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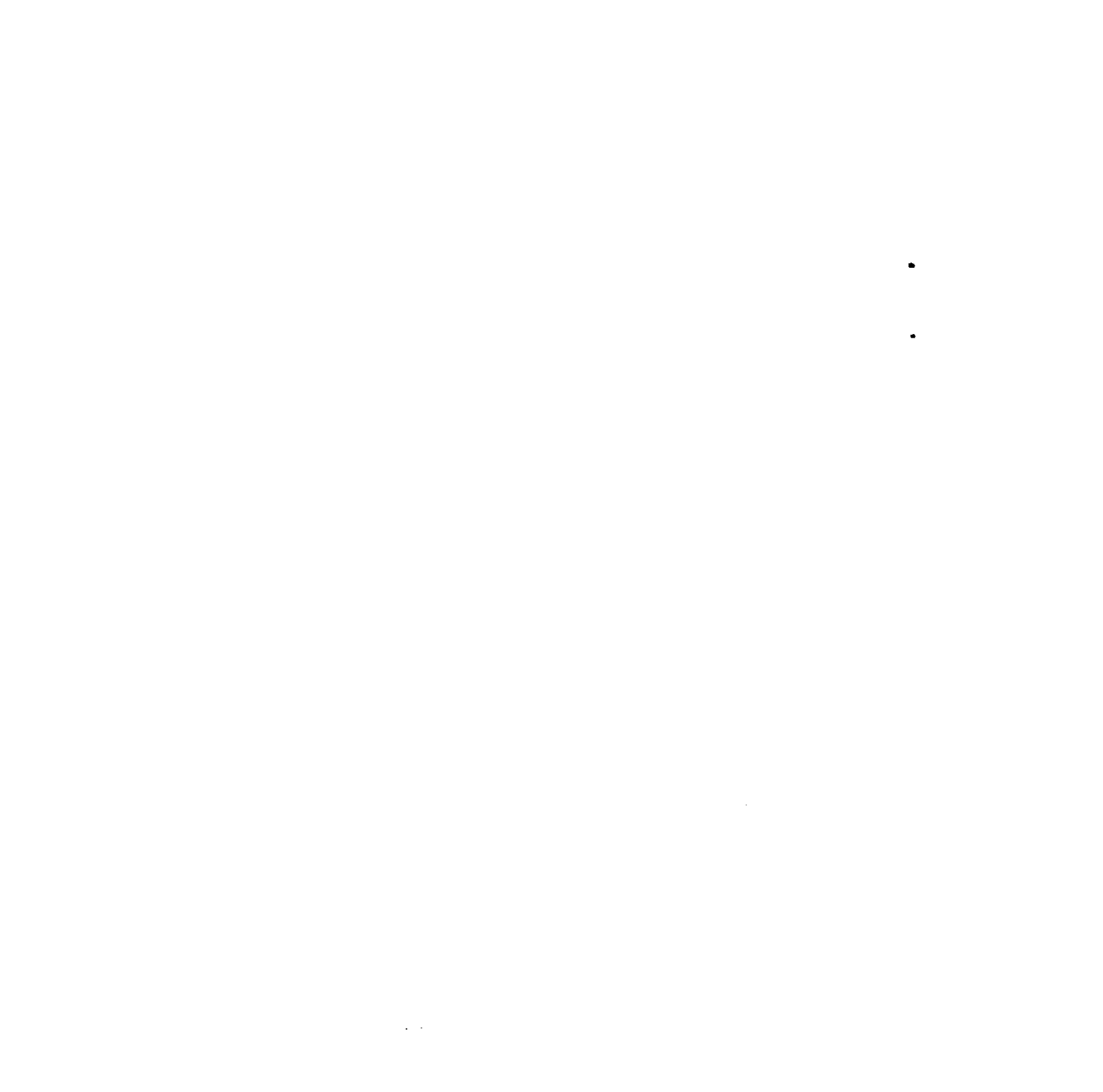
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GRENADA

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.

-
- (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;

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- (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

particulars shall be furnished by the party concerned or a person specifically authorized for the purpose of that party.

(6) Nothing in the functions of the Authority under subsections (2) and (3) shall be construed to include the power to participate in the award of any specific procurement contract.

(7) Subject to this section, every party to a procurement contract shall, to the best of his knowledge and belief, answer when is required all questions put to such party, orally or in writing by the Chief Procurement Officer or an officer of the Unit authorized in that behalf, not later than the date specified in the notice.

(8) A party to a procurement contract who—

- (a) fails to answer a question put to him as required under this Act or furnishes an answer to such a question which is false or misleading in any material respect, knowing the answer to be false or misleading or
- (b) willfully obstructs the Chief Procurement Officer or any officer or employee of the Authority in the performance of any of its functions under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

25.—(1) Notwithstanding any law to the contrary, no commercially sensitive information collected by the Authority pursuant to the provisions of this Act shall, subject to subsection (2), be disclosed to any person.

Confidentiality
and prohibition
of disclosure of
information.

(2) The return or other information referred to in subsection (1) may, subject to the directions of the Chief Procurement Officer be disclosed—

- (a) to any person if required for the performance of that person's functions under this Act;
- (b) if required by any law or as evidence in any court of law.

(3) An officer of the Authority or member of the Board who in the course of his or her employment under this Act—

- (a) willfully discloses any data or information obtained in the course of such employment to a person not authorized to receive that information;
- (b) uses information obtained in the course of such employment for the purpose of speculating in any stock, bond or other security or any goods or services, before its release is authorized by the Chief Procurement Officer or the Board; or
- (c) otherwise contravenes this section,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Appointment of
secretary.

26. The Board, acting on the advice of the Minister, shall appoint a secretary to the Board, who shall, in addition to the responsibilities assigned to him or her under this Act, provide administrative support to the Board and more particularly—

- (a) give notice of meetings of the Board;
- (b) take accurate minutes of meetings of the Board and provide copies to members of the Board and to affected procurement officers;
- (c) keep records of the business of the Board;
- (d) prepare the correspondence of the Board;
- (e) carry out such other tasks in relation to procurement as are assigned to him by this Act or the Board.

Appointment of
committees.

27. The Board may, for the discharge of its functions appoint committees of the Board comprising members of the Board or non members or both and may assign to them functions as the Board may determine save and except that a committee comprised entirely of non-members may only advise the Board.

PART V

APPOINTMENT OF DEPARTMENTAL
PROCUREMENT COMMITTEE

28.—(1) The Permanent Secretary of a department may, after consultation with the Board establish a Department Procurement Committee for that department in the manner as shall be prescribed.

Appointment of
Departmental
Procurement
Committee.

(2) The Board shall establish guidelines detailed in a letter of Understanding to govern the powers of delegation given by the Board to the Departmental Procurement Committee.

(3) The Board may delegate to the Departmental Procurement Committee, procurements for the purposes of the department, which may include a centralized procurement if the department is the department responsible for that procurement.

(4) Pursuant to subsection (1), the Board may through the Permanent Secretary, give such directions to the Departmental Procurement Committee with regard to the carrying out its responsibilities and exercise of its powers.

(5) Subject to the directions referred to in subsection (4) the Departmental Procurement Committee has, in relation to a procurement delegated to it, all the responsibilities and powers of the Board except that it is not permitted to further delegate its authority given to it by the Board, unless the Board so permits.

Procurement
staff.

29.—(1) All procurement related functions shall be carried out by persons trained and knowledgeable in procurement in accordance with the guidelines and qualifications requirements established by the Authority.

(2) Subject to the provisions of this Act, a procuring department shall be responsible for procurement with the funds at its disposal.

PART VI

METHODS OF PROCUREMENT

Choice of
Procurement
methods.

30.—(1) Public procurements shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided in sections 31, 32, 33, and 44.

(2) If the procuring department uses a method of procurement other than advertised open bidding or, in the case of procurement of consultant services, a method other than request for proposals, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.

Open Com-
petitive bidding.

31.—(1) The open bid proceedings may include a prequalification stage or apply a post qualification procedure prior to the award of contract.

(2) The open bid may be carried out in a single stage or in two stages, but use of the two-stage method is appropriate in the circumstances outlined in subsection (3); all other methods to be selected as the circumstances require from this Part.

(3) An open bid may be held in two stages in the following cases:—

- (a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and
- (b) when, because of the complex nature of the goods, works or services to be procured, the procuring department wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications.

32.—(1) In procurement proceedings in which the procuring departments decided that only domestic suppliers or contractors are likely to be interested in submitting bids, the procuring department may employ national competitive bidding procedures. National Com-
petitive bidding.

(2) The procuring department is not required to employ national competitive bidding procedures if the estimated contract amount is lower than the value threshold.

(3) The procuring department may stipulate in the bidding documents that bidders shall quote only in the local currency and payments shall be made wholly in the local currency.

(4) At least two weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the bids in the manner as may be prescribed.

International
Competitive
bidding.

33.—(1) The procuring department shall employ international competitive bidding procedures when the estimated contract amount is higher than the value threshold.

(2) Prescribed International competitive bidding may be used whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.

(3) International competitive bidding shall be in accordance with the appropriate procedures prescribed in this Act together with the following:—

- (a) the invitation to bid and bidding documents shall be in English;
- (b) the invitation to bid shall be placed in at least two newspapers with adequate circulation to attract foreign competition in the manner as may be prescribed;
- (c) at least four weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the tenders in the manner as may be prescribed;
- (d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular

shall conform to the prescribed principle;

- (e) bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies, or in a currency widely used in international trade and stated in the bidding documents;
- (f) general and special conditions of contract shall be of a kind generally used in international trade.

34.—(1) Restricted bidding may be held in the following Restricted bidding. cases:—

- (a) when the goods, works or services are only available from a limited number of bidders;
- (b) when the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement.

35.—(1) When restricted bidding is employed on the Procedures for restricted bidding. grounds referred to in paragraph (a) of section 34, all known suppliers capable of supplying the goods, works or services shall be invited to bid.

(2) When restricted bidding is employed on the grounds referred to in paragraph (b) of section 34, the procuring department shall solicit bids from a minimum number of five bidders, if possible.

(3) The procedures for bidding proceedings, as set forth in this Part, apply to restricted bidding, except to the extent that they are modified by this section.

Request for proposals.

36. Request for proposals for services is the method to be used for the procurement of consultant services, subject only to the exceptions provided in section 39.

Request for quotations.

37. The request for quotations method may be used for the procurement of goods and works—

- (a) where the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the procuring department and the estimated value does not exceed the prescribed amount;
- (b) when the estimated value of the procurement of small works, does not exceed the prescribed amount;
- (c) when the estimated value of the procurement of services does not exceed the prescribed amount.

Basic procedures for request for quotations.

38.—(1) Quotations shall be requested in writing from as many bidders as practicable, but from at least three bidders.

(2) The request shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time to delivery, as well as any other special requirements.

(3) Bidders shall be given adequate time to prepare and submit their quotations, but each bidder shall be permitted one quotation, which may not be altered or negotiated.

(4) A purchase order shall be placed with the bidder that provided the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.

39.—(1) Public procurement by means of the sole-source Sole-source. procurement method is permitted only in the following circumstances:—

- (a) when only one supplier has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured and no suitable alternative is available;
- (b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- (c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional

works or services from the initial contract would be difficult for technical or economic reasons;

- (d) when the services require that a particular consultant be selected due to his unique qualifications, or when it is indispensable to continue with the same consultant.

(2) Use of sole-source procurement on the grounds referred to in paragraphs (b), (c), (d), and (e) of subsection (1) is subject to prior approval by the procurement department.

Basic procedure
for sole-source
procurement.

40.—(1) When the procuring entity engage in sole-source procurement on the grounds referred to in section 39, it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery; and shall request submission of a bid or proposal in writing or both and shall be free to negotiate with the sole bidder.

(2) Publication in the *Gazette*, of a notice of the holding of sole-source procurement proceedings is required when the estimated value of the procurement exceeds the prescribed threshold.

Emergency
procurement.

41.—(1) Notwithstanding any other provision of the Act, a procurement may be made as an emergency procurement as prescribed by regulations when the Cabinet determines that an immediate action is required to prevent irreparable injury to public good due to an emergency situation.

(2) In this Act, “emergency situation” means a state of affair wherein because of unforeseen intervention of nature or any other event likely to cause an immediate threat to life, limb or property, an immediate action is required.

42.—(1) The invitation to bid, or an invitation to prequalify, shall be published in the *Gazette*, and, when feasible, and, in the case of international competitive bidding, also in selected international media listed in the guidance provided by regulations. ^{Invitation to bid.}

(2) A procuring department may limit participation on the basis of nationality in accordance with regulations and shall include in the record of the procurement proceedings a statement of the grounds and circumstances on which it relied.

(3) An international bid in which the participation of foreign bidders is invited, shall involve publication in the English language of the invitation to submit bids, or to apply for prequalification, if such procedures take place, in the prescribed manner and the bidding and contract documents are also to be made available in the English language, shall be held in the following cases:—

- (i) when the estimated value of the procurement exceeds the prescribed thresholds; or
- (ii) when there is no response to a national bidding proceeding.

(4) The invitation to bid or, as the case may be, the invitation to prequalify, shall include information on—

- (a) the identity and address of the procuring department;
- (b) the nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
- (c) the manner of obtaining and the price of the bidding documents, or, if applicable, the prequalification documents;
- (d) the place and deadline for submission of bids, or of applications to prequalify;
- (e) such other matters as may be prescribed in the regulations and standard forms issued by the Authority.

Bidding
documents.

43.—(1) Unless provided otherwise under the regulations, a procuring department shall use the prescribed standard bidding document.

(2) The procuring department shall provide, in an expeditious and non discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of prequalification proceedings, to all bidders that have been prequalified, and the price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.

(3) The bidding documents shall inform bidders of—

- (a) the nature and time frame of the procurement, including, but not limited to the technical specifications or drawings, as the case may be, terms of reference, the contractual terms of the procurement, and the manner of entry into force of the contract;
- (b) bidder qualification requirements if a pre-qualification procedure was not followed;
- (c) information as to site visits and pre-bid conferences;
- (d) instructions for preparation and submission of bids, including the deadline for submission of bids, time and place of bid opening;
- (e) components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- (f) the criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights and when considering evaluation criteria, the

procuring entity shall consider only the following:—

- (i) the bid price;
- (ii) the cost of operating, maintaining and repairing the goods, or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
- (iii) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in goods, works or services being offered by bidders, the transfer of technology and the development of managerial, scientific and operational skills;
- (g) the preference, if any, for domestic goods and contractors as outlined in regulations;
- (h) any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
- (i) whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;

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- (j) if suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
 - (k) the required validity period of bids;
 - (l) the amount and acceptable forms of any required bid, performance or other security;
 - (m) the conditions of contract which will be entered into with the successful bidder;
 - (n) notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
 - (o) the manner in which bidders may obtain review of actions, omissions and decisions of the procuring entity; and
 - (p) such other matters as may be required in regulations, manuals and standard forms as may be prescribed.

44.—(1) A bid shall be submitted in writing, duly signed and in a sealed envelope; and bids received after the deadline for submission of bids shall be returned unopened. ^{Submission of bids.}

(2) Invitation for prequalification and bidding documents shall permit submission of applications to pre-qualify or bids by hand or mail or by courier at the option of the bidder.

(3) Subject to the policy laid down by the Authority, the bidding documents may authorize other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with section 36.

(4) Bids shall remain valid for the period of time indicated in the bidding documents, but modification or withdrawal of a bid during the bid validity period is subject to forfeiture of the bid security.

(5) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned and a bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security, if such a security was required.

Bid security.

45.—(1) The bidding documents may require bidders to submit a bid security, which shall be applied to all bidders, and set in accordance with the regulations.

(2) Forfeiture of a bid security may be imposed only in the event of—

- (a) a modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
- (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;

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- (c) failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
 - (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.

46.—(1) Bids shall be opened at the time and place Bid opening. indicated in the bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.

(2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request; and any documents with financial implications must be signed by the chairman and two other members of the bid opening committee.

(3) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.

(4) Following opening of the bids, and until the preliminary decision on award has been notified to the successful bidder, a bidder shall not make any unsolicited communication to the procuring department or try in any way to influence the procuring entity's examination and evaluation of the bids.

Examination
evaluation and
comparison of
bids.

47.—(1) Following the opening of bids, the procuring entity shall first examine the bids in order to determine whether the bids are complete, signed, whether required documents to establish legal validity and required bid security have been furnished and whether bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.

(2) Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, if one is required, or not accompanied by essential supporting documents such as business registration certificates, business licences and tax receipts, or are substantially non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.

(3) If a prequalification procedure was applied, a bid received from any entity other than the prequalified bidders shall be rejected and excluded.

(4) Bids not excluded from consideration under subsections (2) and (3), shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.

(5) The procuring entity may seek clarification from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited.

(6) If there is an arithmetical error, such an error shall be rectified and the bidder notified but if the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited.

(7) If there is a discrepancy between figures and words, the amount in words shall prevail unless the discrepancy is due to misplacement of decimal point, in which case the mistake shall be rectified and the bidder notified.

(8) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection of bid at the earlier stage, such a minor variation shall be costed, if possible, and the evaluation cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.

(9) If the process included a prequalification, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.

(10) If there was no prequalification, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents; if that bid fails, the same check shall be applied to the next ranked bid.

48. Information relating to the examination, clarification, evaluation and comparison of bids shall be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, as provided in any manner as may be prescribed.

Non-disclosure
of bid evaluation
details.

49.—(1) Except as provided in paragraph (b) of subsection (2), no negotiations shall take place between the procuring department and a supplier or contractor with respect to a bid submitted by the supplier or contractor.

Prohibition of
negotiations.

(2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the procuring entity shall investigate the causes for the excessive cost and may—

- (a) consider requesting new bids; or
- (b) subject to approval by the procurement committee and guidelines issued by the Authority, negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope which can be reflected in a reduction of the contract price.

Award of
contract.

50.—(1) The contract shall be awarded to the bidder having submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents.

(2) Prior to the expiry of the period of bid validity, the procuring entity shall notify the successful bidder of the proposed award, which shall specify the time within which the contract must be signed, subject to any intervening complaints filed in accordance with Part VII.

(3) Where the value of the contract exceeds the levels set in the regulations, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 calendar days have passed following the giving of that notice.

(4) If the bidder whose bid has been accepted fails to sign a written contract, when required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the procuring entity shall accept the next ranked bidder from among the remaining bids that are in force, but in selecting the next ranked bidder, the procuring entity shall comply with the provisions of section 47 as appropriate, as well as with the notice requirements provided in subsection (2).

51.—(1) Where the bidding documents require the supplier or contractor whose bid has been accepted to sign a written procurement contract conforming to the bid, the procuring entity and the supplier shall sign the procurement contract within 30 days after the notice referred to in subsection (2) of section 49 has been dispatched to the supplier or contractor.

Acceptance of
bid and signature
of contract.

(2) Where a written procurement contract is required to be signed, the procurement contract shall enter into force when the contract is signed by the supplier or contractor and by the procuring entity.

(3) Except as provided in subsection (2) of section 49, a procurement contract in accordance with the terms and conditions of the accepted bid shall enter into force when the notice is dispatched to the supplier or contractor that submitted the bid, if it is dispatched while the bid is in force.

(4) Contracts shall be signed by the Permanent Secretary of a procuring department, but he or she may delegate signature of small procurements contracts in the manner as may be prescribed.

Two-stage bidding.

52.—(1) Where a procurement is to be done by two-stage bidding, the bidding documents shall, in the first stage, call upon bidders to submit initial bids without a bid price, and may solicit initial proposals relating to the technical, quality or other characteristics of the goods, works or services, as well as to contractual terms and conditions of the proposed contract and, where relevant, the professional and technical competence and qualifications of the bidders.

(2) The procuring department may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes; minutes of these discussions shall form part of the procurement records.

(3) At the end of the first stage, the procuring department may—

- (a) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive;
- (b) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.

(4) In the second stage, the procuring department shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.

(5) A bidder, not wishing to submit a final bid, may withdraw from the bidding proceedings without forfeiting any bid security that the bidder may have been required to provide, and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised documents.

(6) The procedures for bidding set forth in section 50 apply to two-stage bidding proceedings, except to the extent they are modified by this section.

53.—(1) For the purposes of procuring the services of a consultant, the procuring department shall prepare a shortlist of 3 to 6 consulting firms, to the greatest extent feasible, comprising consultants of the same category, and similar capacity and business objectives, to which it shall provide the request for proposals for services; and the short-list shall be established from among those who have capacity to perform the required services, as demonstrated in their submissions.

Request for
consultant's
services.

(2) When the estimated value of the procurement exceeds the prescribed threshold, in order to establish the short-list, the procuring department shall seek expressions of interest by publishing a notice in the *Gazette*, and where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal.

(3) For assignments of a value lower than the prescribed threshold the short-list may be established from market knowledge, or other sources of information but in the case of assignments which have an estimated value above that

threshold, or are particularly complex, an advertisement shall also be utilized.

(4) The request for proposals shall provide short-listed bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity including, in particular—

- (a) the name and address of the procuring department;
- (b) the nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
- (c) the criteria to be used in evaluating and comparing proposals, and their relative weights as compared to price;
- (d) the contractual terms of the procurement, and the manner of entry into force of the contract;
- (e) instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
- (f) the final selection procedures to be applied;
- (g) notice of conflict-of-interest restrictions and anti-fraud and corruption rules; including the grounds for potential debarment from future participation in procurement of goods, service or works that may result from the assignment under consideration;

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- (h) and such matters as may be prescribed in the regulations and standard documents issued by the Authority.

(5) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

54.—(1) The selection of the successful proposal shall be based either— Selection based on quality and cost.

- (a) on the technical quality of the proposal, the consultant's relevant experience and the expertise of its staff, and the proposed work methodology, as well as the price of the proposal; alternatively,
- (b) on the quality of the technical proposal submitted within a predetermined fixed budget; or
- (c) on the basis of the best financial proposal submitted by the candidates, having obtained an acceptable technical score pre-disclosed in the request for proposals.

(2) Detailed procedures shall be set forth in the regulations.

55. When the services are of an exceptionally complex nature or of a considerable impact on future projects or national economy or when they may lead to the submission of proposals which are difficult to compare, the consultant may be selected exclusively on the basis of the technical quality of his proposal; the use of which method should be approved by the procurement committee. Selection based on quality.

Contract award.

56.—(1) The contract may be negotiated with the selected consultant but negotiations may not be simultaneously held with several consultants.

(2) The procuring department shall notify its proposed award to all shortlisted consultants at the same time it notifies the selected consultant, but where the value of the contract exceeds the levels set in the regulations, the contract shall not be signed until at least 14 calendar days have passed following the giving of that notice.

(3) The selected consultant shall not be permitted to substitute key staff, unless both parties agree that undue delay in the selection process makes such changes unavoidable or that such changes are critical to meet the objectives of the assignment.

(4) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

Small procure-
ments.

57. A small procurement may be made in accordance with the small procurement procedures as may be prescribed.

PART VII

COMPLAINTS PROCEDURE

Right to review.

58.—(1) A potential or actual bidder who claims to have suffered, or that is likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act, may seek review in accordance with this Part, at any stage of the procurement proceedings.

(2) An application for review shall not be entertained unless it identifies the specific act of omission or commission alleged to contravene this Act or its implementing regulations and the bidding document.

(3) Where an application for review concerns alleged improprieties in the solicitation of applications to prequalification or to solicitation of bids, which are apparent prior to bid opening, such applications shall be entertained only if submitted prior to bid opening.

59.—(1) Prior to the entry into force of a contract, an application for review shall be made, in the first instance, in writing, to the Board. Review by
Board.

(2) Pursuant to subsection (1), the Board shall not entertain an application for review unless it was submitted within 14 working days or other deadlines as may be prescribed or when the bidder submitting it became aware of the circumstances giving rise to the complaint or when the bidder should have become aware of those circumstances, whichever is earlier.

(3) Unless the complaint is resolved by mutual agreement, the Board shall suspend the procurement proceedings unless it is satisfied that urgent public interest considerations require the procurement to proceed and shall, within five working days after submission of the complaint issue a written decision stating the reasons and, if the complaint is upheld, indicating the corrective measures to be taken.

(4) If the Board does not issue a decision by the time stated in subsection (3), or if the complainant is not satisfied with the decision of the Permanent Secretary the complainant is entitled to submit a complaint to the Procurement Review Tribunal under section 59.

(5) Complaints under subsection (4) shall not be heard unless submitted to the Procurement Review Tribunal within ten working days from the elapse of the time stated in subsection (3) or from the date on which the entity's decision was communicated to the complainant.

Review by Pro-
curement Re-
view Tribunal.

60.—(1) A person who is aggrieved by a decision of the Board made pursuant to section 58, may make an application to the Minister in the prescribed manner for review of that decision.

(2) On receipt of an application for review, under subsection (1), the Minister shall appoint a Procurement Review Tribunal.

(3) The Procurement Review Tribunal appointed under subsection (2) shall consist of three members appointed from among eminent Grenadians with a background in public procurement, the Grenada Chamber of Commerce, and the business community, legal profession and other relevant fields.

(4) A member of the panel shall be appointed by instrument in writing in the prescribed manner and in accordance with subsection (3) in respect of a particular application for review and that appointment shall be automatically terminated in the completion of its inquiry in respect of that review.

(5) An application for review may be brought before the Procurement Review Tribunal in the following circumstances—

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- (a) in the form of an appeal by the complaining bidder against a decision by a procurement department, provided that the appeal is submitted within ten working days of the date of the decision;
 - (b) where the Board under which an application for review is made pursuant to section 58 fails to render a decision within the required time frame, provided that the application for review is filed within ten working days of the expiry of the time for the decision to in section 58;
 - (c) in the case where the contract has already entered into force, any application for review submitted in the first instance to the Procurement Review Tribunal shall not be entertained unless it is submitted to the Tribunal within ten working days or when the bidder submitting it became aware of the circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.

(6) In order for an application for review to be considered by the Procurement Review Tribunal, the application shall be accompanied by an administrative fee in accordance with the regulations.

(7) The Procurement Review Tribunal shall make a decision under this section within ten working days after receiving the complaint, and such decision shall be binding on all the parties.

(8) A complaint may be dismissed for—

- (a) failure to comply with any of the requirements of this Part;
- (b) setting forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by the procuring department, or with respect to deadlines for filing of a complaint with the Procurement Review Panel;
- (d) concerning contract implementation or administration rather than contract award;
- (e) challenging an affirmative determination of qualifications as regards a competing bidder.

(9) Unless a complaint is dismissed, the remedies that may be ordered by the Independent Procurement Review Tribunal include—

- (a) prohibiting the procuring department from acting or deciding in an unauthorized manner or from following incorrect procedure;

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- (b) annulling in whole or in part any unauthorized act or decision of a procuring entity, other than any act or decision bringing the contract into force;
 - (c) reversing a decision by the Board or substituting its own decision for such a decision, other than any decision bringing the contract into force.

(10) The timely submission of a complaint in accordance with deadlines set in this section suspends the procurement proceedings until a decision on the complaint is issued by the Procurement Review Tribunal.

(11) The certifications, under subsection (10) shall state the grounds for the finding that urgent considerations exist and which shall be made a part of the record of the procurement proceedings, and shall be conclusive with respect to all levels of review, except judicial review.

PART VIII

CONTRACT CO-ORDINATOR

61. The Permanent Secretary of a procuring department shall after consulting with the Board, appoint a contract co-ordinator to represent the interests of the Government under every contract exceeding the limit prescribed by regulation.

Appointment of
contract
co-ordinator.

62.—(1) The contract co-ordinator shall keep a record of all dealings with the contractor and in particular shall keep minutes of all meetings with the contractor detailing matters discussed and decisions made.

Duties of
contract
co-ordinator.

(2) The contract co-ordinator shall not agree to any change in the contract price or the material terms of a contract without the prior approval in writing of the procurement authority.

(3) The records referred to in subsection (1) and the changes approved by the procurement authority shall be placed in the procurement document's file.

Work not to commence until formal agreement executed.

63. The contract co-ordinator shall not permit any work to commence under a construction contract before a formal agreement has been executed, except when the procurement is otherwise permitted under the provisions of this Act.

Breach of contract.

64.—(1) The contract co-ordinator shall issue a written report of any breach of contract to the Permanent Secretary who shall forward same to the Board.

(2) When a contractor defaults in the performance of a contract, the Board may, subject the rights of the person who furnished the performance security, take such steps as it considers appropriate including issuing an invitation to tender or a request for proposal or negotiating a contract for completion of the contract.

PART IX

SUSPENSION AND DEBARMENT

Suspension and debarment.

65.—(1) After reasonable notice to the person involved and a reasonable opportunity of that person to be heard, the Board may for cause—

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- (a) suspend a person for not more than 6 months;
or
 - (b) debar a person for not more than 3 years,

from submitting a tender, proposal or quotation or making an offer for a sole source or emergency procurement or from entering into a contract in relation to any of them.

(2) A person may be suspended or debarred for any of the following—

- (a) 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;
- (b) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
- (c) conviction for an offence involving corruption;
- (d) engaging in anti-competitive practices, whether or not involving collusion and whether or not an offence under the law;
- (e) deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify suspension or debarment;

- (f) unethical conduct including—
- (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement,
 - (ii) offering to pay or paying a kickback whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract, and
 - (iii) knowingly soliciting or obtaining confidential information, or attempting 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 tender, proposal, quotation or offer in relation to an emergency procurement.

(3) A contract shall not be awarded to a person when he is suspended or debarred.

PART X

OFFENCES

66.—(1) Any person who breaches any provisions of the Act commits an offence and where no penalty has been provided for the offence, the person is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both. Offences relating to procurement.

(2) The following shall also constitute offences under this Act—

- (a) entering or attempting to enter into a collusive agreement; whether enforceable or not, with any other supplier or contractor where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
- (b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement prices to obtain an unfair advantage in the award of a procurement contract;
- (c) altering any procurement document with intent to influence the outcome of tender proceeding;
- (d) making a request for classification in a manner not permitted under this Act.

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- (e) any relevant offence prescribed for pursuant to the Prevention of Corruption Act, 2007.

PART XI

FINANCE

Revenue and
Expenditure.

67.—(1) The revenue of the Authority shall consist of—

- (a) such amounts as may be received from the Consolidated Fund, and
- (b) any other sums that may lawfully accrue to the Authority.

(2) The Authority shall keep proper record of its accounts in accordance with the generally accepted international accounting standards and shall prepare and retain financial statements in respect of each year.

Appointment of
Auditor.

68. Subject to the provisions of any other law which mandates the audit of public corporations and certain other corporate bodies by the Director of Audit the Board shall appoint annually an auditor to perform the duties specified in section 70.

Conduct of audit
by the Authority.

69.—(1) The Authority shall not later than four months after the end of each financial year have its accounts audited annually by an independent auditor appointed pursuant to section 68 who shall conduct the audit in accordance with generally accepted international accounting standards.

(2) The Board, the Chief Procurement Officer and employees of the Authority shall grant to the auditor access to all books, deeds, contracts, accounts, vouchers or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person required to appear, make a signed statement or to provide information pursuant to subsection (2) and who fails to do so commits an offence and upon summary conviction is liable to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding two months or to both such fine and imprisonment and to revocation of his or her appointment as a member of the Board, or a staff member of the Authority in accordance with this Act.

70.—(1) The duties of the auditor appointed pursuant to the provisions of this Act shall include any or all of the following, namely, the duty—

Duties of the
auditor.

- (a) to make a full review of the books, records and accounts of the Authority, to provide a report on the annual financial statement and financial position of the Authority, and in every report the auditor shall—
 - (i) state whether, in his or her opinion, the balance sheet, profit and loss statement and accounts are full and fair and properly drawn up, and whether they exhibit a true and fair statement of the affairs of the Authority in accordance with international accounting standards and;

- (ii) state, in any case in which the auditor has called for information or explanation from the Chief Procurement Officer, members of the Board, officers and employees or agents of the Authority, whether a satisfactory response was received;
- (b) to make a full review of the internal control structure, and a full and fair report of the same to the Board;
- (c) to make a full review of the procedures adopted by the Authority in the exercise of its functions under this Act, and a full and fair report of the same to the Board;
- (d) to perform all or any of the following as may from time to time be imposed on the auditor by the Authority or by the Authority at the request of the Minister, namely, the duty to submit—
 - (i) such additional information in relation to the audit of the Authority as the Minister considers necessary;
 - (ii) a report on the financial accounting systems of the Authority; and
 - (iii) a report on whether prudent investment criteria, policies, practices and procedures are approved and reviewed by the management and Board.

(2) If in the course of the performance of the duties of an auditor, an auditor is satisfied that—

- (a) there has been a serious breach of or non-compliance with the provisions of this Act or any other law or any regulations or directions issued under this Act or any other law;
- (b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;
- (c) the financial and accounting systems contain material deficiencies; or
- (d) serious irregularities have occurred, including those that affect the interests of employees;

the auditor shall report the matter forthwith to the Board and the Minister.

(3) An auditor performing his or her duties under this section shall not be liable to any person in any action in tort or contract for any act done or not done, or any statement or report made or not made, in good faith and in the exercise of reasonable professional judgment.

(4) The Board shall remunerate the auditor in respect of the discharge by the auditor of all or any of the duties set out in subsection (1).

71. An auditor appointed pursuant to section 68, shall as ^{Auditor's report.} soon as practicable and not later than four months after the end of each financial year, submit copies of the audited financial statement of the Authority and a report on the financial statement to the Board.

Annual report.

72.—(1) Subject to subsection (2) and not later than six months after the end of each financial year, the Authority shall submit to the Minister an annual report on the work and activities of the Authority for that financial year and the Minister shall not later than one month following receipt of an annual report lay the same in the House of Representatives.

(2) An annual report submitted pursuant to subsection (1) shall be accompanied by the auditor's report submitted pursuant to section 71.

(3) A summary of an annual report submitted pursuant to subsection (1) shall be published by the Minister—

- (a) in the *Gazette*;
- (b) at least two weekly newspapers in general circulation in Grenada; and;
- (c) any other media as the Minister may determine; and

the entire annual report shall be available to the public on payment of the prescribed fee to the Authority.

Variation of
period for pro-
viding report.

73. The Minister may at the request of the Authority vary or extend the period within which an audit may be conducted or any report is required to be provided under this Part.

PART XII

MISCELLANEOUS AND REGULATIONS

Power to make
Regulations.

74.—(1) The Minister may make such regulations as appear to him to be necessary and expedient for the proper carrying out of the intent of this Act.

(2) Without restricting the generality of subsection (1), the Minister may make regulations—

- (a) prescribing anything that under this Act may be prescribed;
- (b) prescribing the form of agreement in relation to the contract value;
- (c) prescribing the amount of the procurement in relation to the list of pre-qualified small suppliers;
- (d) prescribing the amount of procurements for which the Board has sole responsibility;
- (e) prescribing the amount of the charge for a copy of an invitation to tender or of a request for proposals;
- (f) prescribing the amount under or over which the Board or the accounting officer had the power to determine when there is only one source of supply;
- (g) prescribing the amount under or over which the Board or the accounting officer has the power to negotiate and award a contract where there is a threat to public health, welfare or safety by reason of an emergency;
- (h) prescribing the amount under which a procurement may be made in accordance with the small procurements procedures;

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- (i) prescribing the lower and the upper limit with regard to the form of request for quotations;
 - (j) prescribing the content of a purchase order;
 - (k) prescribing the limit over which a contract administrator shall be appointed;
 - (l) establishing qualifications and prequalification guidelines with respects to bidding;
 - (m) prescribing the procedure for the recruitment and selection of persons apt for appointment as members of the Administrative Review Board.

Passed by the House of Representatives the 10th day of August, 2007.

ADRIAN C.A. HAYES
Clerk to the House of Representatives.

Passed by the Senate the 31st day of August, 2007.

ADRIAN C.A. HAYES
Clerk to the Senate.

GRENADA