processes, including the introduction of information and communications technology, and the development of modalities for appropriate collaboration among procuring departments;

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- (c) ensure capacity building and human resource development for public procurement including developing, promoting and supporting training and professional development of persons engaged in public procurement;
 - (d) disseminate information about, and promote public awareness of the public procurement system;
 - (e) issue standard forms of contracts and standard bidding documents for mandatory use by all procuring departments;
 - (f) plan and co-ordinate technical assistance in the field of public procurement;
 - (g) publish a quarterly Public Procurement Bulletin which shall contain information on public procurement, including approved government plans, proposed procurement notice and notices of invitation to bid and contract awarded information;
 - (h) publish in the Public Procurement Bulletin or in the *Gazette* a database of suppliers, contractors, and consultants, and records of process to assist in the work of procuring entities;

- (i) prepare an annual report on the overall functioning of the public procurement system including a profile of procurement activities, to be presented to Cabinet and tabled before Parliament through the Minister;
- (j) on its own motion or based on reports by a procuring department or the Procurement Review Tribunal, investigate and suspend from procurement proceedings under this Act suppliers, contractors and consultants who have neglected their obligations under a procurement contract, or provided false information with respect to their qualifications or official inducements referred to in this Act;
- (k) maintain and issue on a regular basis to all procuring departments a list of suspended suppliers, contractors and consultants;
- (l) perform such other functions as are mandated or conclusive to the attainment of the object stated in subsection (1).

(3) The Authority shall have power, in performing its functions under this Act—

- (a) by notice in writing, to require any party to a procurement contract to furnish in such form and manner and within such

time as may be specified in the notice, periodical or other information or estimates concerning such contract or such other matters as may be specified in the notice;

- (b) to interview any party to a procurement contract and require him or her to furnish such particulars as the Authority may require;
- (c) by notice in writing, to require a party to a procurement contract to complete a form contained in the notice with particulars relating to the contract or such other matter specified in the notice and to return it in the manner and within the time specified therein.

(4) A notice referred to in subsection (1)

- (a) may be served by delivering it to the party to whom it is addressed or by sending it by registered post, fax or e-mail to his or her last known address;
- (b) shall state that it served in exercise of the powers conferred by this section and shall include a general statement of the purpose for which the information, estimates, returns or particulars are required.

(5) Where a requirement to furnish information, estimates, returns or particulars is made pursuant to the provisions of this Act, the information, estimates, returns or