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This Bill would regulate public procurement and in particular promote integrity, fairness, transparency, value for money and efficiency in public procurement.

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BARBADOS

A Bill entitled

An Act to regulate public procurement and in particular to promote integrity, fairness, transparency, value for money and efficiency in public procurement.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Public Procurement Act, 2021*.

Interpretation

2. In this Act,

“accounting officer” has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

“coercive practice” means harming or threatening to harm, directly or indirectly, a person or the property of a person, so as to influence participation or a decision in procurement proceedings or affect the execution of a procurement contract or framework agreement;

“collusive practice” means a scheme or arrangement between 2 or more suppliers, with or without the knowledge of a procuring entity, designed to establish submissions at prices that are artificial or non-competitive and includes a scheme or arrangement for price-fixing and bid-rigging as described in sections 33 and 35, respectively, of the *Fair Competition Act, Cap. 326C*;

“commercial state-owned enterprise” has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

“common item” means a good or service that is regularly required by more than one procuring entity but does not include a drug;

“conflict of interest” means a situation in which the personal interest of a person or that of a close relative of the person, might be furthered, directly or indirectly, from the official actions of the person or in which the personal interest of the person or that of a close relative, might prevent the person from acting impartially and in the public interest;

“contract management record” means the record required to be kept pursuant to section 106(1)(b);

“corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of an officer in procurement proceedings or in the execution of a procurement contract or framework agreement;

“day” does not include a Saturday, Sunday or public holiday;

“Director” means the Director of Finance and Economic Affairs;

“drug” has the meaning assigned to it by section 2 of the *Pharmacy Act*, Cap. 372D;

“*force majeure*” means an event that is beyond the reasonable control of a person and which makes the person’s performance of his obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances;

“framework agreement” means an agreement that is executed with a supplier upon completion of the first stage of a framework agreement procedure and sets out the terms under which the supplier will enter into a procurement contract during the period to which the agreement relates;

“framework agreement procedure” means a procedure conducted in two stages - a first stage to select a supplier to be a party to a framework agreement and a second stage to award a procurement contract to a supplier who is a party to the agreement;

“fraudulent practice” means the misrepresentation or omission of facts in order to influence procurement proceedings or the execution of a procurement contract or framework agreement;

“head of a procuring entity” means in relation to

- (a) a procuring entity that is a state-owned enterprise, the chief executive officer or other officer who holds a similar position in the entity;

(b) a commercial state-owned enterprise, the chief executive officer or other officer who holds a similar position in the entity;

(c) any other procuring entity, the accounting officer of the entity;

“medical practitioner” has the meaning assigned to it by section 2 of the *Medical Profession Act, 2011* (Act 2011-1);

“Minister” means the Minister with responsibility for Finance;

“officer”, in relation to a procuring entity, means a public officer or other employee, including a temporary employee, and a chief executive officer and, where the entity is managed or governed by a board or other similar body, the members of the board or other body, as the case may be;

“open framework agreement” means a framework agreement to which any supplier, in addition to the initial parties, may subsequently become a party;

“open tendering” means tendering in response to a solicitation to the public at large;

“pharmacist” has the meaning assigned to it by section 2 of the *Pharmacy Act, Cap. 372D*;

“pre-qualification document” means a document issued by a procuring entity that sets out the terms and conditions of pre-qualification proceedings;

“procurement contract” means a contract between a procuring entity and a supplier in respect of a procurement;

“procurement record” means the record required to be kept pursuant to section 106(1)(a);

“procuring entity” means every

(a) ministry, department, agency, organ, unit or other authority of Government;

(b) state-owned enterprise; and

(c) commercial state-owned enterprise,

whether or not it uses public money;

“proponent” means a person who submits an unsolicited proposal;

“Protocol” means the Protocol on Public Procurement for the Caribbean Community signed by Barbados on 27th February, 2019 at Basseterre, St. Kitts and Nevis, the text of which is set out in the *First Schedule*;

“public money” has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

“public officer” has the meaning assigned to it by section 2 of the *Public Service Act, Cap. 29*;

“public-private partnership” means an arrangement governed by a long term procurement contract between a procuring entity and a private party involving the designing, financing, building and operation of an infrastructure project or the provision of a service through the appropriate sharing of resources, risks and rewards;

“public procurement” or “procurement” means the acquisition of goods, works or services by a procuring entity;

“single-source procurement” means procurement initiated by soliciting one supplier;

“solicitation” means an invitation to tender or to submit quotations or proposals;

“solicitation document” means a document which sets out the terms and conditions of a procurement and is issued by a procuring entity to suppliers to guide their preparation and presentation of submissions;

“standstill period” means the period commencing with the date of dispatch of a successful tender notice pursuant to section 34(1) and ending with such date as a procuring entity determines in accordance with section 34(3) and (4);

“state-owned enterprise” has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

“submission” means a tender, quotation or proposal submitted by a supplier in response to a solicitation by a procuring entity or an unsolicited proposal;

“supplier” means a provider of goods, works or services;

“Suppliers Register” means the register referred to in section 85(1);

“tenders committee” means the General Tenders Committee, the Drug Tenders Committee or a special tenders committee established by or pursuant to section 7;

“tender security” means a security that a procuring entity requires from a supplier to secure the performance of an obligation relating to a matter referred to in section 21(1)(b) but, for the avoidance of doubt, does not include a security for the performance of a procurement contract;

“Tribunal” means the Public Procurement Tribunal established by section 8;

“undue influence” includes any form of pressure brought to bear by an official, elected or appointed, who is in a position either to provide a benefit to, or exact punishment against, any person involved in procurement activities or decisions;

“unsolicited proposal” means a proposal for the supply of goods, works or services to a procuring entity, made to the entity otherwise than in response to a solicitation.

Application of Act

3.(1) This Act applies to all public procurement.

(2) Notwithstanding subsection (1), to the extent that

(a) any other provision of this Act conflicts with the Protocol; or

(b) this Act conflicts with an obligation of the State under or arising out of a treaty or other form of agreement between Barbados and

(i) another state, including an agreement for technical or other cooperation;

- (ii) any subdivision or local authority of another state or any other authority of another state; or
- (iii) an international financial institution,

the requirements of the Protocol, treaty or other agreement shall prevail.

PART II

ADMINISTRATION

Management of public procurement

4. The Chief Procurement Officer shall be responsible for the management of public procurement.

Functions of Chief Procurement Officer

5.(1) Without prejudice to the generality of section 4, the Chief Procurement Officer shall

- (a) formulate or recommend for the approval of the Minister, policies and rules on public procurement;
- (b) formulate or recommend for the approval of the Director, for public dissemination, manuals, standard documents and guidelines to facilitate the implementation and operation of this Act;
- (c) monitor the operation and performance of the public procurement system, prepare annual reports on the operation and performance of the system and recommend changes to the system where desirable;
- (d) promote and advise on capacity building in the public procurement system and advise on the professional qualifications and competencies required for officers engaged in procurement proceedings;
- (e) monitor the procurement proceedings of procuring entities to determine whether such entities are in compliance with this Act;

- (f) advise the Director and procuring entities on matters relating to public procurement;
- (g) organize and maintain systems for the management and public dissemination of data, statistics and other information on public procurement; and
- (h) whether on his own initiative or at the request of the Director, investigate and report to the Director on any procurement proceedings that are suspected to be in violation of this Act.

(2) The Chief Procurement Officer may, in pursuance of his functions and, in particular, in order to determine whether a procuring entity is in compliance with this Act, inspect the offices, and have access to the records, books and other documents, of the entity, and require from the entity such information as may be necessary for the purpose.

Functions of head of procuring entity

6.(1) The head of a procuring entity shall ensure that the entity conducts public procurement in accordance with this Act and performs its functions under this Act in a timely and efficient manner.

(2) Without prejudice to the generality of subsection (1), the head of a procuring entity shall

- (a) ensure that
 - (i) an officer within the entity is designated to coordinate the procurement proceedings of the entity;
 - (ii) officers engaged in procurement proceedings are supervised to prevent embezzlement, fraud, carelessness or the waste of resources;
 - (iii) appropriately skilled persons are assigned to
 - (A) prepare statements of requirements and perform other functions relevant to procurement proceedings; and

- (B) sit on evaluation committees; and
 - (iv) appropriately qualified persons provide technical input into the procurement proceedings; and
 - (b) before a procurement is initiated, confirm that funds are available to conduct the procurement.
- (3) The head of a procuring entity may, in writing, delegate to another officer of the entity on such conditions as he may determine, any of the duties set out in subsections (1) and (2), but such a delegation does not relieve the head of the entity of his responsibility under this Act.

Tenders committees

7.(1) There is established a committee, to be known as the General Tenders Committee, which shall, in respect of procurement by means of open tendering and restricted tendering

- (a) review and, where appropriate, approve pre-qualification documents, solicitation documents, notices and shortlists of suppliers and any amendments thereto prior to their issue;
 - (b) determine whether to grant extensions of deadlines where so requested by procuring entities;
 - (c) conduct and record openings of tenders;
 - (d) consider evaluation reports and recommendations by procuring entities as to which tenders should be accepted as successful tenders; and
 - (e) consider recommendations by procuring entities to cancel particular procurement activities.
- (2) There is also established a committee, to be known as the Drug Tenders Committee, which shall, notwithstanding subsection (1), discharge the functions set out in subsection (1) in respect of the procurement of drugs.

(3) Notwithstanding subsection (1), where the State borrows money from an international financial institution and the money is to be expended by the State, there shall be established a committee, to be known as a special tenders committee, which shall discharge the functions set out in subsection (1) in respect of procurement arising out of the purpose for which the money is to be expended.

(4) The *Second Schedule* has effect as to the constitution of the tenders committees and otherwise in relation thereto.

(5) Notwithstanding subsections (1) to (4), the chairman of a tenders committee may, where this Act so provides, discharge a function of the tenders committee on behalf of the committee.

Establishment of Public Procurement Tribunal

8.(1) There is established a body to be known as the Public Procurement Tribunal which shall hear and determine matters that come before it pursuant to this Act.

(2) The Tribunal is a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 applies.

(3) The *Third Schedule* has effect as to the constitution of the Tribunal and otherwise in relation thereto.

PART III

PLANNING AND INITIATION OF PROCUREMENT

Planning of procurement

9.(1) A procuring entity shall

- (a) plan its procurement activities in a rational manner;

- (b) aggregate its requirements for goods, works and services, where practicable, to obtain value for money and to reduce the cost of procurement;
 - (c) prepare and submit to the Chief Procurement Officer by 31st January each year
 - (i) an annual procurement plan; and
 - (ii) an estimation of its requirements for goods, works and services, for the next financial year; and
 - (d) prepare, where requested to do so by the Chief Procurement Officer, an individual procurement plan for any particular procurement identified by the Chief Procurement Officer.
- (2) Notwithstanding subsection (1)(c), the Chief Procurement Officer may permit a procuring entity to submit a procurement plan in respect of a period other than a year.

Publication of forthcoming procurement

- 10.(1)** A procuring entity shall, prior to a financial year, publish a list of the procurement activities it plans to conduct during the year.
- (2) The list shall
 - (a) contain an indication of the types of goods, works and services likely to be required; and
 - (b) be updated, where necessary, and published every 6 months.
 - (3) A procuring entity may publish advance notice of any forthcoming procurement.
 - (4) Publication under this section does not
 - (a) constitute a solicitation;
 - (b) oblige a procuring entity to issue a solicitation; or

- (c) confer any rights on suppliers.

Initiation of procurement

- 11.** Procurement shall not be initiated unless
- (a) the subject matter of the procurement, the quantity of goods, works or services required and the estimated value of the procurement contract are documented in the procurement record; and
 - (b) the head of the procuring entity or an officer designated by him for the purpose under section 6, authorizes the initiation of the procurement.

Procurement to be conducted with certain objectives

- 12.** Procurement shall be conducted in a manner that
- (a) ensures integrity, fairness, transparency and accountability in procurement proceedings;
 - (b) promotes fair competition among, participation by, and equal treatment of, suppliers;
 - (c) maximizes economy and efficiency and promotes best value for money; and
 - (d) promotes sustainable development.

Estimation of value of procurement

- 13.(1)** A procuring entity shall not
- (a) divide its procurement activities or value a contract in parts; or
 - (b) use any valuation method for estimating the value of a procurement,
- so as to limit competition among suppliers or otherwise avoid its obligations under this Act.
- (2) A procuring entity shall, in estimating the value of a procurement contract, include the estimated maximum total value of the contract or, where a framework

agreement is contemplated, of all procurement contracts envisaged under the agreement over its entire duration, taking into account all forms of remuneration.

Procurement of common items

14.(1) Common items shall be procured, at the discretion of the Chief Procurement Officer, by

- (a) the Chief Procurement Officer on behalf of procuring entities; or
- (b) procuring entities under arrangements established for the purpose by the Chief Procurement Officer.

(2) The Chief Procurement Officer

- (a) shall
 - (i) consult with procuring entities in order to determine
 - (A) which goods and services are common items; and
 - (B) the estimated need for the items;
 - (ii) distribute to procuring entities every 6 months, a list of items designated as common items;
 - (iii) enter into appropriate contractual arrangements for the procurement of common items; and
 - (iv) issue regularly updated information to procuring entities on the common items available and the prices, delivery times and arrangements established for ordering or obtaining the items; and
- (b) may utilize warehouses, where appropriate, for the cost-effective storage and distribution of common items.

(3) The Chief Procurement Officer shall, for the purpose of procurement under subsection (1)(a), operate a bank account into which shall be paid

- (a) money provided for the procurement of common items;

- (b) money by way of repayments made by procuring entities in respect of procurement conducted on their behalf; and
 - (c) any other money which he may receive in the course of his official duties.
- (4) The Chief Procurement Officer shall pay out of the account referred to in subsection (3), any amounts due in settlement for common items procured.

Use of agents

15. The Chief Procurement Officer, or a procuring entity with the approval of the Chief Procurement Officer, may procure goods or services through an agent, whether local or overseas, where it appears prudent to do so.

PART IV

METHODS OF PROCUREMENT

Selection of method of procurement

- 16.(1)** A procuring entity
- (a) shall, subject to subsection (2)(a) and (b), conduct procurement by means of open tendering where the estimated or actual value of the procurement contract equals or exceeds
 - (i) \$300 000, for the procurement of goods or services or a combination of goods and services; and
 - (ii) \$500 000, for the procurement of works or a combination of works and goods, of works and services or of works, goods and services; and
 - (b) may conduct procurement by means of open tendering in any other case where it considers it appropriate to do so.

- (2) A procuring entity may
 - (a) conduct procurement by means of restricted tendering in the circumstances set out in section 18(1);
 - (b) engage in single-source procurement in the circumstances set out in section 47(1); and
 - (c) conduct procurement by means of a request for quotations where the estimated or actual value of the procurement contract does not equal or exceed the relevant threshold specified in subsection (1)(a).
- (3) A procuring entity may, in conducting procurement, utilize a framework agreement procedure in accordance with section 53.
- (4) Subject to subsections (1) and (2), a procuring entity shall, in selecting a method of procurement, select the method that is the most efficacious in the circumstances of the procurement and seek to maximise competition to the extent practicable.
- (5) The Minister may, by Order subject to negative Resolution, vary the amounts set out in subsection (1).

Open Tendering and Restricted Tendering

Open tendering

- 17.(1)** Where a procuring entity intends to engage in open tendering, the entity shall publish a notice to be called an invitation to tender.
- (2) The invitation to tender shall include
 - (a) any key technical, eligibility or qualification requirements;
 - (b) whether the entity will convene a meeting of suppliers; and
 - (c) the procedure, place and deadline for presenting tenders.
 - (3) Subsection (1) does not apply where a procuring entity engages in pre-qualification proceedings.

Restricted tendering

18.(1) Subject to subsection (2), a procuring entity may, with the permission of the Director, conduct procurement by means of restricted tendering in any of the following circumstances:

- (a) the goods, works or services to be procured are available from 10 suppliers or less; or
- (b) there is an urgent need for the goods, works or services to be procured and
 - (i) the circumstances giving rise to the urgency were neither foreseeable by the entity nor the result of dilatory conduct on the part of the entity; and
 - (ii) engaging in open tendering would be impractical.

(2) A procuring entity shall submit a request for permission to engage in restricted tendering to the Chief Procurement Officer for transmission to the Director.

(3) The entity shall submit with its request, in a case where it seeks to engage in restricted tendering on the ground set out in

- (a) subsection (1)(a), a list of the suppliers from whom the entity believes the goods, works or services are available; or
- (b) subsection (1)(b), the list of suppliers from whom the entity intends to solicit tenders.

(4) The Director may, on the advice of the Chief Procurement Officer, grant permission to a procuring entity to engage in restricted tendering where any of the circumstances set out in subsection (1) exists.

(5) Notwithstanding subsections (1) and (4), where, after a procuring entity applies to the Director for permission to engage in restricted tendering on the ground set out in subsection (1)(a), it is discovered that the goods, works or

services are available from more than 10 suppliers, the Director may grant permission to the entity to engage in restricted tendering where he is satisfied, on the advice of the Chief Procurement Officer, that the entity made reasonable efforts to discover the number of suppliers from whom the goods, works or services are available.

(6) Where a procuring entity engages in restricted tendering on the ground set out in

- (a) subsection (1)(a), the entity shall solicit tenders from all suppliers from whom the goods, works or services are available;
- (b) subsection (1)(b), the entity shall
 - (i) in a non-discriminatory manner, select suppliers from whom to solicit tenders; and
 - (ii) in order to ensure effective competition, select a sufficient number of suppliers.

Solicitation documents for tendering

19.(1) A procuring entity shall provide a solicitation document

- (a) to each supplier who responds to its invitation to tender in accordance with the procedures and requirements specified therein;
- (b) to each supplier who pre-qualifies pursuant to pre-qualification proceedings or, where the entity selects a limited number of pre-qualified suppliers from whom to solicit tenders, who is among the number of selected, pre-qualified suppliers; or
- (c) in a case of restricted tendering on the ground set out in
 - (i) section 18(1)(a), to each supplier from whom the goods, works or services are available; or
 - (ii) section 18(1)(b), to each supplier from whom the entity intends to solicit tenders.

(2) The entity shall prepare the solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose and include in the document

- (a) information on the management of the procurement proceedings and the applicable laws;
- (b) the eligibility requirements of suppliers and an indication of any documentary evidence required to be submitted as proof of eligibility;
- (c) a clear statement of the qualification criteria, the procedures to be used to ascertain the qualifications of suppliers and any documentary evidence required to be submitted to demonstrate those qualifications;
- (d) a description of the subject matter of the procurement in the form of a statement of requirements;
- (e) instructions on the preparation and presentation of tenders, including any requirement for the presentation of separately sealed technical and financial tenders, and the procedure, place and deadline for presenting tenders;
- (f) where a tender security is required, a statement to that effect, and any requirement as to the nature, form, amount and other principal terms and conditions of the security and the issuer, with sufficient specificity to enable a supplier to be reasonably certain of the type of security that the procuring entity would consider acceptable;
- (g) the duration of the standstill period or, where no standstill period will be applied, a statement to that effect and the reason for not applying one;
- (h) the procedure, place, date and time for the opening of tenders;
- (i) the criteria and procedure for evaluating tenders including
 - (i) whether the successful tender will be ascertained on the basis of price or of price and other criteria;

- (ii) where price and other criteria are to be used in the evaluation, the relative weights of all criteria; and
 - (iii) the manner of application of the criteria in the evaluation;
 - (j) any formalities required for a procurement contract to be executed once a successful tender is accepted;
 - (k) the principal terms and conditions and proposed form of the procurement contract; and
 - (l) notice of the right to challenge decisions or actions of a procuring entity or tenders committee that are allegedly not in compliance with this Act.
- (3) The entity may charge a non-refundable fee for the provision of a solicitation document to a supplier but the fee shall reflect only the cost of providing the document to the supplier.

Clarification and modification of invitations to tender and solicitation documents

- 20.(1)** Where a procuring entity receives, at least 2 weeks prior to the deadline for the presentation of tenders, a request from a supplier for clarification of an invitation to tender or a solicitation document, the entity shall, without identifying the source of the request, provide the clarification to all suppliers involved in the procurement proceedings, including the supplier who made the request, at the same time and within sufficient time to enable them to present their tenders before the deadline for presentation.
- (2) Without prejudice to the generality of subsection (1), a procuring entity shall provide clarification of a solicitation document to all suppliers to whom the entity provided the document.
- (3) A procuring entity may, prior to the deadline for presenting tenders, and with the approval of the chairman of the relevant tenders committee, whether on its own initiative or as a result of a request by a supplier for a clarification, modify an invitation to tender or a solicitation document by issuing an addendum.

- (4) The addendum shall
 - (a) in the case of
 - (i) an invitation to tender, be published in the same manner and place as the invitation to tender; and
 - (ii) a solicitation document, be made available to each supplier to whom the entity provided the solicitation document; and
 - (b) be binding on the suppliers.

Tender securities

- 21.(1) Where a procuring entity requires a tender security
 - (a) the requirement shall apply to all suppliers who present tenders; and
 - (b) any requirement that the entity sets out in the solicitation document in respect of the security that refers directly or indirectly to the conduct of a supplier shall relate to
 - (i) the withdrawal or modification of the tender after the deadline for presenting tenders; or
 - (ii) the failure to
 - (A) execute a procurement contract where so required by the solicitation document;
 - (B) provide a security, where so required by the solicitation document, for the performance of the procurement contract after the successful tender is accepted; or
 - (C) comply with any other condition precedent to executing the procurement contract, as specified in the solicitation document.
- (2) Where a supplier breaches a requirement set out in a solicitation document in relation to a matter specified in subsection (1)(b)(i) or (ii), his tender security shall be forfeited.

- (3) A procuring entity shall
- (a) make no claim to the amount of a tender security; and
 - (b) promptly return the security document where any of the following occurs:
 - (i) the expiry of the tender security;
 - (ii) the execution of a procurement contract and the provision of a security for the performance of the contract, where such a security for performance is required by the solicitation document;
 - (iii) the cancellation of the procurement; or
 - (iv) the withdrawal of the relevant tender prior to the deadline for presenting tenders.
- (4) A procuring entity may reject a tender security on the ground that the issuer has become insolvent or has otherwise ceased to be creditworthy.

Meetings with suppliers prior to presentation of tenders

- 22.(1)** Where a procuring entity convenes a meeting of suppliers prior to the deadline for presenting tenders, the entity shall prepare minutes of the meeting.
- (2) The minutes shall
- (a) include any request, without identifying the source of the request, submitted at the meeting for clarification of the solicitation document, and the response of the entity to the request; and
 - (b) be provided promptly to the suppliers to whom the entity provided the solicitation document to enable the suppliers to take the minutes into account in preparing their tenders.

Deadline for presenting tenders

23.(1) A procuring entity shall express a deadline for presenting tenders as a specific date and time and shall, taking into account the reasonable needs of the entity, allow sufficient time for suppliers to prepare and present tenders.

(2) Where a procuring entity issues a clarification or modification of an invitation to tender or a solicitation document, the entity shall, prior to the deadline for presenting tenders, request the chairman of the relevant tenders committee to extend the deadline, where necessary, in order to afford suppliers sufficient time to take the clarification or modification into account in preparing their tenders.

(3) The chairman of a tenders committee may, in his absolute discretion, prior to a deadline for presenting tenders, extend the deadline where it is not possible for one or more suppliers to present tenders by the deadline because of any circumstance beyond their control.

(4) Notice of an extension of a deadline shall, in the case of a clarification or modification of

- (a) an invitation to tender, be published in the same manner and place as the invitation to tender; and
- (b) a solicitation document, be given to each supplier to whom the entity provided the solicitation document.

Presentation of tenders

24.(1) A tender shall be presented

- (a) in accordance with the procedure, and at the place and by the deadline, specified in the solicitation document;
- (b) in writing, signed and, where in
 - (i) paper form, in a sealed envelope; or

- (ii) any other form, according to the requirements specified in the solicitation document, which shall ensure at least a similar degree of authenticity, security, integrity and confidentiality.
- (2) The relevant tenders committee shall
 - (a) provide a secure means by which suppliers may submit tenders and provide each supplier with a receipt showing the date and time when his tender was received;
 - (b) preserve the security, integrity and confidentiality of the tender; and
 - (c) ensure that the content of the tender is examined only after its opening in accordance with section 27.
- (3) A tender received by a tenders committee after the deadline for presenting tenders shall not be opened and shall be returned to the supplier who presented it.
- (4) Notwithstanding subsection (3), a tender received by a tenders committee after the deadline for presenting tenders may be accepted and opened in circumstances where it can be ascertained that the presentation of the tender was delayed by *force majeure*.

Presentation of separately sealed technical and financial tenders

25. A procuring entity may request separately sealed technical and financial tenders where the entity needs to consider the financial aspects of the tenders separately and only after completion of the examination and evaluation of the technical, quality and performance characteristics of the tenders.

Validity of tenders, modification and withdrawal of tenders

26.(1) Tenders shall remain valid for the period specified in the solicitation document.

(2) A procuring entity may, prior to the expiry of the period of validity, request suppliers to extend the period for an additional specified period.

- (3) A supplier may refuse to extend the period of validity of his tender without forfeiting his tender security, if any.
- (4) A supplier who agrees to an extension of the validity of his tender shall extend the period of validity of any tender security he provided or provide a new tender security to cover the extended period of validity of his tender.
- (5) A supplier whose tender security is not extended or who does not provide a new tender security shall be considered to have refused the request to extend the period of validity of his tender.
- (6) A supplier may modify or withdraw his tender prior to the deadline for presenting tenders without forfeiting his tender security.
- (7) A modification or notice of withdrawal of a tender is effective where it is received by the procuring entity prior to the deadline for presenting tenders.

Opening of tenders

- 27.(1)** Tenders shall be opened at the time and place specified in the solicitation document and in accordance with the procedure specified in that document.
- (2) A supplier who presents a tender or his representative shall be
 - (a) permitted by the tenders committee to be present at the opening of tenders; and
 - (b) deemed to have been permitted to be present at the opening of tenders where he is notified of the time and place for the opening of tenders.
 - (3) The name and address of each supplier whose tender is opened and the tender price shall be
 - (a) announced to the persons present at the opening of tenders;
 - (b) communicated, on request, to a supplier who presents a tender but is not present or represented at the opening of tenders; and
 - (c) included immediately in the procurement record.

- (4) Notwithstanding subsections (2) and (3), section 31 shall apply where a procuring entity requests separately sealed technical and financial tenders.
- (5) Notwithstanding subsection (3), tender prices need not be announced where it is impractical to do so because of the volume of the prices.
- (6) With the exception of late tenders, which shall be returned in accordance with section 24, no tender shall be accepted, rejected or evaluated at the opening of tenders.
- (7) A tenders committee shall note, in a record to be called a record of tender opening, any discrepancies or missing documents in respect of a tender, but shall not otherwise comment on such discrepancies or missing documents at the opening of tenders.

Evaluation committees

- 28.(1)** A procuring entity shall, for each procurement, establish an evaluation committee to be responsible for the evaluation of tenders and the preparation of an evaluation report.
- (2) The membership of the committee shall depend on the value and complexity of the procurement but shall in all cases be not less than 3 persons.
- (3) The entity may appoint an external, technical specialist or procurement agent to conduct the evaluation of tenders and prepare an evaluation report on its behalf.
- (4) The entity shall require any person appointed pursuant to subsection (1) or (3) to declare whether he has any conflict of interest in respect of the procurement being evaluated.
- (5) Where a person declares a conflict of interest, the person shall have no further involvement in the procurement proceedings and shall be immediately replaced by the entity.

(6) The entity shall require from a person appointed under subsection (3) an undertaking that he will treat as confidential and not disclose any information that comes to his attention as a result of his appointment.

(7) An evaluation report prepared under this section may include

- (a) the method of assessment;
- (b) a copy of any relevant notice and the date of issue of the notice;
- (c) the deadline for presentation of tenders;
- (d) the date of the opening of tenders;
- (e) any addendum issued or query received;
- (f) copies of all other relevant documents;
- (g) comments on arithmetic corrections;
- (h) any notification to a supplier of an arithmetic correction and any response to such a notification;
- (i) a table showing any corrected prices with relevant comments;
- (j) a comparison of tenders; and
- (k) the recommendation of the committee or person appointed pursuant to subsection (3), including any recommendation to negotiate with a supplier together with appropriate justification for the recommendation.

(8) A procuring entity shall submit each evaluation report to the relevant tenders committee for consideration.

Evaluation criteria and procedures

29.(1) The criteria to be used to evaluate a tender shall relate to the goods, works or services to be procured.

- (2) The evaluation criteria may include
- (a) the price;
 - (b) the cost of operating, maintaining and repairing goods or works;
 - (c) the time for the delivery of the goods, completion of the works or provision of the services, as the case may be;
 - (d) the characteristics of the goods, works or services, such as functional and environmental characteristics;
 - (e) the terms of payment and of guarantees in respect of the goods, works or services; and
 - (f) where relevant, the experience, reliability and professional and managerial competence of the supplier and of the personnel to be involved in providing the goods, works or services.
- (3) All non-price evaluation criteria shall, to the extent practicable, be objective and quantifiable.
- (4) A procuring entity shall, in evaluating tenders and determining the successful tender, use only the criteria and procedures specified in the solicitation document and apply the criteria and procedures in the manner specified in that document.
- (5) No criterion or procedure that has not been set out in accordance with this section and section 19(2) shall be used in any evaluation under this Act.

Examination and evaluation of tenders

30.(1) A procuring entity may ask a supplier for clarification of his tender where the clarification would assist the entity in the examination and evaluation of the tender.

- (2) A procuring entity shall correct purely arithmetic errors discovered during the examination of a tender and give prompt notice of the correction to the supplier who presented the tender.

(3) No change in a matter of substance in the tender, including a change in price and a change aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

(4) Any items having a zero price shall be deemed to be included in the price of other items except in the case of line-item bidding where a zero price shall be considered a non-offer for the item.

(5) A procuring entity shall regard a tender as responsive where it conforms to all requirements set out in the solicitation document.

(6) Notwithstanding subsection (5), a procuring entity may regard a tender as responsive even where it contains

(a) minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation document; or

(b) errors or oversights that are capable of being corrected without touching on the substance of the tender,

and any such deviations shall be quantified, to the extent possible, and appropriately taken into account in the evaluation of the tender.

(7) Notwithstanding subsection (6), where a specification states that an item is critical to the functioning of the entire lot or procurement, the failure of such critical item to be responsive shall be cause for the tender in respect of the entire lot or procurement to be regarded as unresponsive.

(8) A procuring entity shall reject a tender

(a) where the supplier who presented the tender is not qualified or the entity is obliged, under this Act, to exclude the supplier from participation in public procurement;

(b) where the supplier who presented the tender does not accept a correction of an arithmetic error made pursuant to subsection (2);

(c) where the tender is unresponsive; or

- (d) in the circumstances set out in section 32.
- (9) The entity shall evaluate the tenders that have not been rejected in order to ascertain the successful tender in accordance with the criteria and procedures set out in the solicitation document.
- (10) The successful tender shall be

 - (a) where price is the only criterion, the tender with the lowest price; or
 - (b) where there are price and other criteria, the most advantageous tender ascertained on the basis of the criteria and procedures, specified in the solicitation document, for evaluating the tenders.
- (11) Where tender prices are expressed in two or more currencies, for the purpose of evaluating and comparing tenders, the tender prices of all tenders shall be converted to the currency specified in the solicitation document according to the rate set out in that document.
- (12) A procuring entity may, whether or not it has engaged in pre-qualification proceedings, require a supplier who presented a tender that is determined to be a successful tender to demonstrate or reconfirm his qualifications.
- (13) The criteria and procedures to be used for the demonstration or reconfirmation of the qualifications of a supplier shall be set out in the solicitation document.
- (14) Where a procuring entity has engaged in pre-qualification proceedings, the criteria for confirming qualifications shall be the same as those used in the pre-qualification proceedings.
- (15) Where a supplier who presented a successful tender is requested to demonstrate or reconfirm his qualifications but fails to do so within 10 days of the request, the entity shall reject the tender and shall

 - (a) subject to section 35(2), select the next highest ranked tender from among those remaining valid; or
 - (b) cancel the procurement.

Separate opening, examination and evaluation of technical and financial tenders

31.(1) This section applies, in addition to section 30, where a procuring entity intends to consider the financial aspects any of tenders separately and only after the completion of the examination and evaluation of the technical, quality and performance characteristics of the tenders.

(2) A procuring entity shall, before it requests the opening by the tenders committee of the financial tenders, examine and evaluate the technical, quality and performance characteristics of tenders in accordance with the criteria and procedures specified in the solicitation document.

(3) The results of the examination and evaluation of the technical, quality and performance characteristics of the tenders shall be immediately included in the procurement record.

(4) Where the technical, quality and performance characteristics of a tender

(a) meet or exceed the relevant minimum requirements, the tender shall be regarded as responsive;

(b) fail to meet the relevant minimum requirements, the tender shall be regarded as unresponsive and shall be rejected on that ground.

(5) The procuring entity shall, in the case of

(a) a responsive tender,

(i) promptly communicate to the supplier who presented the tender, the score of the technical, quality and performance characteristics of his tender; and

(ii) invite all such suppliers or their representatives to the opening, by the tenders committee of the financial tenders; and

- (b) an unresponsive tender
 - (i) promptly send to the supplier who presented the tender a notice of rejection together with the reason for the rejection; and
 - (ii) ensure that his financial tender is returned unopened.
- (6) The name and address of each supplier whose tender is responsive, the score of the technical, quality and performance characteristics of his tender and the price of his financial tender shall
 - (a) be announced to the persons present at the opening of the financial tenders; and
 - (b) communicated, on request, to a supplier who was invited to, but was not present or represented at, the opening of tenders.
- (7) The price of each corresponding financial tender referred to in subsection (6) shall be included in the procurement record.
- (8) The procuring entity shall compare the financial aspects of the responsive tenders and on that basis identify the successful tender in accordance with the criteria and procedures set out in the solicitation document.
- (9) The successful tender shall be the tender with the best combined evaluation in terms of
 - (a) the criteria, other than price, specified in the solicitation document; and
 - (b) the price.

Rejection of abnormally low tenders

32.(1) A procuring entity may, subject to subsection (2), reject a tender where the entity determines that the price, in combination with other constituent elements of the tender, is abnormally low in relation to the goods, works or services to be procured and raises concerns with the entity as to the ability of the supplier who presented the tender to perform the procurement contract.

- (2) A procuring entity shall not reject a tender pursuant to subsection (1) unless the entity
- (a) requests in writing from the supplier details of the aspect of the tender that gives rise to its concerns as to the ability of the supplier to perform the procurement contract; and
 - (b) takes account of any information provided by the supplier pursuant to the request and of the information included in the tender but continues, on the basis of all such information, to hold such concerns.
- (3) The decision of a procuring entity to reject the tender of a supplier pursuant to this section and the reason for the decision shall be communicated to the supplier.

Determination of successful tender

- 33.(1)** Where a procuring entity determines that a tender is the successful tender in respect of a procurement, the entity shall submit to the relevant tenders committee for consideration, the evaluation report on the matter and a recommendation that the tenders committee treat and accept as the successful tender, the tender identified as such by the entity.
- (2) The tenders committee may
- (a) accept the recommendation of the procuring entity as to the successful tender; or
 - (b) where it does not accept the recommendation, subject to sections 29 to 32 and taking the evaluation report into account, make its own decision as to which tender is the successful tender.
- (3) A determination as to the successful tender does not constitute acceptance of the tender.

Successful tender notice and standstill period

- 34.(1)** Where the relevant tenders committee determines that a tender should be accepted as a successful tender, the procuring entity shall dispatch simultaneously to each supplier who presented a tender, a notice, to be called a successful tender notice, informing the supplier that the entity intends to accept the successful tender at the end of the standstill period.
- (2) The successful tender notice shall include
- (a) the name and address of the supplier who presented the successful tender;
 - (b) the contract price or, where the successful tender was ascertained on the basis of price and other criteria, the contract price and a summary of the other characteristics of the tender that made the tender the successful tender; and
 - (c) the duration of the standstill period.
- (3) The standstill period shall be at least 10 days from the date of dispatch of the notice.
- (4) Where the means of dispatch of the notice is not expected to result in the delivery of the notice to a supplier in less than 5 days, the entity shall extend the standstill period for such additional period as the entity may consider appropriate in the circumstances.
- (5) Notwithstanding subsection (1), no successful tender notice or standstill period is required where the entity determines that urgent public interest considerations require the procurement to proceed without a standstill period.
- (6) Where a supplier whose tender was unsuccessful so requests within 5 days of notification of the successful tender, the entity shall, within 10 days of receipt of the request, communicate to the supplier the reason that his tender was unsuccessful.

Successful tender acceptance notice

35.(1) A procuring entity shall, upon the expiry of the standstill period, or, where no standstill period is required, as soon as practicable after the successful tender is determined, dispatch to the supplier who presented the successful tender, a notice to be called a successful tender acceptance notice.

(2) Notwithstanding subsection (1), no successful tender acceptance notice or other communication in any form conveying acceptance of a successful tender or the award of a procurement contract shall be issued unless

- (a) the relevant tenders committee determines that a particular tender should be accepted as the successful tender; and
- (b) it is confirmed that
 - (i) the procurement is not subject to an application for reconsideration under section 96 or an appeal to the Tribunal;
 - (ii) funding is available for the procurement; and
 - (iii) any regulatory approvals required have been granted.

(3) A procuring entity shall not be liable for the provision of goods, works or services by a supplier who receives a successful tender acceptance notice or for anything done by the supplier in connection with such provision unless the supplier, prior to the provision of the goods, works or services or the doing of anything in connection with such provision, enters into a procurement contract with the entity in accordance with this Act.

Negotiations

36.(1) Where the relevant tenders committee determines that a tender should be accepted as a successful tender, negotiations may be held with the supplier who presented the tender.

(2) Negotiations shall not relate to the price of the tender except where price was not a factor in the evaluation.

- (3) Negotiations may relate to
 - (a) minor amendments to the special conditions of the contract, the delivery or completion schedule or work plan or the technical details of the statement of requirements; or
 - (b) the minor reduction of quantities for budgetary reasons.
- (4) Notwithstanding subsection (3), negotiations shall not be conducted
 - (a) to alter substantially the technical, quality or performance characteristics of a tender, including the scope of the responsibilities of the supplier;
 - (b) to alter materially the terms and conditions of the proposed procurement contract;
 - (c) solely for the purpose of reducing prices or fee rates except where changes are required to reflect any agreed technical changes; or
 - (d) to alter substantially anything that was a deciding factor in the evaluation.
- (5) A procuring entity shall
 - (a) prepare minutes of any negotiations held; and
 - (b) obtain the written agreement of the supplier that the minutes are a true and accurate record of the negotiations.

Execution of procurement contract

37.(1) Where a solicitation document requires a supplier whose tender is accepted to execute a procurement contract conforming to the terms and conditions of the accepted tender

- (a) the procuring entity and the supplier shall execute the procurement contract within a reasonable period after the successful tender acceptance notice is dispatched to the supplier; and

- (b) between the time when a successful tender acceptance notice is dispatched to the supplier and the execution of the procurement contract, neither the entity nor the supplier shall take any action that is likely to interfere with the execution of the procurement contract or with its performance.
- (2) Where a supplier whose tender is accepted fails to
 - (a) execute a procurement contract as required; or
 - (b) provide any required security for the performance of the contract,the procuring entity may, subject to section 35(2), select the next highest ranked tender from among those remaining valid or cancel the procurement.

Notice of award of procurement contract

- 38.(1)** A procuring entity shall, within 3 days of the execution of a procurement contract, dispatch simultaneously to each supplier whose tender was unsuccessful, a notice of the award of the contract.
- (2) The notice shall state the name of the supplier to whom the contract was awarded and the contract price.
- (3) A procuring entity shall, on 31st March and 30th September each year, publish a cumulative list of all procurement contracts awarded in the year.

Management of procurement contract

- 39.(1)** A procuring entity shall nominate a contract administrator for each procurement contract awarded.
- (2) The contract administrator shall
 - (a) monitor the performance of a supplier to ensure that all delivery or performance obligations are met and that appropriate action is taken by the procuring entity in the event that obligations are not met;
 - (b) prepare any required amendments to the procurement contract and refer the amendments for the approval of the Solicitor General or another

legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, of such legal officer as the entity may approve for the purpose;

- (c) manage any handover or acceptance procedures;
- (d) refer any recommendation for the termination of the contract for the consideration of the Solicitor General or another legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, of such legal officer as the entity may approve for the purpose; and
- (e) ensure that
 - (i) the supplier submits all required documentation;
 - (ii) the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
 - (iii) there is adequate cost, quality and time control, where required;
 - (iv) all tests required in the contract are satisfactorily completed;
 - (v) performance under the contract is satisfactorily completed before closing the contract management record; and
 - (vi) the contract management record is kept in accordance with this Act.

Reports on supplier performance

40.(1) A procuring entity shall submit to the Chief Procurement Officer, a report on the performance of each supplier with whom the entity has a procurement contract.

- (2) The report shall
 - (a) be in such form as the Chief Procurement Officer requires; and

- (b) include
 - (i) the final price paid for the goods, works or services and an explanation of any differences between that price and the original contract price;
 - (ii) information on the conformance of the goods, works or services with the statement of requirements and an explanation of any concerns in relation to quality;
 - (iii) the time taken for completion of performance under the contract and an explanation of any differences between that time and the delivery or completion schedule in the contract; and
 - (iv) such other information as the Chief Procurement Officer may require; and
 - (c) be submitted, in the case of a procurement contract the duration of which is
 - (i) less than a year, at the end of the quarter in which performance under the contract is completed; and
 - (ii) a year or more, at least annually.
- (3) The Chief Procurement Officer may, in addition to the report referred to in subsection (1), require such other reports from the entity as may be necessary for the performance of his functions.
- (4) Nothing in this section prevents a procuring entity from submitting a report to the Chief Procurement Officer, at any other time, on the performance of a supplier.

Cancellation of procurement

- 41.(1)** A procuring entity may cancel a procurement
- (a) prior to the acceptance of a successful tender; or

- (b) where a successful tender is accepted, in the circumstances set out in section 37(2).
- (2) A procuring entity shall not cancel a procurement without the approval of the relevant tenders committee.
- (3) Where a procuring entity cancels a procurement
 - (a) no tenders shall be opened after the decision to cancel the procurement is taken;
 - (b) any tenders that remain unopened at the time the decision to cancel the procurement is taken shall be returned to the suppliers who presented them; and
 - (c) the entity shall
 - (i) promptly
 - (A) communicate to any supplier who presented a tender, the decision of the entity to cancel the procurement; and
 - (B) issue a notice of the cancellation of the procurement in the same manner and place as the original information regarding the procurement proceedings; and
 - (ii) where the supplier so requests, communicate to the supplier within a reasonable time, the reason for the cancellation.

Requests for Quotations

Requests for quotations

42.(1) Where a procuring entity intends to conduct procurement by means of a request for quotations, the entity shall request written quotations from a shortlist of suppliers.

- (2) The entity, in developing a shortlist,
 - (a) shall select from the Suppliers Register, as many suppliers as practicable but at least 3; and
 - (b) shall, in order to ensure effective competition and fair and equal opportunities to all suppliers
 - (i) implement a rotation of suppliers on successive shortlists; and
 - (ii) not include
 - (A) suppliers who are not expected to satisfy fully any eligibility or qualification requirements;
 - (B) where there are suppliers that are practically owned by the same person, more than one such supplier.
- (3) A supplier shall not be permitted to
 - (a) give more than one quotation; or
 - (b) change his quotation after the deadline for presenting quotations.
- (4) Notwithstanding subsections (1) and (2), where a procuring entity intends to conduct procurement by means of a request for quotations, the entity may, instead of requesting quotations from a shortlist of suppliers from the Suppliers Register, publish the request to enable all interested suppliers to submit quotations.

Solicitation documents for requests for quotations

- 43.(1)** A procuring entity shall, in order to request quotations, prepare and issue a solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose.
- (2) A solicitation document referred to in subsection (1) shall include
 - (a) information on the management of the procurement proceedings and the applicable laws;

- (b) a description of the subject matter of the procurement in the form of a statement of requirements;
 - (c) instructions on the preparation and presentation of quotations, including any documents required to be submitted with the quotation and the procedure, place and deadline for presenting quotations;
 - (d) a statement as to whether elements, other than the cost of the goods or services, such as any applicable transportation and insurance charges or customs duties and taxes, are to be included in the price;
 - (e) the criteria and procedures for evaluating quotations;
 - (f) the principal terms and conditions and proposed form of the procurement contract; and
 - (g) notice of the right to challenge decisions or actions of a procuring entity that are allegedly not in compliance with this Act.
- (3) Section 20 applies in respect of solicitation documents referred to in this section, with such modifications and adaptations as may be necessary, as that section applies in respect of solicitation documents referred to in that section except that any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to that section shall be performed by the procuring entity in respect of a request for quotations.

Meetings with suppliers and presentation of quotations

44.(1) Sections 22, 23 and 24 apply to the presentation of quotations and any meetings with suppliers prior to the presentation of quotations, with such modifications and adaptations as may be necessary, as those sections apply to the presentation of tenders and meetings with suppliers prior to the presentation of tenders.

- (2) Notwithstanding subsection (1),
- (a) no public opening of quotations is required but all quotations shall be opened and recorded by a procuring entity immediately after the deadline for presenting quotations; and
 - (b) any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to sections 23 and 24 shall be performed by the procuring entity in respect of quotations.

Negotiations on quotations prohibited

45. No negotiations shall take place between a procuring entity and a supplier with respect to a quotation presented by the supplier.

Evaluation of quotations, determination of successful quotations, procurement contracts, supplier performance and cancellation of procurement

46. Sections 28, 29, 30, 32, 34(6), 35, 37, 38, 39, 40 and 41 apply to procurement by means of a request for quotations, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to those sections shall be performed by the procuring entity in respect of quotations.

Single-Source Procurement

Criteria for single-source procurement

47.(1) Subject to subsection (2) and **section 48(1)**, a procuring entity may engage in single-source procurement where

- (a) the goods or services are available only from a particular supplier or a particular supplier has exclusive rights in respect of the goods or services, so that no reasonable alternative or substitute exists, and the

use of any other method of procurement would therefore not be possible;

- (b) the entity, having procured goods or services from a supplier, determines that additional goods or services must be procured from the supplier for reasons of standardization or because of the need for compatibility with existing goods or services, taking into account
 - (i) the effectiveness of the original procurement in meeting the needs of the entity;
 - (ii) the limited size of the proposed procurement in relation to the original procurement;
 - (iii) the reasonableness of the price; and
 - (iv) the unsuitability of alternatives to the goods or services;
- (c) owing to a catastrophic event, there is an extremely urgent need for the goods, works or services and engaging in any other method of procurement would be impractical because of the time involved in using the method; or
- (d) the entity determines, in the interest of national security or public health, that the use of any other method of procurement is not appropriate.

(2) Where a procuring entity engages in single-source procurement for reasons of urgency in accordance with subsection (1)(c), the entity shall limit the procurement contract to the quantity of goods or services or the extent of works required to deal with the catastrophic event.

Permission to engage in single-source procurement

48.(1) A procuring entity shall, before engaging in single-source procurement

- (a) confirm, where relevant, that the goods or services are not available under arrangements for the procurement of common items; and

- (b) seek permission from
 - (i) the Director, where the estimated value of the procurement contract equals or exceeds the relevant threshold specified in section 16(1)(a); or
 - (ii) the Chief Procurement Officer, where the estimated value of the procurement contract exceeds \$50 000 but does not exceed the relevant threshold specified in section 16(1)(a).
- (2) A procuring entity shall, where subsection (1)(b)(i) applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.
- (3) Where he is satisfied as to the existence of any of the circumstances set out in section 47(1)
 - (a) the Director, on the advice of the Chief Procurement Officer; or
 - (b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to engage in single-source procurement.

Solicitation documents for single-source procurement

- 49.(1)** A procuring entity shall, in order to solicit a proposal or price quotation pursuant to single-source procurement, prepare and issue a solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose.
- (2) The solicitation document shall include
 - (a) a description of the subject matter of the procurement in the form of a statement of requirements; and
 - (b) the principal terms and conditions and proposed form of the procurement contract.

(3) Notwithstanding subsection (1), where a procuring entity undertakes single-source procurement on the ground set out in section 47(1)(c), the entity may engage in negotiations with a supplier without the issue of a solicitation document.

Evaluation of single-source submission

50.(1) Where a procuring entity receives a submission pursuant to single-source procurement, the submission shall be evaluated to determine whether

- (a) the submission
 - (i) meets the requirements of the entity, including any technical needs, as defined by the statement of requirements, and any requirement for urgent delivery or completion;
 - (ii) offers value for money, based on prices previously obtained for similar procurement contracts or on an analysis of the cost of each component, taking into account the circumstances and value of the procurement contract;
- (b) the supplier accepts the contractual terms and conditions proposed by the entity or offers other terms and conditions which are acceptable to the entity; and
- (c) negotiations with the supplier are necessary.

(2) Section 28(1) to (6) apply to single-source procurement, with such modifications and adaptations as may be necessary, as those provisions apply to procurement by means of open tendering.

Negotiations for single-source procurement

51.(1) Where negotiations with a supplier are necessary in relation to single-source procurement, a procuring entity shall prepare a plan for the negotiations.

- (2) The plan shall specify the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.
- (3) A procuring entity shall
 - (a) prepare minutes of any negotiations held; and
 - (b) obtain the written agreement of the supplier that the minutes are a true and accurate record of the negotiations.
- (4) A procuring entity shall not commit itself to a proposed agreement arising out of negotiations under this section unless the entity obtains the approval of the person who, pursuant to section 48, granted the entity permission to engage in single-source procurement.

Procurement contracts, supplier performance and cancellation in relation to single-source procurement

52. Sections 37(1), 38(3), 39, 40 and 41 apply to single-source procurement, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the person who, pursuant to section 48, granted the procuring entity permission to engage in single-source procurement.

Framework Agreements

Framework agreements

- 53.(1)** A procuring entity may engage in procurement through such framework agreements, whether open or closed and whether in respect of common items or otherwise, as are executed by the Chief Procurement Officer.
- (2) The Chief Procurement Officer shall, upon the execution of a framework agreement, publish a notice of the agreement, specifying whether the agreement

is an open framework agreement or a closed framework agreement, the names of the suppliers involved and the goods or services to be supplied.

(3) The Chief Procurement Officer shall, on 31st March and 30th September each year, publish a cumulative list of all framework agreements awarded in the year.

Procurement of services of individual consultants

54. Notwithstanding section 16(1) and (2), where a procuring entity intends to procure the services of an individual consultant, the entity shall do so in accordance sections 55 to 59.

Solicitation in relation to individual consultants

55.(1) A procuring entity shall, in order to procure the services of an individual consultant, publish a notice inviting consultants to express interest in the assignment.

(2) The notice shall include

- (a) the principal terms and conditions of the procurement contract;
- (b) any key technical, eligibility or qualification requirements; and
- (c) the procedure, place and deadline for expressing interest.

(3) Notwithstanding subsection (1), a procuring entity need not publish a notice where

- (a) there is an urgent need for the services to be procured and
 - (i) the circumstances giving rise to the urgency were neither foreseeable by the entity nor the result of dilatory conduct on the part of the entity; and
 - (ii) publication would be impractical;
- (b) the services required are a continuation of services already provided by a consultant and the entity determines that the services must be

procured from the same consultant for reasons of continuity, use of experience acquired or continued professional liability; or

(c) the entity determines, in the interest of national security or public health, that publication is not appropriate.

(4) A procuring entity may, where it does not publish a notice referred to in subsection (1), directly invite at least 3 consultants to express interest in the assignment.

Solicitation document not required in respect of individual consultants

56.(1) A procuring entity is not required to prepare a solicitation document for the procurement of the services of an individual consultant but shall make the terms of reference for the assignment available to all interested consultants on request or to all consultants invited to express interest.

(2) Terms of reference shall clearly state the skills, qualifications and experience required and the basis for evaluation.

(3) No tender security shall be requested for the procurement of the services of an individual consultant.

Presentation of submissions by individual consultants and evaluation of submissions

57.(1) A submission from an individual consultant shall include his curriculum vitae and a proposed fee rate which may be requested as separately sealed technical and financial submissions, respectively.

(2) Evaluation of submissions from individual consultants

(a) shall be based on the skills, qualifications and experience of the consultants, as stated in the terms of reference;

(b) may take into account references;

(c) may include interviews to assess further the skills, qualifications and experience of the consultants; and

(d) shall rank consultants according to their skills, qualifications and experience.

(3) Section 28(1) to (6) apply to the procurement of the services of an individual consultant, with such modifications and adaptations as may be necessary, as those provisions apply to procurement by means of open tendering.

Negotiations with individual consultants

58. A procuring entity may negotiate fees and the terms and conditions of the procurement contract with the consultant ranked first in the evaluation and, where negotiations fail, may negotiate with the consultant ranked next after him.

Procurement contracts, supplier performance and cancellation in relation to services of individual consultants

59. Sections 34(6), 37, 38, 39, 40 and 41 apply to procurement of the services of individual consultants, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the procuring entity.

Procurement of Public-Private Partnerships

Act applies to public-private partnership

60. For the avoidance of doubt, this Act applies to the procurement of public-private partnerships.

Feasibility study for public-private partnership

61.(1) A procuring entity shall not conduct procurement for a public-private partnership unless there is undertaken a feasibility study that

(a) explains the strategic and operational benefits of the public-private partnership for the entity in terms of its strategic objectives and public policy;

- (b) describes, in specific terms, in the case of a public-private partnership for
 - (i) the performance of a function of the entity, the nature of the function and the extent to which the function, both by law and by nature, may be performed by a private party under a public-private partnership agreement; and
 - (ii) the use of state property, the state property concerned, the uses, if any, to which the state property has been previously put and the types of use to which a private party may legally subject the state property under a public-private partnership agreement;
 - (c) establishes, in the case of a public-private partnership pursuant to which the entity will pay the private party any consideration, that the entity can afford the payment;
 - (d) sets out the proposed allocation of risk between the entity and the private party;
 - (e) demonstrates the value for money to be achieved by the public-private partnership; and
 - (f) explains the capacity of the entity to procure, enforce, monitor, report on and regulate the implementation of the public-private partnership agreement.
- (2) Where before a public-private partnership agreement is executed, there is a material change in any assumption made in the feasibility study on the public-private partnership, in particular, with regard to affordability, value for money or substantial technical, operational and financial risk transfer, the entity
- (a) shall
 - (i) promptly notify the Director of the change;
 - (ii) submit details of any intended revision to the study;
 - (iii) revise the study; and

- (iv) submit to the Director, the revised study together with a statement on the impact of the revision on the feasibility of the public-private partnership; and
- (b) shall not conduct procurement for the public-private partnership unless the permission of the Director to do so is obtained on the basis of the revised study.

Permission to procure public-private partnership

62.(1) A procuring entity may, with the permission of the Director, conduct procurement for a public-private partnership by such method under this Part as may be appropriate in the circumstances.

(2) The entity shall submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(3) Where he is satisfied on the basis of the feasibility study that the public-private partnership is feasible, the Director may, on the advice of the Chief Procurement Officer, grant permission to the entity to conduct the procurement.

PART V

UNSOLICITED PROPOSALS

Receipt of unsolicited proposal

63.(1) A procuring entity shall, within 5 days of receipt of an unsolicited proposal, notify the Chief Procurement Officer in writing of its receipt.

(2) The Chief Procurement Officer shall promptly transmit a notification received under subsection (1) to the Director.

Procuring entity not required to consider unsolicited proposal

64. A procuring entity is not required to consider any unsolicited proposal it receives.

Eligibility of unsolicited proposal for consideration

65.(1) An unsolicited proposal shall, in order to be eligible for consideration, contain the following information:

- (a) in respect of the proponent
 - (i) the name, address and other contact information of the proponent, including, where applicable, the address of the registered office of the proponent;
 - (ii) the taxpayer identification number and national insurance number of the proponent;
 - (iii) documentary evidence regarding the legal capacity of the proponent to enter into an unsolicited proposal agreement or a procurement contract;
 - (iv) any qualification and experience in relation to the proposal; and
 - (v) where the proponent is registered under section 86, the unique registration number assigned to him pursuant to section 86(4);
- (b) in respect of the proposed good, work or service
 - (i) a concise title, and an abstract of approximately 200 words, of the good, work or service; and
 - (ii) a statement that
 - (A) indicates the objectives, approach and scope of the good, work or service;

- (B) describes how the proposal is demonstrably innovative, supported by any evidence available that the proponent is the sole provider of the innovation;
 - (C) outlines the anticipated benefits or cost advantages to the procuring entity, including the proposed price or total estimated cost of supplying the good, work or service, in sufficient detail to allow a meaningful evaluation by the entity; and
 - (D) shows whether, and if so, how, the proposed project supports the entity's strategic growth and development plan and its other objectives;
- (c) an indication of any confidential or proprietary data in the proposal that must not be made public;
 - (d) a declaration from the proponent, in such form as may be approved by the Chief Procurement Officer
 - (i) as to any interest of the proponent that may give rise to a conflict of interest;
 - (ii) that the making of the proposal was not as a result of any non-public information obtained from the entity to which the proposal was submitted or from another procuring entity;
 - (e) the period for which the proposal is valid for consideration, which shall not be less than 6 months; and
 - (f) the name of any other person to whom the proposal or a similar proposal was submitted by the proponent.

General criteria for consideration of unsolicited proposal

66.(1) Subject to section 78, a procuring may consider an unsolicited proposal where

- (a) the proposal contains a clear business case established by a comprehensive and relevant feasibility study; and
- (b) the good, work or service concerned
 - (i) involves an innovative design or an innovative approach to project development and management; or
 - (ii) presents a new and cost-effective method of service delivery.

(2) A procuring entity shall, where it determines to consider an unsolicited proposal, notify the proponent or his authorized representative in writing of its decision.

Evaluation of unsolicited proposal generally

67.(1) A procuring entity shall establish an evaluation committee to

- (a) evaluate each unsolicited proposal it determines to consider; and
- (b) prepare an evaluation report.

(2) Section 28(2) to (6) apply to an evaluation committee established under subsection (1), with such modifications and adaptations as may be necessary, as those provisions apply to an evaluation committee established for the purpose of procurement.

(3) Where under section 28(3)

- (a) the entity appoints a person to conduct an evaluation and prepare an evaluation report on its behalf; and
- (b) the proponent withdraws the proposal before the period for which the proposal was stated to be valid for consideration expires,

the proponent shall bear the costs of the person in relation to the evaluation.

Evaluation of unsolicited proposal not involving public-private partnership

68. Where an unsolicited proposal does not involve a public-private partnership, the evaluation of the proposal shall include a feasibility study that evaluates the costs and benefits of procuring the good, work or service from the proponent including, where relevant, an assessment of

- (a) any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the proposal;
- (b) the overall scientific, technical or socio-economic merit of the proposal;
- (c) the potential contribution of the proposal to the entity's strategic objectives as identified in its strategic growth and development plan;
- (d) whether the proposed cost of the project is realistic, affordable and justified; and
- (e) any other factor which, in the opinion of the entity, is relevant to the proposal.

Evaluation of unsolicited proposal involving public-private partnership

69. Where an unsolicited proposal involves a public-private partnership, the evaluation of the proposal shall include a feasibility study described in section 61(1).

Consideration of unsolicited proposal not involving public-private partnership - sole supplier

70.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal under section 68, that

- (a) the proposal satisfies the criteria in section 66(1);

- (b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity;
- (c) the proponent is the sole supplier of the good, work or service; and
- (d) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for the procurement of the good, work or service, and may procure the good, work or service.

(2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to engage in the related procurement from

- (a) the Director, where the estimated value of the procurement contract likely to result from the proposal equals or exceeds the relevant threshold specified in section 16(1)(a); or
- (b) the Chief Procurement Officer, where the estimated value of the procurement contract likely to result from the proposal exceeds \$50 000 but does not exceed the relevant threshold specified in section 16(1)(a).

(3) The entity shall, where subsection (2)(a) applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(4) Where he is satisfied as to the circumstances set out in subsection (1)(a) to (d),

- (a) the Director, on the advice of the Chief Procurement Officer; or
- (b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to engage in the procurement.

Negotiations on unsolicited proposal made by sole supplier

71.(1) Section 51(1), (2) and (3) apply to negotiations pursuant to section 70(1), with such modifications and adaptations as may be necessary, as those provisions apply to negotiations for single-source procurement.

(2) A procuring entity shall not commit itself to a proposed agreement arising out of negotiations pursuant to section 70(1) unless the entity obtains the permission of the person who, pursuant to section 70(4), granted the entity permission to engage in the procurement.

Procurement contracts, supplier performance and cancellation in relation to procurement pursuant to unsolicited proposal by sole supplier

72. Sections 37(1), 38(3), 39, 40 and 41 apply to procurement pursuant to section 70(1), with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the person who, pursuant to section 70(4), granted the procuring entity permission to engage in the procurement.

Consideration of unsolicited proposal not involving public-private partnership - more than one supplier

73.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal under section 68, that

- (a) the proposal satisfies the criteria in section 66;
- (b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity; and
- (c) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

but the proponent may not be the sole supplier of the good, work or service, the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for an unsolicited proposal agreement, and may enter into the agreement.

(2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to enter into the related agreement from

- (a) the Director, where the estimated value of the procurement contract likely to result from the proposal equals or exceeds the relevant threshold specified in section 16(1)(a); or
- (b) the Chief Procurement Officer, where the estimated value of the procurement contract likely to result from the proposal exceeds \$50 000 but does not exceed the relevant threshold specified in section 16(1)(a).

(3) The entity shall, where subsection (2)(a) applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(4) Where he is satisfied as to the circumstances set out in subsection (1)(a) to (c),

- (a) the Director, on the advice of the Chief Procurement Officer; or
- (b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to enter into the agreement.

Consideration of unsolicited proposal involving public-private partnership

74.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal that involves a public-private partnership, that

- (a) the proposal satisfies the criteria in section 66;

- (b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity; and
- (c) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for an unsolicited proposal agreement, and may enter into the agreement.

- (2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to enter into the related agreement from the Director.
- (3) The entity shall submit the request for permission to the Chief Procurement Officer for transmission to the Director.
- (4) Where he is satisfied as to the circumstances set out in subsection (1)(a) to (c), the Director may, on the advice of the Chief Procurement Officer, grant permission to the entity to enter into the agreement.

Unsolicited proposal agreement

75.(1) An unsolicited proposal agreement shall include terms and conditions on

- (a) the methodology for determining any costs to be reimbursed to the proponent, should procurement proceedings result in the award of a procurement contract for the good, work or service to a person other than the proponent or be cancelled;
- (b) the procedure for further developing the project and responding to matters raised by the procuring entity;
- (c) the allocation of responsibility for preparing solicitation documents;
- (d) the confidential treatment of information in the proposal; and
- (e) the purchase of intellectual property rights, if any.

- (2) Where pursuant to subsection (1), responsibility for preparing solicitation documents is allocated to a person other than the entity, the preparation of the documents shall be under the supervision of the entity.
- (3) For the purposes of subsection (1)(a),
- (a) the entity and the proponent shall restrict their consideration to direct costs incurred by the proponent in developing technical and other materials relevant to meeting the criteria set out in section 73(1) or 74(1), as the case may be; and
 - (b) the quantum of reimbursement to the proponent shall be the audited costs of the proponent from the date of submission of the proposal to the entity to conclusion of the related procurement proceedings.
- (4) Where the entity and the proponent do not reach consensus on the terms and conditions of the agreement, the entity shall not
- (a) be responsible for any costs which the proponent incurred in preparing and submitting the unsolicited proposal;
 - (b) implement the project proposed in the proposal for the current or next financial year; and
 - (c) utilize any proprietary information provided by the proponent in the proposal.

Procurement proceedings after execution of unsolicited proposal agreement

- 76.(1)** A procuring entity may, upon the execution of an unsolicited proposal agreement in respect of a proposal that
- (a) does not involve a public-private partnership but may involve more than one supplier; or
 - (b) involves a public-private partnership,
- conduct procurement in respect of the proposal in accordance with Part IV.

- (2) Without prejudice to the generality of subsection (1), the entity
- (a) may engage in pre-qualification proceedings, where appropriate; and
 - (b) shall in the pre-qualification notice, pre-qualification document and solicitation document, as the case may be
 - (i) disclose that the procurement proceedings originate from an unsolicited proposal;
 - (ii) state the costs and terms of payment agreed between the entity and the proponent in relation to the proposal; and
 - (iii) require that every supplier, other than the proponent, make allowance for the costs and pay the costs to the proponent should his submission be successful.

Restriction on use of unsolicited proposal

- 77.(1) A procuring entity shall not
- (a) use any data, concept, idea or other part of an unsolicited proposal as the basis or part of the basis for a solicitation or in negotiations with a person other than the proponent unless
 - (i) the project proceeds to procurement proceedings in accordance with this Part; and
 - (ii) the proponent is notified of and agrees to the intended use;
 - (b) disclose information identified in an unsolicited proposal agreement as confidential.
- (2) Subsection (1)(a) does not preclude the use of any data, concept or idea in an unsolicited proposal that is or becomes otherwise available without restriction.

Rejection of unsolicited proposal

78.(1) A procuring entity shall reject an unsolicited proposal where the proposal

- (a) relates to known requirements of the entity that can, within reasonable and practicable limits, be acquired by open tendering, restricted tendering or a request for quotations;
- (b) relates to goods, works or services which are generally available;
- (c) does not fall within the entity's functions;
- (d) does not comply substantially with sections 65 and 66;
- (e) has not been submitted by a duly authorized representative of the proponent; or
- (f) contravenes the provisions of any law.

(2) A procuring entity shall, where it rejects an unsolicited proposal

- (a) notify the proponent or his authorized representative in writing of the rejection of the proposal;
- (b) ensure that the entity does not make use of any intellectual property or proprietary data in the proposal;
- (c) return to the proponent or his authorized representative all paper-based documents received in respect of the proposal; and
- (d) destroy any copies of the proposal, whether electronic or paper-based, made or obtained by the entity.

Record of unsolicited proposals

79.(1) A procuring entity shall maintain for a period of no less than 7 years from the date of receipt of an unsolicited proposal, a record in respect of the proposal.

- (2) The record shall include
 - (a) a brief description of the proposal;
 - (b) the name and contact information of the proponent;
 - (c) whether the proposal was considered or returned to the proponent and, where the proposal was considered
 - (i) the evaluation report;
 - (ii) minutes of any negotiations entered into with the proponent;
 - (iii) a copy of any unsolicited agreement executed; and
 - (iv) a copy of any procurement contract awarded as a result of the proposal.

PART VI

GENERAL RULES REGARDING PROCUREMENT

Description of subject matter of procurement

80.(1) A procuring entity shall set out in the pre-qualification document, if any, and in the solicitation document, a description of the subject matter of the procurement in the form of a statement of requirements.

- (2) The statement of requirements
 - (a) shall
 - (i) include the minimum requirements that submissions must meet in order to be considered responsive and the manner in which the minimum requirements are to be applied;
 - (ii) set out the relevant technical, quality and performance characteristics of the subject matter of the procurement; and
 - (iii) to the extent practicable, be objective, functional and generic;

- (b) may include specifications, plans, drawings, designs, testing and test methods, packaging, marking, labelling, conformity certification and symbols and terminology; and
- (c) shall not include a requirement for, or reference to, a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement, and provided that words such as “or equivalent” are included.

Standardization of trade terms and conditions etc.

81. A procuring entity shall, in formulating

- (a) the terms and conditions of a procurement and procurement contract and other relevant aspects of a pre-qualification document, if any, and a solicitation document, use standardized trade terms and standardized conditions, where available; and
- (b) the description of the subject matter of the procurement to be included in the pre-qualification document, if any, and in the solicitation document, use standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the goods, works or services to be procured, where available.

Publication of notices

82.(1) A notice to be published pursuant to this Act

- (a) shall be published
 - (i) at least once in one daily newspaper with nationwide circulation in Barbados; and
 - (ii) on such government websites as the entity may consider appropriate; and

- (b) may, notwithstanding a requirement for the notice to be published in a particular manner and place, be also published in such media as the entity may consider appropriate.
- (2) Where foreign participation is required for sufficient competition or where so required by an international agreement, the notice shall also be published
 - (a) in media of wide regional or international circulation;
 - (b) on widely read internet sites; or
 - (c) in such publication as may be required by the agreement.
- (3) Where a procuring entity believes that it is necessary to ensure wide competition, the entity may, in addition to the publication required by subsections (1) and (2), after the date of publication of an invitation to tender, send a copy of the notice directly to
 - (a) suppliers who are registered in the Suppliers Register, past suppliers or any other identified, potential suppliers;
 - (b) professional or industry associations; and
 - (c) embassies of Barbados in countries, suppliers from which are likely to participate or foreign embassies of such countries in Barbados or both.

Corrections to published information

83. Where information published by a procuring entity to invite the participation of suppliers in pre-qualification or other procurement proceedings is discovered to be, or becomes, materially inaccurate for any reason, the entity shall correct the information and publish the corrected information in the same manner and place in which the original information was published.

Communications

84.(1) Any document, notification, decision or any other information generated in the course of a procurement and communicated, including anything communicated in connection with proceedings for an application for

reconsideration under section 96 or an appeal to the Tribunal or in the course of a meeting or forming part of the procurement record, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.

(2) Direct solicitation and any communication of information between suppliers and a procuring entity referred to in section 26(2) and (3), 30(1) and (2) or 91(1)(a) may be made by means that do not provide a record of the content of the information on the condition that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form that

- (a) provides a record of the content of the information; and
- (b) is accessible so as to be usable for subsequent reference.

(3) All documents and communications shall be in English.

(4) A procuring entity shall, where it first solicits the participation of suppliers in particular procurement proceedings, specify

- (a) the means to be used to
 - (i) communicate information by or on behalf of the entity to a supplier or to the public or by a supplier to the entity or to another person acting on behalf of the entity;
 - (ii) satisfy any requirement for information to be in writing or for a signature; and
 - (iii) hold any meeting of suppliers; and
- (b) in relation to any procurement involving information that a procuring entity considers to be secret, where the entity considers it necessary, any measures and requirements needed to ensure that the information is kept confidential.

(5) A procuring entity may use only those means of communication that are in common use by suppliers in the context of the particular procurement.

- (6) In any meeting held with suppliers, a procuring entity shall use only those means that ensure that suppliers can fully and contemporaneously participate in the meeting.
- (7) A procuring entity shall implement appropriate measures to secure the authenticity, integrity and confidentiality of information concerning procurement proceedings.
- (8) Where a procuring entity requires the approval or permission of a tenders committee, a chairman of a tenders committee, the Director, the Chief Procurement Officer or any other person in order to make a determination or pursue a course of action, the entity shall not, unless the approval or permission is granted, communicate the determination or the decision to pursue the course of action to any supplier or to the public at large.
- (9) In this section, “direct solicitation” means solicitation addressed directly to one supplier or a restricted number of suppliers but does not include solicitation addressed to a limited number of suppliers following pre-qualification proceedings.

PART VII

REGISTRATION, ELIGIBILITY AND QUALIFICATION

Suppliers Register

- 85.(1)** The Chief Procurement Officer shall establish and maintain a register to be called the Suppliers Register.
- (2) The Suppliers Register shall
- (a) include in respect of every supplier registered pursuant to section 86
 - (i) the name, address and other contact information of the supplier;
 - (ii) the taxpayer identification number and national insurance number of the supplier;

- (iii) the bank account information of the supplier;
- (iv) the unique registration number assigned to the supplier pursuant to section 86(4);
- (v) the date of registration;
- (vi) any documentary evidence regarding the legal capacity of the supplier to enter into a procurement contract;
- (vii) any other information available as to the eligibility of the supplier to participate in public procurement;
- (viii) a statement as to whether the supplier is registered as a supplier of goods, services or works or a combination of the three;
- (ix) any information available as to the qualifications of the supplier to supply the goods, services or works he proposes to supply;
- (x) a record of the current and past procurement contracts of the supplier, if any, and of his performance under the contracts; and
- (xi) such other information as the Chief Procurement Officer may consider appropriate; and

(b) be reviewed and updated at least once every 6 months.

(3) Without prejudice to section 87, a supplier shall, twice yearly, by 15th March and 15th September each year, ensure that the information entered in the Suppliers Register in relation to him is accurate and complete.

(4) The Chief Procurement Officer shall, on 31st March and 30th September each year, publicize the existence of the Suppliers Register and publish

- (a) the procedure for applying for registration;
- (b) the criteria to be satisfied for entry in the register and the documentary evidence to be submitted; and
- (c) the period for which registration is valid and any requirement for updating an entry in the register or for renewing registration.

(5) The entry of the name of a supplier in the Suppliers Register shall not be construed as an indication that the supplier is suitable to participate in any particular procurement.

Suppliers to be registered

86.(1) A procuring entity shall not enter into a procurement contract with a supplier unless the supplier is registered under this section.

(2) A person may, in such form as the Chief Procurement Officer may require, apply to the Chief Procurement Officer for registration as a supplier.

(3) The Chief Procurement Officer shall, within 30 days of receipt of an application for registration and payment of such fee as may be prescribed, notify the supplier in writing of

(a) the approval of his application and the inclusion of his name in the Suppliers Register; or

(b) the rejection of his application and the reason for the rejection.

(4) The Chief Procurement Officer shall issue a unique registration number to every supplier who is registered.

(5) Registration under this section is valid for 3 years and may be renewed, upon application to the Chief Procurement Officer, for further periods of 3 years.

(6) The Chief Procurement Officer shall, within 20 days of receipt of an application for renewal of registration, notify the supplier in writing of

(a) the renewal of his registration; or

(b) the rejection of his application and the reason for the rejection.

(7) The Chief Procurement Officer may refuse to register a supplier or to renew the registration of a supplier where the supplier is or becomes ineligible to participate in public procurement.

(8) The Chief Procurement Officer shall not refuse to register a supplier or to renew the registration of a supplier unless he gives the supplier a reasonable

opportunity to be heard on why registration or renewal of registration should not be refused.

Changes affecting registration

87.(1) Where a material change in the circumstances of a supplier renders the information submitted to the Chief Procurement Officer for the purpose of registration in the Suppliers Register misleading, inaccurate or incomplete, the supplier shall, as soon as practicable and in any event within 14 days of the change, notify the Chief Procurement Officer in writing of the change.

(2) In subsection (1), “material change” includes a change that would render a supplier ineligible to participate in public procurement and a change of the name under which, or the address at which, the supplier conducts business.

(3) The Chief Procurement Officer shall

(a) upon receipt of a notification pursuant to subsection (1); or

(b) where he is otherwise satisfied that any information in the Suppliers Register is misleading, inaccurate or incomplete,

make such alteration to the register as may be necessary to ensure that the register is not misleading and that it is accurate and complete.

(4) The Chief Procurement Officer shall, before making an alteration to the Suppliers Register pursuant to subsection (3)(b), notify the supplier involved of his intention to make the alteration.

(5) The Chief Procurement Officer shall promptly notify in writing a supplier in respect of whom an alteration is made under subsection (3), of the fact of the alteration and the nature of it.

Eligibility of suppliers to participate in public procurement

88.(1) A supplier is eligible to participate in public procurement where

(a) he has the legal capacity to enter into a procurement contract;

(b) he is not insolvent, in receivership, bankrupt or being wound up;

- (c) his affairs are not being administered by a person appointed by a court;
and
 - (d) he is not the subject of legal proceedings for any of the matters referred to in paragraph(b)or(c).
- (2) A supplier is ineligible to participate in public procurement where he, or in the case of a supplier that is a body corporate, any of its directors or officers, within a period of 5 years prior to his application for registration or the initiation of procurement proceedings, as the case may be
- (a) knowingly or recklessly provided false information in a submission or any other document submitted to a procuring entity in connection with procurement proceedings or a procurement contract;
 - (b) interfered with the participation of other suppliers in public procurement;
 - (c) engaged in misconduct in relation to procurement proceedings or a procurement contract including
 - (i) corrupt practices;
 - (ii) fraudulent practices,
 - (iii) collusive practices;
 - (iv) coercive practices;
 - (v) knowingly underpricing submissions; and
 - (vi) breaches of confidentiality;
 - (d) did not perform substantially, contractual obligations under a procurement contract, where the non-performance was not due to circumstances beyond his control;
 - (e) refused to furnish a security for the performance of a procurement contract in accordance with the terms of the solicitation document;

- (f) was convicted of an offence under this Act or related to

 - (i) obtaining a procurement contract or sub-contract; or
 - (ii) dishonesty or professional activities;
 - (g) was suspended, disbarred or disqualified by any professional body; or
 - (h) was suspended or prohibited from participating in procurement by an international organization or a foreign government, provided that the Chief Procurement Officer verified that the proceedings of the international organization or foreign government that led to the suspension or prohibition

 - (i) were based on a fair, independent review of the facts of the case; and
 - (ii) provided the supplier with the opportunity to be heard in his defence and to appeal to an independent body against the original decision.
- (3) A foreign supplier shall be permitted to submit, as documentary evidence of eligibility to participate in public procurement
- (a) certified copies of equivalent documents from the relevant authority of the country in which the supplier is incorporated or otherwise organized; or
 - (b) an official statement certifying that equivalent documentation is not issued in the country in which the supplier is incorporated or otherwise organized.
- (4) The Director may, upon the recommendation of the Chief Procurement Officer, determine in accordance with this section that a supplier is ineligible to participate in public procurement but such a decision shall not be made unless
- (a) the Chief Procurement Officer conducts a thorough investigation of the facts of the case; and

- (b) the supplier receives reasonable notice, in writing, of the grounds for the decision and the details of the grounds, and is given a reasonable opportunity to be heard on the matter.
- (5) A decision that a supplier is ineligible to participate in public procurement and the reason for the decision shall be promptly communicated to the supplier.

Exclusion of supplier from particular procurement proceedings

89.(1) A procuring entity shall, with the approval of the Director upon the recommendation of the Chief Procurement Officer, exclude a supplier from participation in procurement proceedings where the supplier

- (a) has a conflict of interest that is likely to impair the integrity of the procurement proceedings; or
 - (b) is or becomes ineligible to participate in public procurement.
- (2) A supplier shall not be excluded from participation in procurement proceedings unless
 - (a) the Chief Procurement Officer conducts a thorough investigation of the facts of the case; and
 - (b) the supplier receives reasonable notice, in writing, of the grounds for the proposed exclusion and the details of the grounds, and is given a reasonable opportunity to be heard on why he should not be excluded.
- (3) A decision to exclude a supplier from participation in procurement proceedings and the reason for the exclusion shall be promptly communicated to the supplier.

Removal from Suppliers Register

90.(1) The Chief Procurement Officer may remove from the Suppliers Register, the name of a supplier who becomes ineligible to participate in public procurement.

(2) The Chief Procurement Officer shall not remove the name of a supplier from the Suppliers Register pursuant to subsection (1) unless he gives the supplier a reasonable opportunity to be heard on why his name should not be removed from the register.

(3) The Chief Procurement Officer shall promptly notify in writing a supplier whose name has been removed from the Suppliers Register of the fact of the removal and the reason for it.

Qualifications of suppliers

91.(1) A procuring entity may, at any stage of procurement proceedings, including through pre-qualification proceedings, require a supplier to

- (a) meet such qualification criteria as the entity considers appropriate in the circumstances; and
- (b) demonstrate that he has the capability and resources to perform the procurement contract effectively.

(2) Qualification criteria may include

- (a) professional, technical and environmental qualifications;
- (b) professional and technical competence;
- (c) financial resources and equipment and other physical facilities;
- (d) managerial capability, reliability and experience; and
- (e) a sufficient number of personnel capable of discharging the obligations of the supplier under the procurement contract.

(3) A procuring entity may, at any stage of procurement proceedings, verify the qualifications of a supplier.

(4) A procuring entity shall

- (a) impose on or apply to a supplier, whether in pre-qualification proceedings or otherwise, no qualification criterion other than that set

out in the pre-qualification notice or document, if any, or in the solicitation document;

- (b) in determining whether to qualify a supplier, apply qualification criteria equally to all suppliers and evaluate the qualifications of each supplier in accordance with such criteria;
 - (c) establish no qualification criterion, requirement or procedure that discriminates against or among suppliers or categories of suppliers unless the criterion is objectively justifiable.
- (5) Where a procuring entity assesses the qualifications of suppliers, the entity shall
- (a) promptly notify each supplier in writing of whether or not he qualified, and where the supplier did not qualify, inform the supplier, upon his request, of the reasons that he did not qualify; and
 - (b) supply to any person upon his request, the names of the suppliers who qualified.

Pre-qualification of suppliers

92.(1) A procuring entity may engage in pre-qualification proceedings in order to identify, prior to solicitation, suppliers who are qualified to present submissions.

- (2) A procuring entity shall, in particular, consider engaging in pre-qualification proceedings where
- (a) the subject matter of the procurement is highly complex or specialised or requires detailed design or methodology;
 - (b) the cost of preparing a detailed submission would discourage competition; or
 - (c) the evaluation of a submission would necessarily be particularly detailed and the evaluation of a large number of submissions would therefore require excessive time and resources from the entity.

- (3) Where a procuring entity desires to have suppliers pre-qualify, the entity shall publish a notice, to be called a pre-qualification notice, inviting suppliers to submit applications to pre-qualify.
- (4) The pre-qualification notice shall include
 - (a) the principal terms and conditions of the procurement contract;
 - (b) whether a pre-qualification document is to be issued or whether applications to pre-qualify should be submitted to the entity;
 - (c) where no pre-qualification document is to be issued, the qualification criteria and the procedures to be used for ascertaining the qualifications of suppliers;
 - (d) whether tenders are to be solicited from all pre-qualified suppliers or only from a limited number of suppliers who best meet the qualification criteria;
 - (e) where tenders are to be solicited only from a limited number of suppliers, the maximum number of pre-qualified suppliers from whom tenders are to be solicited and the manner in which that number is to be selected; and
 - (f) the procedure, place and deadline for submitting applications to pre-qualify.
- (5) Where a pre-qualification document is to be issued, the entity shall
 - (a) prepare the document in the form of the standard document, if any, issued or approved by the Director for the purpose;
 - (b) include in the document
 - (i) instructions for preparing and submitting applications to pre-qualify; and
 - (ii) a clear statement of the qualification criteria and of any documentary evidence or information required to be submitted to

demonstrate, and the procedures to be used to ascertain, the qualifications of suppliers; and

(c) supply the document to any supplier who requests it.

(6) Where a procuring entity engages in pre-qualification proceedings, only suppliers that the entity has pre-qualified are entitled to participate further in the procurement proceedings.

Clarification of pre-qualification notices and documents

93.(1) Where a procuring entity receives, within a reasonable time prior to the deadline for the submission of applications to pre-qualify, a request from a supplier for clarification of a pre-qualification notice or a pre-qualification document, the entity shall

(a) provide the clarification to the supplier; and

(b) without identifying the source of the request, in the case of

(i) a pre-qualification notice, publish the clarification; or

(ii) a pre-qualification document, communicate the clarification to all other suppliers to whom the entity provided the document.

(2) A procuring entity shall provide a clarification referred to in subsection (1), whether by publication or otherwise, to all suppliers at the same time and within sufficient time to enable them to present their applications to pre-qualify before the deadline for submission.

(3) A procuring entity may, prior to the deadline for submitting applications to pre-qualify, and, where required pursuant to section 7, with the approval of the relevant tenders committee, whether on its own initiative or as a result of a request for clarification by a supplier, modify a pre-qualification notice or a pre-qualification document by issuing an addendum.

- (4) The addendum shall
- (a) in the case of
 - (i) a pre-qualification notice, be published promptly; and
 - (ii) a pre-qualification document, be communicated promptly to the suppliers to whom the entity provided the pre-qualification document; and
 - (b) be binding on the suppliers.
- (5) Where a procuring entity issues a clarification or modification of a pre-qualification notice or a pre-qualification document, the entity shall, prior to the deadline for presenting applications to pre-qualify, extend, or where required pursuant to section 7, request the relevant tenders committee to extend the deadline where necessary in order to afford suppliers sufficient time to take the clarification or modification into account in preparing their applications.
- (6) The procuring entity, or where required pursuant to section 7, the relevant tenders committee may, in its absolute discretion, prior to a deadline for presenting applications to pre-qualify, extend the deadline where it is not possible for one or more suppliers to present their applications by the deadline because of any circumstance beyond their control.
- (7) Notice of an extension of a deadline shall
- (a) in the case of a pre-qualification notice, be published; and
 - (b) in the case of a pre-qualification document, be given to all suppliers to whom the entity provided the document.
- (8) The functions of a tenders committee under this section shall be discharged by the chairman of the committee.

PART VIII

CHALLENGE PROCEEDINGS

Appeals to Tribunal in respect of registration, exclusion etc.

94. A supplier may, upon payment of such fee as may be prescribed, appeal to the Tribunal against a decision

- (a) to refuse to register him or renew his registration;
- (b) that he is ineligible to participate in public procurement;
- (c) to exclude him from participation in public procurement; or
- (d) to remove his name from the Suppliers Register.

Procedure for appeal

95.(1) An appeal under section 94 shall be

- (a) in writing; and
- (b) submitted within 14 days of receipt by the supplier of notice of a decision referred to in that section.

(2) The Tribunal shall, within 15 days of receipt of the appeal, determine whether to entertain or dismiss the appeal.

(3) The Tribunal may dismiss an appeal where it determines that the appeal

- (a) is manifestly without merit; or
- (b) was not submitted by the deadline set out in subsection (1)(b),

and a dismissal constitutes a decision on the appeal.

Reconsideration of decision or action by procuring entity or tenders committee

96.(1) A supplier who participates in procurement proceedings and alleges that he has suffered or is likely to suffer loss or injury because a decision or action of a procuring entity or tenders committee in relation to the proceedings does not comply with this Act may, upon payment of such fee as may be prescribed, apply to the entity or committee to reconsider the decision or action.

- (2) An application for reconsideration shall
 - (a) be in writing;
 - (b) include particulars of the decision or action that the supplier alleges does not comply with this Act; and
 - (c) where the application relates to
 - (i) the terms of solicitation or pre-qualification or a decision or action taken in pre-qualification proceedings, be submitted prior to the deadline for presenting submissions; or
 - (ii) any other decision or action taken in the procurement proceedings, be submitted within the standstill period, if any, or, where no standstill period is applied, prior to the execution of
 - (A) the procurement contract; or
 - (B) the framework agreement, where a framework agreement is involved.
- (3) A procuring entity or tenders committee shall
 - (a) within 5 days of receipt of an application for reconsideration
 - (i) publish a notice of the application; and
 - (ii) notify all participants in the procurement proceedings of the submission of the application and its substance; and

- (b) within 10 days of publication of the notice

 - (i) determine whether to entertain or dismiss the application and, where it determines to entertain the application, whether to suspend the procurement proceedings to which the application relates; and
 - (ii) notify the applicant and all other participants in the procurement proceedings of its decision to entertain or dismiss the application and where the application is

 - (A) to be entertained, of whether the procurement proceedings are suspended and if so, the duration of the suspension or, if not, the reason for the decision not to suspend the proceedings; or
 - (B) dismissed, the reason for the dismissal.
- (4) A procuring entity or tenders committee may dismiss an application for reconsideration where it determines that the application
- (a) is manifestly without merit; or
 - (b) was not submitted by the deadline set out in subsection (2)(c),
- and a dismissal constitutes a decision on the application.
- (5) Where a procuring entity or tenders committee determines to entertain an application for reconsideration, the entity or committee
- (a) may overturn, correct, vary or uphold any decision or action it took in the procurement proceedings to which the application relates or the entity may cancel the procurement; and
 - (b) shall, within 20 days of publication of the notice referred to in subsection (3)(a),

 - (i) issue its decision on the application; and

- (ii) communicate its decision to the applicant, all other participants in the proceedings for reconsideration and all other participants in the procurement proceedings.

(6) A procuring entity or tenders committee shall give its decision and the reason for it, and state any action taken pursuant to it, in writing.

Appeals to Tribunal in respect of reconsideration proceedings

97.(1) A supplier who applies to a procuring entity or tenders committee for reconsideration of a decision or action may, upon payment of such fee as may be prescribed, appeal to the Tribunal where

- (a) the entity or committee does not
 - (i) give notice to him in accordance with section 96(3)(b)(ii) and (6); or
 - (ii) communicate its decision to him in accordance with section 96(5) and (6); or
- (b) he is dissatisfied with the decision of the entity or committee in respect of his application.

(2) An appeal to the Tribunal shall

- (a) be in writing; and
- (b) where
 - (i) it relates to a failure of a procuring entity or tenders committee to
 - (A) give notice to a supplier in accordance with section 96(3)(b)(ii) and (6); or
 - (B) communicate its decision to a supplier in accordance with section 96(5) and (6),

be submitted within 14 days after the notice should have been given or the decision should have been communicated to the supplier in accordance with section 96; or

- (ii) it is against a decision of a procuring entity or tenders committee in respect of an application for reconsideration, be submitted within 14 days of the communication to the supplier of the decision of the entity or committee.
- (3) Where a supplier appeals to the Tribunal
 - (a) the authority of the procuring entity or tenders committee to entertain his application ceases; and
 - (b) the entity or committee shall, upon receipt from the Tribunal of notice of the appeal, promptly provide the Tribunal with all documents relating to the procurement proceedings.
- (4) The Tribunal shall
 - (a) within 5 days of receipt of an appeal, publish a notice of the appeal; and
 - (b) within 10 days of publication of the notice,
 - (i) unless it decides that urgent public interest considerations require the procurement proceedings to continue, order the suspension of the proceedings where and for as long as it determines that a suspension is necessary to protect the interests of the appellant; and
 - (ii) notify the procuring entity, the tenders committee and all participants in the procurement proceedings to which the appeal relates of the appeal and its substance and its decision
 - (A) to suspend the proceedings and the duration of the suspension; or
 - (B) not to suspend the proceedings and the reason for its decision.
- (5) The Tribunal may order that any suspension imposed under subsection (4) be extended or lifted.

(6) The Tribunal may dismiss an appeal and order that any suspension imposed be lifted where it determines that the appeal

(a) is manifestly without merit; or

(b) was not submitted by the deadline set out in subsection (2)(b),

and a dismissal constitutes a decision on the appeal.

(7) The Tribunal shall within 20 days of publication of the notice referred to in subsection (4)(a)

(a) issue its decision on the appeal; and

(b) communicate its decision to the appellant, the procuring entity, the tenders committee and all other participants in the procurement proceedings.

Hearing of appeal

98.(1) An appeal to the Tribunal shall be heard and determined by the chairman and not less than 2 members of the Tribunal selected by the chairman, and the chairman and the members so selected shall have all the powers of the Tribunal in relation to the appeal.

(2) In the event of a difference of opinion among members sitting together, the opinion of the majority shall prevail.

(3) The Tribunal may, if it thinks fit, receive oral or written evidence, and under oath or otherwise, but it is not bound by the rules of evidence in the *Evidence Act*, Cap. 121 and it may take into account opinion evidence and such facts as it considers relevant and material.

(4) The Tribunal shall allow every party to an appeal to appear in person or by representative, and, where the Tribunal receives oral evidence, to examine and cross-examine witnesses.

(5) Notwithstanding subsection (4), the Tribunal may proceed in the absence of a party who has been given reasonable notice in writing to attend.

- (6) The Tribunal shall, subject to section 101, receive evidence in public.
- (7) The Tribunal may issue summonses, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence and requiring parties or witnesses to answer questions and, generally, for conducting its proceedings in a proper and orderly manner.
- (8) The Tribunal may report to the High Court the conduct of any person who disobeys any subpoena, order or direction properly issued under subsection (7), or says or does any other thing that would, if the Tribunal were a superior court of law, be contempt of court.
- (9) Where a report is made under subsection (8), the High Court shall hear the complaint and any defence, and may punish the person concerned in the same manner as if the person were guilty of contempt of the High Court.

Decisions by Tribunal

- 99.(1)** In taking its decision on an appeal that it has entertained, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.
- (2) Without prejudice to the generality of subsection (1), the Tribunal may
 - (a) confirm a lawful decision;
 - (b) revise an unlawful decision or substitute its own decision for such a decision;
 - (c) overturn, wholly or in part, an unlawful act or decision, other than a decision that results in the execution of a procurement contract or framework agreement;
 - (d) prohibit any individual or entity from acting or deciding unlawfully or from following an unlawful procedure;

- (e) require any individual or entity that has acted or proceeded in an unlawful manner or that has reached an unlawful decision, to act or proceed in a lawful manner or reach a lawful decision;
 - (f) order that procurement proceedings be terminated; or
 - (g) dismiss the appeal.
- (3) The Tribunal shall give reasons for any decision it makes on a matter before it, including a decision to dismiss a matter, and shall state the decision and the reasons for it, in writing.
- (4) Nothing in this Part shall permit the Tribunal to interfere with a procurement contract or framework agreement that has been executed.
- (5) Decisions of the Tribunal shall be made available for public inspection.

Costs

100. The Tribunal shall not award costs to any party to an appeal other than sums in respect of the reasonable costs incurred in

- (a) the preparation of the submission relating to an application for reconsideration or the appeal; and
- (b) the obtaining of an expert report,

and any such award shall be at the discretion of the Tribunal.

Disclosure in reconsideration and appeal proceedings

101. No information shall be disclosed in proceedings under sections 94 to 99 and no public hearing shall be held under those sections where

- (a) the Tribunal is of the opinion that evidence may be disclosed relating to financial or other personal circumstances of any person and that the balance of advantage is in favour of preventing the disclosure of the evidence in public, having regard both to the public interest and the interest of the person concerned; or

- (b) to do so would prejudice national security, impede law enforcement, prejudice the legitimate, commercial interests of a supplier or impede fair competition.

Rights of participants in reconsideration and appeal proceedings

102.(1) A supplier who is a party in procurement proceedings to which an application for reconsideration of a decision or action by a procuring entity or tenders committee or an appeal relates and the procuring entity, the tenders committee and any other governmental authority the interests of which are, or are likely to be, affected by the application or appeal have the right to

- (a) participate in the proceedings under sections 94 to 99;
 - (b) be present and represented at all hearings during the proceedings;
 - (c) be heard;
 - (d) present evidence, including from witnesses;
 - (e) request, subject to **section 101**, that any hearing should take place in public; and
 - (f) obtain, subject to section 101, access to the record of the proceedings.
- (2) A supplier who fails to participate in proceedings for a reconsideration or an appeal referred to in subsection (1) is barred from subsequently challenging the decisions or actions that are the subject matter of the application for reconsideration or the appeal.

Effect of an application for reconsideration or an appeal

103.(1) A procuring entity shall not take any step that would result in the execution of a procurement contract or framework agreement where the entity receives, in respect of a decision or action taken in procurement proceedings related to the contract or agreement

- (a) an application for reconsideration within the time limits prescribed in section 96;

- (b) notice, from a tenders committee, of an application for reconsideration submitted to the committee within the time limits prescribed in section 96; or
 - (c) notice of an appeal before the Tribunal under section 97.
- (2) The prohibition referred to in subsection (1) shall expire on the fifteenth day after the decision of the procuring entity, tenders committee or Tribunal on the application for reconsideration or the appeal, as the case may be, is communicated to
 - (a) the applicant or appellant, as the case may be;
 - (b) the procuring entity, where applicable;
 - (c) all other participants in the proceedings for reconsideration or all parties to the appeal, as the case may be; and
 - (d) all other participants in the procurement proceedings to which the application or appeal relates.
- (3) A procuring entity may, at any time, apply to the Tribunal to authorize the entity to enter into a procurement contract or framework agreement on the ground that urgent public interest considerations so justify.
- (4) The decision of the Tribunal and the reason for the decision shall promptly be communicated to the persons referred to in paragraphs (a) to (d) of subsection (2).

Court proceedings

- 104.(1)** A party to an appeal to the Tribunal may appeal from the decision of the Tribunal to the Court of Appeal.
- (2) In disposing of an appeal under this section, the Court of Appeal may
 - (a) confirm or vacate the determination;
 - (b) make an order referring the determination back to the Tribunal for re-determination in accordance with the directions of the court; or

- (c) make such other orders as it considers necessary.

PART IX

MISCELLANEOUS

Form of procurement contract

105.(1) A procurement contract shall, subject to subsection (2), be a written agreement drawn up in a form approved by the Solicitor General.

(2) Where the estimated value of the procurement contract is less than \$50 000, the contract may be a purchase order in a form approved by the Director.

(3) All contract documents shall be in the form, and include the terms and conditions, included or indicated in the solicitation document, subject to any changes resulting from the acceptance of the successful submission or from negotiations.

(4) Where

- (a) the value of a contract equals or exceeds the relevant threshold specified in section 16(1)(a); or

- (b) the contract includes terms and conditions other than those provided in the standard form approved by the Solicitor General,

the procuring entity shall, prior to executing the contract, ensure that the contract is approved by the Solicitor General or another legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, by such legal officer as the entity may approve for the purpose.

(5) Where

- (a) the value of a contract exceeds 5 per cent of the operational budget of a state-owned enterprise or a commercial state-owned enterprise; or

- (b) the terms and conditions of a contract will result in more than one per cent of recurrent expenditure being added to the operational budget of any procuring entity,

the procuring entity shall, prior to executing the contract, in addition to complying with subsection (4), ensure that the contract is approved by the Minister.

Procurement record and contract management record

106.(1) A procuring entity shall maintain for a period of no less than 7 years from the date of completion of performance under a procurement contract, a record of

- (a) the procurement proceedings; and
 - (b) the management of the procurement contract.
- (2) A procurement record shall include
- (a) any request to initiate the procurement proceedings and the consistency of the request with a procurement plan;
 - (b) a brief description of the goods, works or services involved;
 - (c) where a procuring entity uses a method of procurement other than open tendering, a statement of the reasons and circumstances relied upon to justify the use of such other method and evidence of any permission granted for the use of the method;
 - (d) a copy of any notice published;
 - (e) any list of suppliers or organizations to which an invitation to tender or other similar notice was sent directly;
 - (f) any shortlist of suppliers or list of pre-qualified suppliers used;
 - (g) a copy of any pre-qualification or solicitation document issued and any amendment to, or clarification of, such document;
 - (h) a record of the submissions received, including the name and address of each supplier who presented a submission;

- (i) a record of any opening of tenders;
- (j) copies of all submissions evaluated and any clarification requested from a supplier and the response received;
- (k) any evaluation report prepared, including in respect of applications for pre-qualification;
- (l) minutes of any meeting held with suppliers;
- (m) a copy of the successful tender notice, or, where no standstill period was applied and no successful tender notice issued, a statement of the reasons and circumstances relied upon by the procuring entity in deciding, in accordance with section 34(5), not to apply a standstill period;
- (n) the name and address of the successful supplier and a copy of the successful tender acceptance notice;
- (o) any submissions to, and decisions of, a tenders committee;
- (p) any reason given to a supplier for the rejection of his submission;
- (q) any decision of a procuring entity to reject a submission as abnormally low and the reason for the decision and, in particular, the concerns that led the entity to reject the submission and its reasons for holding such concerns, and all communications with the supplier in relation to the submission;
- (r) any decision to cancel the procurement and the reason for the decision;
- (s) any decision to exclude a supplier from the procurement proceedings and the reason for the decision; and
- (t) in the case of an application for reconsideration or an appeal under Part VIII, a copy of the application for reconsideration or appeal, as the case may be, and of all decisions taken in the relevant proceedings and the reasons for the decisions.

- (3) A contract management record shall include
 - (a) the successful tender acceptance notice;
 - (b) a copy of the executed contract document and any agreed contract amendments;
 - (c) any variations issued under the contract or call-off orders issued under a framework agreement;
 - (d) all post-contract documentation relating to the fulfilment of contractual obligations including copies of guarantees;
 - (e) minutes of any meetings related to the management of the contract, including contract progress or review meetings;
 - (f) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;
 - (g) copies of test reports relating to any tests performed on the goods and works;
 - (h) copies of all invoices including supporting documentation and details of the actual payment authorized;
 - (i) details of any claims made or penalties imposed by the procuring entity in accordance with the contract;
 - (j) all correspondence between the procuring entity and the supplier; and
 - (k) a copy of the report referred to in section 40(1).
- (4) Procurement records and contract management records shall be accurately maintained and kept up to date and may be in electronic form.
- (5) Where procurement and contract management records are in electronic form, the procuring entity shall establish and maintain measures to safeguard the integrity and the reliability of the records.

Public procurement manuals, standard documents and instructions

107. The Director may issue public procurement instructions and manuals to provide guidance on, and standard documents and forms for the implementation of, this Act.

Annual reports

108.(1) The Chief Procurement Officer shall, at the end of a financial year, prepare a report on the operation and performance of the public procurement system for the year.

(2) The report shall include

- (a) a figure representing the total value of contracts awarded by procuring entities and another figure representing the cost of the total value of procurement contract variances for the year;
- (b) the number of unfulfilled contracts awarded;
- (c) a summary of the procurement activities of each procuring entity that sets out
 - (i) the number of procurement contracts awarded;
 - (ii) the number of procurement contracts varied and the reason for the variance;
 - (iii) the quantum of the variances;
 - (iv) the number of unfulfilled procurement contracts and the quantum of cost incurred thereby;
 - (v) with respect to procurement for a project, a brief description of the project and the name of the supplier to whom the contract was awarded and the value, scope of works and expected deliverables of the project;

- (vi) any lessons learnt as a consequence of the management of the procurement contracts; and
 - (vii) the number of unsolicited proposal agreements entered into together with a brief description of the proposal, the name of the proponent and any procurement contract awarded as a result of the proposal;
- (d) details of changes implemented to ensure that current best practice for public procurement is observed;
 - (e) the names of any procuring entities that have failed to comply with this Act;
 - (f) an assessment of the overall operation and performance of the public procurement system;
 - (g) a summary of any issues to be resolved; and
 - (h) any recommendations requiring action on the part of a procuring entity.
- (3) The report need not include details of contracts valued at less than the relevant threshold specified in section 16(1)(a) other than the total number and value.
- (4) The Minister shall cause a report prepared pursuant to subsection (1) to be laid in Parliament within 4 months of the end of the financial year to which the report relates.

Confidentiality in procurement proceedings

109.(1) A procuring entity shall not, unless in accordance with an order of the court, disclose any information related to its procurement proceedings or suppliers where to do so would prejudice national security, impede law enforcement, prejudice the legitimate, commercial interests of suppliers or impede fair competition.

(2) A procuring entity shall, unless it is required to provide or publish information in accordance with this Act or any rules made under this Act, treat

applications to pre-qualify and submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or to any other person not authorized to have access to the information.

(3) Subject to subsection (1), in procurement involving information that a procuring entity considers to be secret, a procuring entity may

- (a) impose on suppliers requirements aimed at protecting the information; and
- (b) require suppliers to ensure that their sub-contractors comply with such requirements.

(4) A procuring entity shall, subject to any other law to the contrary, keep confidential the commercial and proprietary information that comes into its possession in relation to procurement proceedings.

Disclosure of interest

110.(1) Where an officer or a member of a tenders committee or of the Tribunal is interested in any matter requiring the consideration and decision of the officer, committee or Tribunal, or is interested in any party to any such matter, the person so interested shall

- (a) disclose such interest as soon as practicable after he becomes aware of the matter; and
- (b) absent himself from, and refrain from participation in, the deliberations or decision-making process in relation to the matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made or to which it relates or in the record of the hearing of the Tribunal to which it relates.

(3) Subsections (1) and (2) apply, with such modifications and adaptations as may be necessary, to advisers and technical specialists who provide advice to a tenders committee or the Tribunal and to staff who provide secretarial services to a tenders committee or the Tribunal.

Protection from suit, victimization etc.

111.(1) No action shall be instituted against a member of the Tribunal in respect of the discharge or purported discharge, in good faith, of his functions under this Act.

(2) Notwithstanding any other law, a person shall not be discharged, demoted, suspended, threatened, harassed, financially prejudiced or otherwise discriminated against or victimized for making a report under section 112(1)(d).

(3) A person who is discharged, demoted, suspended, threatened, harassed, financially prejudiced or otherwise discriminated against or victimized for making a report under section 112(1)(d) shall, where applicable, be reinstated in his original office with no loss of benefit and without prejudice to any other legal recourse available to him.

(4) A person who discharges, demotes, suspends, threatens, harasses or in any manner discriminates against or victimizes a person or acts so as to prejudice the livelihood of a person as a consequence of his making a report under section 112(1)(d) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 3 years or to both such fine and imprisonment.

Officers engaged in procurement activities

112.(1) An officer who is engaged in the procurement activities of a procuring entity shall

- (a) have regard to the objectives specified in section 12 in relation to public procurement and otherwise comply with this Act;
- (b) exercise any functions that he has in relation to public procurement
 - (i) diligently and with the degree of care and efficiency that a reasonable person would exercise in the circumstances; and

- (ii) impartially to ensure that suppliers have fair and competitive access to opportunities in public procurement;
 - (c) keep confidential any information relating to public procurement that comes into his possession including any proprietary information of suppliers; and
 - (d) disclose to the Chief Procurement Officer any information in his possession concerning any act of impropriety or illegality in respect of such activities or any breach of this Act.
- (2) An officer who is engaged in the procurement activities of a procuring entity shall not participate as a supplier in such activities.
- (3) Where the Chief Procurement Officer or the Tribunal has reasonable cause to believe that there has been misconduct or a breach of this Act by an officer, the Chief Procurement Officer or Tribunal shall refer the matter to the appropriate authority for further investigation.

Offences and penalties

- 113.(1)** A person who
- (a) is not a public officer and does not declare a conflict of interest as required by section 28(4);
 - (b) without reasonable excuse, fails or refuses to give information, or produce any books, documents or records required under section 5(2) or section 98(7);
 - (c) without reasonable excuse, refuses to answer a summons as required under **section 98(7)**;
 - (d) knowingly gives false or misleading information or evidence in purported compliance with a request or summons under section 5(2) or **section 98(7)**;

- (e) assaults, resists or obstructs the Chief Procurement Officer or staff designated by him, in the exercise of their powers to access or require relevant information in accordance with section 5(2); or
- (f) contrary to this Act, interferes, with or exerts undue influence on, the Director or the Chief Procurement Officer or any officer appointed to assist the Director or the Chief Procurement Officer or on a procuring entity in the performance of the functions assigned to the person or entity or in the exercise of the powers granted under this Act,

is guilty of an offence and is liable on conviction on indictment to a fine of \$170 000 or to imprisonment for 7 years or to both such fine and imprisonment.

- (2) Notwithstanding subsection (1), a person who fails or refuses to answer any question or make any statement that may incriminate him is not guilty of an offence under that subsection.

Rules

114. The Minister may make Rules for giving effect to this Act.

Repeal and consequential changes

115.(1) The *Financial Management and Audit (Supplies) Rules, 1971 (S.I. 1971 No. 47)* are repealed.

- (2) The enactment set out in first column of the ***Fourth Schedule*** is amended to the extent set out opposite thereto in the second column.

Transitional provisions

116. This Act does not apply to procurement initiated before the commencement of this Act and such procurement shall be conducted and dealt with as if this Act had not commenced.

Commencement

117. This Act shall come into operation on a day to be fixed by Proclamation.

110

FIRST SCHEDULE

(Sections 2 and 3)

Public Procurement Bill, 2021
(Act 2021-)

PROTOCOL

ON

PUBLIC PROCUREMENT

FOR THE CARIBBEAN COMMUNITY

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PREAMBLE

THE STATES PARTIES,

Recalling the undertaking of the Member States in Article 239 of the Revised Treaty of Chaguaramas to elaborate a Protocol relating, *inter alia*, to government procurement;

Recognising the importance of the contribution of government procurement to the gross domestic product (GDP) of the Member States;

Conscious of the Member States' transition from government procurement to public procurement;

Aware that the Member States provide considerable procurement opportunities for CARICOM-based suppliers of goods, services and works in the CARICOM Single Market and Economy (CSME);

Conscious that the Member States are likely to secure the best value for money if the procurement policies of their Governments are informed by policies of fair competition, non-discrimination and transparency;

Desirous of strengthening the regional supplier base and providing opportunities for micro, small and medium-sized enterprises to participate in procurement opportunities;

Acknowledging that the Less Developed Countries are disadvantaged by reason of the size, structure and vulnerability of their economies and require a greater policy space in the context of public procurement contracts for the procurement of works in order to facilitate adjustment to competition in the Community public procurement regime;

First Schedule - (Cont'd)

Committed to enhancing the quality of governance in the Caribbean Community through the promotion of fairness, transparency and accountability in the supply of goods, services and works within the CSME;

Convinced that a sound, efficient, transparent and credible policy of public procurement by the Member States will contribute significantly to the achievement of the objectives of the Caribbean Single Market,

Have agreed as follows:

First Schedule - (Cont'd)

PART ONE
GENERAL PROVISIONS

ARTICLE 1

USE OF TERMS

In this Protocol, unless the context otherwise requires:

“bidder” means a supplier who has submitted a bid;

“bidding documents”:

- (a) means documentation containing information in respect of a procurement opportunity; and
- (b) includes the invitation to bid, specific information concerning the item(s) to be procured including any technical or other specifications, conditions for supplier participation, the manner, date and time for the submission of bids, the form and format of the bid, evaluation criteria, the form of contract, the implementation period and any other relevant information;

“CARICOM” means the Caribbean Community;

“Community” means the Caribbean Community established by Article 2 of the Revised Treaty and includes the CSME as established by the Revised Treaty;

“Community Council of Ministers” or “Community Council” means the Organ of the Community so named in paragraph 1(b) of Article 10 of the Revised Treaty;

“Community Public Procurement Notice Board” means the electronic notice board established by the Contracting Parties pursuant to Article 31;

First Schedule - (Cont'd)

“Community public procurement regime” means the regime operated among Contracting Parties in which public procurements to which this Protocol applies are conducted;

“Community Rules of Origin” means the Rules of Origin set out in Article 84 of the Revised Treaty, in so far as they may be applicable, and as amended from time to time;

“Community Suppliers Register” means the register described in paragraph 1 of Article 32;

“concession” means a long-term contract for works in relation to which:

- (a) the consideration for the works to be carried out consists:
 - (i) solely of the right to exploit the activity; or
 - (ii) of a combination of the right set out in subparagraph (i) and the right to payment; and
- (b) the concessionaire bears the risk inherent in the exploitation by providing funding for the activity or otherwise;

“Contracting Party” means a Member State that is a party to this Protocol;

“Council for Trade and Economic Development” or “COTED” means the Organ of the Community so named in paragraph 2 (b) of Article 10 of the Revised Treaty;

“CSME” means the regime established by the provisions of the Revised Treaty replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and Tobago on 4 July 1973;

“disadvantaged country, region or sector” means a country, region or sector so designated under paragraph 2 of Article 142 of the Revised Treaty;

“effectively controlled” in the context of a company or other legal entity, means the power to name a majority of its directors or to otherwise legally direct its actions;

*First Schedule - (Cont'd)***“force majeure”:**

- (a) means an event that is beyond the reasonable control of a person and which makes the person’s performance of his or her obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances; and
- (b) includes –
 - (i) war, riots, civil disorder, strikes, lockouts, industrial action (except where such strikes, lockouts or industrial action are within the power of the person invoking the force majeure), confiscation or any other action by Government agencies; and
 - (ii) earthquakes, fire, floods, storms or explosions;

“green procurement” means the acquisition of goods, services or works in a manner that causes minimal adverse environmental impact and includes:

- (a) improved recyclability;
- (b) high recycled content;
- (c) greater energy efficiency;
- (d) utilising clean technology or clean fuels;
- (e) reduced water consumption;
- (f) reduced emissions of irritating or toxic substances during installation or use; and
- (g) reduced production of toxic substances during use or disposal;

First Schedule - (Cont'd)

“in writing” means any expression of information in words, numbers or other symbols, including electronic symbols which can be read, reproduced and stored;

“less developed countries” means the countries referred to as less developed countries in Article 4 of the Revised Treaty;

“Member State” means a Member State of the Community, excluding an Associate Member within the meaning of Article 231 of the Revised Treaty;

“more developed countries” means the countries referred to as more developed countries in Article 4 of the Revised Treaty;

“national of a Contracting Party” means:

- (a) an individual who:
 - (i) is a citizen of a Contracting Party; or
 - (ii) has a connection with a Contracting Party of a kind which entitles him to be regarded as belonging to it or as being a native or resident of a Contracting Party for the purposes of the laws of the respective Contracting Party relating to immigration; or
- (b) a company or other legal entity constituted in a Contracting Party in conformity with the laws thereof and which that Contracting Party regards as belonging to it, provided that such company or other legal entity:
 - (i) has its registered office and central administration, and carries on substantial activity within a Contracting Party; and
 - (ii) is substantially owned and effectively controlled by an individual mentioned in paragraph (a);

First Schedule - (Cont'd)

“offsets” means any conditions or undertakings that encourage local development or improve a Contracting Party’s balance of payments account, such as the application of margins of preference for the use of domestic content or domestic suppliers, requirements for the licensing or the transfer of technology, domestic investment requirements, counter trade and similar actions;

“open bidding” means a procurement method in which an interested supplier may submit a bid for a procurement contract;

“Permanent Joint Council” means the Permanent Joint Council on Public Procurement established under Article 30;

“private party” in the context of public-private partnerships, means a majority privately owned company or consortium;

“procurement” means the acquisition of goods, services or works or any combination thereof;

“procurement method” means the method to be used to engage in public procurement;

“procurement opportunity” means an opportunity for suppliers to participate in procurement proceedings;

“procurement proceedings” means the initiation and conduct of the process of effecting a public procurement up to the award of a contract;

“procuring entity” in relation to a Contracting Party, means a central, sub-central or local government entity, statutory body, state-owned entity or other undertaking in a Contracting Party that engages in public procurement;

“public asset” means any new or existing infrastructure for public use;

“public funds” means monies derived from:

- (a) revenue including all tolls, taxes, imposts rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale and all other receipts of a Contracting Party’s Government, from whatever sources arising, and over which Parliament has the

First Schedule - (Cont'd)

power of appropriation, including the proceeds of all loans raised; and

- (b) any trust or other monies held, whether temporarily or otherwise, in the name of a Contracting Party's Government;

“public-private partnership” means a long-term contract between a procuring entity and a private party:

- (a) to develop (possibly by significant upgrade or renovation) and to manage a public asset or to provide a service on behalf of the procuring entity;
- (b) in which the private party bears significant risk and management responsibility throughout the life of the contract;
- (c) in which the private party provides a significant portion of the finance at its own risk; and
- (d) where the remuneration to the private party is significantly linked to performance or the demand for or use of the public asset or service related to, or offered by means of, the public asset so as to align the interests of the procuring entity and the private party;

“public procurement” means procurement for or on behalf of a procuring entity using public funds by way of purchase, rental, lease, concession or hire-purchase with or without an option to buy but not with a view to commercial resale or use in the production of goods and services by private commercial entities for commercial use;

“public use” means for use by or for the benefit of the public;

“publish” means to disseminate information in an electronic, paper or other medium that is distributed widely and is readily accessible to suppliers who are entitled to participate and are interested in participating in a procurement opportunity;

“Revised Treaty” means the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001;

First Schedule - (Cont'd)

“**Secretariat**” means the Secretariat of the Community referred to in Article 23 of the Revised Treaty;

“**substantially owned**” in the context of a company or other legal entity, means having a beneficial ownership of more than 50 per cent of the equity interest therein;

“**supplier**” means a national of a Contracting Party, who offers the execution of works or the supply of goods or services on a market but does not include State-owned entities;

“**technical specification**” means a detailed description which:

- (a) specifies the characteristics of the goods, services or works to be procured or their related processes and production methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that a procuring entity prescribes; and
- (b) addresses quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labelling as they apply to a good, process, service, production or operating method;

“**third country**” means a country that is not a Member State;

“**traditional media**” includes television, radio, newspapers, magazines, newsletters and other print publications; and

“**Treaty**” means the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and Tobago on 4 July 1973;

ARTICLE 2

OBJECTIVES

This Protocol establishes the conditions and procedures for the progressive integration of the national public procurement market of each Contracting Party into a single, unified and open area through the design and implementation of a regional best practice regime for public

First Schedule - (Cont'd)

procurement and, in so doing:

- (a) creates the necessary competitive and non-discriminatory conditions to facilitate achievement of best value for money;
- (b) provides opportunities for access to a single market with regional sales opportunities;
- (c) strengthens the competitiveness of the regional supplier base in particular in relation to micro, small and medium-sized enterprises; and
- (d) encourages the rational use of scarce resources.

ARTICLE 3

OPERATING PRINCIPLES

1. Consistent with the objective of this Protocol, each Contracting Party shall, in its public procurements to which this Protocol applies, give effect to the following principles:
 - (a) national treatment and most favoured nation treatment;
 - (b) transparency;
 - (c) accountability;
 - (d) best value for money; and
 - (e) procedural fairness.
2. In accordance with paragraph 1, each Contracting Party shall:
 - (a) ensure that procurement policies, administrative rules, guidelines, procedures and practices which are within the scope of application of this Protocol, as set out in Article 5, are not prepared, adopted or applied so as to afford protection or favour

First Schedule - (Cont'd)

- to, or bias against, the goods, services, works or suppliers of any other Contracting Party;
- (b) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to domestic goods, services, works and suppliers;
 - (c) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to the goods, services, works and suppliers of a Member State not party to this Protocol or a third country;
 - (d) ensure that procuring entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of affiliation to, or ownership by a person or persons of any other Contracting Party; and
 - (e) ensure that adequate and relevant information on public procurement and procurement opportunities is made accessible and widely available to suppliers in a consistent and timely manner at reasonable or no cost.

ARTICLE 4**IMPLEMENTATION**

In the context of public procurements to which this Protocol applies, each Contracting Party:

- (a) shall enact, monitor and enforce appropriate public procurement legislation that is compatible with the provisions of this Protocol;
- (b) shall establish, strengthen and maintain national institutional arrangements to ensure the enforcement of and compliance with public procurement legislation enacted in accordance with paragraph (a); and
- (c) shall not introduce in its territory any new restrictions, whether or not so expressly stated, the effect of which would be to prohibit or otherwise limit the participation of suppliers in public procurements to which this Protocol applies.

First Schedule - (Cont'd)

PART TWO

SCOPE AND COVERAGE

1. Subject to paragraph 2, this Protocol applies to every public procurement of a value equal to or greater than the relevant threshold specified in Annex A.
2. The provisions of this Protocol shall not apply to public procurements:
 - (a) under agreements between a Contracting Party and an international organisation which limit participation in public procurement;
 - (b) under agreements between a Contracting Party and:
 - (i) a Member State that is not party to this Protocol; or
 - (ii) a third country,

for the joint implementation or exploitation of a project by the parties which are financed by the Member State or third country and limit participation in public procurement; or
 - (c) of the types specified in Annex B.

ARTICLE 6

THRESHOLD REVIEW

1. Subject to paragraph 2, the Contracting Parties may, from time to time, amend Annex A in accordance with Article 39, in order to ensure the achievement of the objectives of this Protocol.
2. The Permanent Joint Council shall review the thresholds specified in Annex A at least every two years, taking into account the considerations referred to in paragraph 4 and shall, where necessary and appropriate, recommend to the Contracting Parties that the

First Schedule - (Cont'd)

thresholds be amended.

3. Recommendations of the Permanent Joint Council shall be made on the affirmative vote of two-thirds of the members of the Permanent Joint Council, present and voting.
4. The Permanent Joint Council and the Contracting Parties shall take the following into consideration to determine whether to recommend the amendment of the thresholds or to amend the thresholds, respectively –
 - (a) the strength of the economies;
 - (b) the strength of the currencies; and
 - (c) such other factors as the Permanent Joint Council and the Contracting Parties consider appropriate.

ARTICLE 7

CONTRACT VALUATION RULES

1. Paragraphs 2 to 6 shall apply in determining the value of individual public procurement contracts to which this Protocol applies.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. Each Contracting Party shall ensure that its procuring entities do not select valuation methods or divide public procurement into multiple parts with the intention of avoiding the application of this Protocol.
4. Where the public procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers (hereinafter referred to as “recurring contracts”), the basis for calculating the estimated total maximum value shall be:

First Schedule - (Cont'd)

- (a) where no similar recurring contracts have been concluded over the previous 12 months, the estimated value of similar recurring contracts to be concluded during the 12 months subsequent to the initial contract; or
 - (b) the actual value of similar recurring contracts concluded over the previous 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months;
- 5. Where the public procurement is to be conducted in a single lot and the total price is not known, the basis for estimating the value shall be, with respect to:
 - (a) a fixed-term contract where the term:
 - (i) is 12 months or less, the total estimated contract value for the contract's duration; or
 - (ii) exceeds 12 months, the total estimated contract value, including the estimated residual value, where applicable; or
 - (b) a contract for an indefinite period, the estimated monthly instalment multiplied by 36.
- 6. In cases where an intended public procurement specifies the need for option clauses, the basis for valuation shall be the total value, inclusive of optional purchases.

ARTICLE 8

RULES OF ORIGIN

Each Contracting Party shall apply the Community Rules of Origin to public procurements under this Protocol.

First Schedule - (Cont'd)

ARTICLE 9

PROHIBITION OF OFFSETS

Each Contracting Party shall ensure that its procuring entities do not seek to impose offsets against suppliers in the:

- (a) qualification and selection of suppliers;
- (b) evaluation of bids; or
- (c) award of contracts.

PART THREE

INFORMATION AND COMMUNICATION TECHNOLOGIES

ARTICLE 10

COMMUNICATION MODALITIES

1. Unless otherwise required by this Protocol, and consistent with the requirements of the procuring entity and the conditions of the market, information dissemination and other communication shall be effected through electronic or paper media.
2. Each Contracting Party shall employ its best endeavours in the use of information technology taking into consideration:
 - (a) the high cost of paper publication;
 - (b) the volume of publication necessary in the operation of the Community public procurement regime;
 - (c) the complexities of intra-regional transport and delivery of documents;

First Schedule - (Cont'd)

- (d) time constraints involved in the Community public procurement regime; and
- (e) regional progress in the use of electronic data processing and telecommunication technologies.

ARTICLE 11

INFORMATION SYSTEMS

Each Contracting Party shall establish information systems comprising traditional and electronic media which shall be accessible by procuring entities and suppliers.

PART FOUR

PROCUREMENT PROCEEDINGS

ARTICLE 12

COMMUNITY STANDARD BIDDING DOCUMENTS

1. The Community Standard Bidding Documents shall include:
 - (a) standard forms and content of the invitation to bid;
 - (b) instructions to bidders;
 - (c) form of bid;
 - (d) form and conditions of contract; and
 - (e) any necessary appendices, such as formats for bid securities.

First Schedule - (Cont'd)

2. The Community Standard Bidding Documents shall be published on the Community Public Procurement Notice Board.
3. Subject to paragraph (6), each Contracting Party shall ensure that its procuring entities use the Community Standard Bidding Documents in public procurements to which this Protocol applies.
4. The Permanent Joint Council shall be responsible for considering and approving any modifications of or amendments to the Community Standard Bidding Documents as well as ensuring the accuracy and currency of such documentation.
5. Each Contracting Party may submit requests for modifications of and amendments to the Community Standard Bidding Documents to the Permanent Joint Council for its consideration and approval.
6. Notwithstanding paragraph 3, the Permanent Joint Council may approve the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies.

ARTICLE 13

ANNUAL PROCUREMENT PLAN

1. Each Contracting Party shall ensure that its procuring entities publish their Annual Procurement Plans on the Community Public Procurement Notice Board as early as possible in every fiscal year.
2. A procuring entity's Annual Procurement Plan shall contain information concerning its intended public procurements to which this Protocol applies for the relevant year, including the subject matter of the intended public procurements together with volumes and values, and the proposed dates or range of dates for the publication of related invitations to bid, where such information is available.
3. Each Contracting Party shall employ its best endeavours to ensure that its procuring entities conduct procurement proceedings in accordance with their Annual Procurement

First Schedule - (Cont'd)

Plans.

4. Annual Procurement Plans shall not be binding on the procuring entities that publish them.

ARTICLE 14

PUBLICATION OF PROCUREMENT OPPORTUNITIES

1. Subject to paragraph 2, each Contracting Party shall ensure that its procuring entities publish invitations to bid on the Community Public Procurement Notice Board.
2. Where a method which does not require the publication of an invitation to be bid is being employed, paragraph 1 shall not apply.

ARTICLE 15

PROCUREMENT METHODS

1. Subject to paragraph 2, each Contracting Party, shall ensure that its procuring entities employ open bidding for public procurements valued at or above the relevant threshold.
2. Notwithstanding paragraph 1, a Contracting Party may permit its procuring entities to employ procurement methods other than open bidding if:
 - (a) there is an extremely urgent need for the subject matter of the procurement and an open and competitive method of procurement is impractical because of the time involved in using such a method;
 - (b) in relation to a specific procurement opportunity, the procuring entity reasonably decides that only a limited number of suppliers can perform the contract for technical or artistic reasons or reasons connected with the protection of exclusive rights and no reasonable alternative or substitute for the goods, services or works to be procured exists;

First Schedule - (Cont'd)

- (c) additional goods, services or works which were not included in the initial procurement contract, but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to satisfactorily complete the procurement, provided that the total value of the contract awarded for such additional goods, services or works does not exceed fifty per cent (50%) of the amount of the initial contract;
 - (d) goods are purchased on commodity markets or where goods and services are made available under exceptionally advantageous conditions that only arise in the very short term;
 - (e) no suitable bids were received in response to an earlier invitation to suppliers to participate in an open bid;
 - (f) due to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in open bidding would be impractical because of the time involved in using such a method;
 - (g) the procuring entity has:
 - (i) procured from a particular supplier goods, services or works which are, to the procuring entity's satisfaction, effective in meeting the needs of the procuring entity; and
 - (ii) determined the need for additional supplies to be procured from the supplier for reasons of standardisation or compatibility with existing goods, services or works;
 - (h) the public procurement contract is awarded to the winner of a design or artistic contest; or
 - (i) the procurement is between procuring entities.
3. Where the procuring entities within a Contracting Party employ a procurement method other than open bidding, the Contracting Party shall ensure that procuring entities select bidders in a non-discriminatory manner so as to maximise competition to the extent

First Schedule - (Cont'd)

practicable.

4. In establishing procedures for procurement methods, each Contracting Party shall develop appropriate and effective rules and guidelines governing procurement planning, advertising media, e-procurement, security of bids, establishment of bid evaluation committees, time-frames and content and fees for bidding documents.

ARTICLE 16

TIME LIMITS

Each Contracting Party shall ensure that:

- (a) all time limits applied to procurement opportunities offered by procuring entities under this Protocol are adequate to allow interested suppliers to prepare and submit bids;
- (b) its procuring entities take into account the complexity of the procurement opportunity, the possibility of publication delays and the implications of cross-border transport of relevant documentation consistent with the procuring entity's own reasonable needs when determining time limits;
- (c) where its procuring entities use open bidding, they shall provide no less than forty (40) calendar days between the date of publication of the bid and the deadline for the submission of bids; and
- (d) when its procuring entities use procurement methods other than open bidding they comply with paragraph (b) and provide reasonable time limits consistent with the requirements of the procurement and the objectives of this Protocol.

First Schedule - (Cont'd)

ARTICLE 17

SUBMISSION, RECEIPT AND OPENINGS OF BIDS

1. Each Contracting Party shall ensure that procuring entities:
 - (a) require the submission of bids in writing;
 - (b) receive and open bids under conditions and procedures that guarantee transparency, fairness and objectivity; and
 - (c) subject to paragraph 2, return unopened to the senders, bids received after the closing date and time for submission.
2. Notwithstanding paragraph 1(c), each Contracting Party shall ensure that its legislation permits procuring entities to accept late bids in circumstances where it can be ascertained that the submission of such bids was delayed by *force majeure*.
3. Each Contracting Party shall elaborate procedures and conditions that guarantee transparency, fairness and objectivity in the receiving and opening of bids.

ARTICLE 18

EVALUATION OF BIDS AND NOTICE

OF SUCCESSFUL BID

1. Each Contracting Party shall ensure that procuring entities:
 - (a) evaluate only bids which, at the time of opening, materially comply with the requirements for participation as described in the bidding documents; and
 - (b) evaluate bids fairly and objectively and solely on the basis of the evaluation criteria contained in the relevant bidding documents.

First Schedule - (Cont'd)

2. Subject to paragraph 4, each Contracting Party shall ensure that procuring entities issue a notice of successful bid to the bidder whose bid is determined to be the most advantageous based on the criteria in the bidding documents. The notice of successful bid shall be transmitted simultaneously to all participating bidders.
3. Each Contracting Party shall ensure that procuring entities provide reasons for rejecting a bid to the unsuccessful bidder who so requests. Such request must be received by the procuring entity within five (5) working days of notification of the successful bid. The procuring entity shall respond to such requests within ten (10) calendar days of receipt of same.
4. Each Contracting Party shall ensure that where its procuring entities cancel procurement opportunities:
 - (a) such cancellations are done prior to an award of contract; and
 - (b) the procuring entities provide reasons for cancellations, within a reasonable time, to any supplier who so requests.

ARTICLE 19**PUBLICATION OF NOTICE OF CONTRACT AWARD**

1. In the context of public procurement to which this Protocol applies, each Contracting Party shall ensure that when its procuring entities award procurement contracts, the procuring entities:
 - (a) immediately notify all bidders participating in the procurement proceedings of the contract award;
 - (b) publish a notice of contract award on the Community Public Procurement Notice Board for general information; and
 - (c) ensure that notifications and publications done pursuant to sub-paragraphs (a) and (b), respectively, are dispatched within three (3) working days from the date of the

First Schedule - (Cont'd)

award of contract.

2. Notices of contract award shall remain posted on the Community Public Procurement Notice Board for at least thirty (30) calendar days following the date of publication.

ARTICLE 20

RECORD OF PROCUREMENT PROCEEDINGS

1. Each Contracting Party shall ensure that its procuring entities establish, document and maintain records of their procurement proceedings in the manner specified in paragraph 2 of this Article.
2. Without prejudice to the means of retention or storage employed, each Contracting Party shall ensure that its procuring entities' procurement records are retained for a period of at the least five (5) years and contain, at the minimum:
 - (a) a brief description of the works, goods or services procured;
 - (b) the names and addresses of the bidders;
 - (c) the procurement method employed;
 - (d) the name and address of the successful bidder;
 - (e) the date of contract award;
 - (f) the contract price and actual completion cost;
 - (g) the duration of the contract;
 - (h) information relating to the qualification of bidders;
 - (i) a summary of the evaluation and comparison of bids;

First Schedule - (Cont'd)

- (j) the reasons for the rejection of any or all bids;
- (k) a summary of the requests for clarification or verification of the bid documents and any modifications thereof;
- (l) information relating to the successful bidder's performance on the contract; and
- (m) information relating to any complaints and their determination including their determination on appeal.

ARTICLE 21

CONTRACT ADMINISTRATION

1. Each Contracting Party shall employ its best endeavours to ensure that procurement personnel are adequately trained and qualified to administer procurement and contract administration procedures.
2. On an ongoing basis, best endeavours shall be made to design regional training programmes on public procurement and to assist the Contracting Parties with the implementation of such programmes.

ARTICLE 22

STATISTICAL REPORTING

1. Each Contracting Party shall record, compile and store information relating to public procurement proceedings and shall submit the information annually to the Secretariat for inclusion in the database referred to in paragraph 3.
2. The Contracting Parties shall develop common rules with respect to the content, submission, maintenance and accessibility of the information to be submitted pursuant to paragraph 1.

First Schedule - (Cont'd)

3. An electronic database of statistical information shall be developed for the storage of information submitted by each Contracting Party pursuant to paragraph 1.
4. Subject to paragraph 2, each Contracting Party shall have access to the database.

PART FIVE

TRANSPARENCY, FAIRNESS AND SUPPLIER CHALLENGE

ARTICLE 23

TECHNICAL SPECIFICATIONS

1. Each Contracting Party shall ensure that its procuring entities' use of design and technical specifications in their procurement proceedings is not intended to and does not have the effect of, unfairly limiting competition by directing the award of a contract to a particular supplier.
2. Each Contracting Party shall ensure that where its procuring entities prescribe technical specifications, such specifications:
 - (a) are included in the bidding documents;
 - (b) are worded in terms of performance, conformance and functional requirements, wherever possible, rather than design or descriptive characteristics;
 - (c) are based on regional standards, where available, or on national standards or internationally recognised standards or codes; and
 - (d) do not refer to a particular trademark, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirements.

First Schedule - (Cont'd)

3. Where a specification referred to in paragraph 2 (d) is unavoidable, words such as “equivalent to” or “similar to” shall be included in the specification.

ARTICLE 24

QUALIFICATION AND ELIGIBILITY OF SUPPLIERS

1. Each Contracting Party shall ensure that:
 - (a) any conditions for participation in a procurement opportunity that a procuring entity requires of an interested supplier are limited to conditions necessary to ensure that the supplier possesses the capabilities to fulfil the requirements of the procurement contract;
 - (b) its procuring entities do not discriminate between suppliers who are their own nationals and suppliers who are nationals of other Contracting Parties when identifying suppliers who are qualified to participate in a procurement opportunity;
 - (c) its procuring entities’ decisions regarding the qualifications of suppliers are based solely on the conditions for participation specified in the bidding documents;
 - (d) where a supplier is rejected on the basis of qualifications, the procuring entity, at the request of the supplier, communicates to the supplier the reasons for its decision within a reasonable time.
2. Nothing in this Protocol shall prevent a Contracting Party from permitting a procuring entity to disqualify a supplier from a procurement opportunity on the grounds of unfair competitive advantage, conflict of interest, bankruptcy, false declarations or conviction for criminal offences.
3. Each Contracting Party shall ensure that its procuring entities do not, as a prerequisite for award of a contract, impose artificial constraints that serve to limit procurement opportunities, such as conditions that require previous awards of contracts by the procuring entity or prior work experience in the territory of the procuring entity.

First Schedule - (Cont'd)

4. The Contracting Parties shall establish common rules for the disqualification of suppliers mentioned in paragraph 2.
5. The Contracting Parties shall establish common rules and minimum standards for procuring entities' use in their assessments of a supplier's eligibility to participate in procurement proceedings.

ARTICLE 25

LIMITATION ON DISCLOSURE OF INFORMATION

Each Contracting Party shall ensure that, unless ordered to do so by a court of competent jurisdiction and subject to the conditions of such an order, its procuring entities do not disclose information:

- (a) that prejudices legitimate commercial interests of bidders or inhibits fair competition; or
- (b) that relates to the examination, evaluation and comparison of bids, other than the summary referred to in Article 20 (2) (i).

ARTICLE 26

ANTI-CORRUPTION AND CONFLICTS OF INTEREST

1. Each Contracting Party shall establish legal and administrative frameworks which require the procurement personnel of its procuring entities to:
 - (a) discharge their duties impartially so as to ensure that qualified suppliers have fair and competitive access to procurement opportunities to which this Protocol applies; and
 - (b) conduct themselves in such a manner as to foster public confidence in the integrity of the Community public procurement regime.

First Schedule - (Cont'd)

2. Notwithstanding the generality of paragraph 1, the legal and administrative frameworks shall require procurement personnel to:
 - (a) abstain from attempting to realise personal gain from public office by conduct inconsistent with the proper discharge of duties;
 - (b) avoid direct or indirect involvement in public procurement proceedings where:
 - (i) an officer or a member of the officer's immediate family has a financial interest pertaining to the procurement;
 - (ii) a business or organisation in which the officer or any member of the officer's immediate family has a financial interest is involved in the procurement; or
 - (iii) any other person, business or organisation with whom the officer or any member of the officer's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement;
 - (c) abstain from soliciting or accepting from a supplier a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a procurement, influencing the content of any specification, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any public procurement contract, sub-contract or activity; and
 - (d) abstain from using confidential information for their actual or anticipated personal gain or for the actual or anticipated gain of any other person.
3. Each Contracting Party shall ensure that where an officer is involved in or is about to become involved in procurement proceedings under any of the circumstances referred to in paragraph 2 (b), the officer immediately declares his or her interest, in writing, and recuses himself from the procurement proceedings.

First Schedule - (Cont'd)

ARTICLE 27

NORMS AND STANDARDS

The Contracting Parties shall develop and adopt norms and standards to be complied with by the procuring entities' procurement personnel as well as by suppliers and bidders to be included in the Community public procurement regime for the implementation and enforcement by all Contracting Parties. Non-compliance with these norms and standards shall be subject to the laws of the Contracting Party where the non-compliance occurred.

ARTICLE 28

SUPPLIER CHALLENGE AND REVIEW

1. The Contracting Parties shall develop common non-discriminatory, timely, transparent and effective challenge and review procedures.
2. Each Contracting Party shall provide for the independent hearing and consideration of supplier challenges. Such hearings may be at the administrative or judicial levels. Where an authority other than a court hears a supplier challenge, the Contracting Party shall ensure that the supplier's right to seek judicial review is not prejudiced.
3. Each Contracting Party shall ensure that the exercise of a supplier's right to challenge and seek review of a procuring entity's procurement decisions does not prejudice that supplier's participation in ongoing or future procurement opportunities within the Contracting Party to which the procuring entity belongs.

First Schedule - (Cont'd)

PART SIX

TECHNICAL COOPERATION AND ASSISTANCE

ARTICLE 29

TECHNICAL COOPERATION AND ASSISTANCE

1. At the request of any disadvantaged country, region or sector, the COTED shall provide technical cooperation and assistance for the purpose of enabling the disadvantaged country, region or sector to participate in the Community public procurement regime and to discharge relevant responsibilities thereunder.
2. The mode, scope and extent of such technical cooperation and assistance shall be determined by the COTED and notified to the Permanent Joint Council.

PART SEVEN

INSTITUTIONAL ARRANGEMENTS

ARTICLE 30

THE PERMANENT JOINT COUNCIL ON PUBLIC PROCUREMENT

1. There is hereby established, for the purposes of this Protocol, the Permanent Joint Council on Public Procurement which shall:
 - (a) oversee the implementation of the Community Policy on Public Procurement and compliance with the provisions of this Protocol;
 - (b) have responsibility for the long-term monitoring of the Community public procurement regime with the assistance of the Caribbean Community Secretariat and shall draw the attention of the Community Council of Ministers to breaches of

First Schedule - (Cont'd)

this Protocol;

- (c) in accordance with Article 6, at least every two years review the thresholds specified in Annex A and, where necessary and appropriate, recommend that the Contracting Parties amend Annex A;
 - (d) convene, as necessary, to examine and evaluate the operation of the Community public procurement regime and its progress in achieving its objectives, including performance of the periodic reviews in respect of the disadvantaged countries, regions and sectors;
 - (e) report to COTED on the Community public procurement regime every two (2) years to enable COTED to take action, as necessary, pursuant to Article 29;
 - (f) pursuant to Article 12 paragraph 4, be responsible for considering and approving modifications of and amendments to the Community Standard Bidding Documents;
 - (g) pursuant to Article 12 paragraph 6, be responsible for approving the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies;
 - (h) in its decision-making processes promote, as far as practicable, the use of electronic communications in light of the reasonableness of cost, scope and ease of access;
 - (i) coordinate the development of an electronic database of statistical information relating to public procurement proceedings for use by the Contracting Parties and make recommendations to the Contracting Parties regarding common rules for the content, submission, maintenance and accessibility of the information it contains; and
 - (j) coordinate and promote the design of training programmes, as necessary, and support the implementation processes in Contracting Parties.
2. The report referred to in paragraph 1(e) shall include information on the application of any provisions pursuant to Part Six of this Protocol and Chapter 7 of the Revised Treaty and shall be made available to the Contracting Parties at the earliest opportunity after its

First Schedule - (Cont'd)

completion.

3. The Permanent Joint Council shall consist of senior public procurement officials or senior trade officials designated by the Contracting Parties. Each Contracting Party shall designate one senior public procurement official or senior trade official as its representative on the Permanent Joint Council.
4. At its first meeting, the Permanent Joint Council shall determine its rules of procedure.
5. The Permanent Joint Council shall establish, as it considers necessary, ad hoc working groups comprised of trade and public procurement officials to assist in the discharge of its responsibilities detailed in this Protocol.

ARTICLE 31

COMMUNITY PUBLIC PROCUREMENT

NOTICE BOARD

1. There shall be, for the purposes of this Protocol, a Community Public Procurement Notice Board which shall be:
 - (a) established by the Contracting Parties;
 - (b) used for the purposes of displaying the information relating to the obligations specified in paragraph 2; and
 - (c) accessible to all interested stakeholders.
2. Each Contracting Party shall use the Community Public Procurement Notice Board to discharge their obligations under this Protocol, including those relating to:
 - (a) supplier exchange of information to facilitate joint bidding activities;

First Schedule - (Cont'd)

- (b) publication of the following:
 - (i) annual procurement plans;
 - (ii) procurement opportunities;
 - (iii) contract award notices;
 - (iv) designated national and Community contact points;
 - (v) Community Suppliers Register; and
 - (vi) Community standard bidding documents;
 - (c) the electronic database of regional public procurement statistics.
3. Each Contracting Party shall employ the respective administrative and technical capacities required to utilise optimally the Community Public Procurement Notice Board in accordance with the provisions of this Protocol.

ARTICLE 32

COMMUNITY AND NATIONAL SUPPLIERS REGISTERS

1. The Contracting Parties shall establish a Community Suppliers Register, which shall –
- (a) consist of the names and contact and other information of suppliers registered in the national register of suppliers in each Contracting Party;
 - (b) be published on the Community Public Procurement Notice Board; and
 - (c) to varying degrees, be accessible to procuring entities, suppliers and any member of the general public.
2. Each Contracting Party shall compile and maintain a national suppliers register of

First Schedule - (Cont'd)

suppliers registered in that Contracting Party.

3. Each Contracting Party shall be responsible for submitting its national suppliers register for publication on the Community Public Procurement Notice Board.

PART EIGHT

SPECIAL PROVISIONS

ARTICLE 33

DISPUTE SETTLEMENT

The dispute settlement procedures set out in Chapter Nine of the Revised Treaty shall apply, *mutatis mutandis*, to the resolution of disputes between Contracting Parties within the contemplation of this Protocol.

ARTICLE 34

PUBLIC PROCUREMENT AND THE ENVIRONMENT

Nothing in this Protocol shall be construed as precluding a Contracting Party from employing its best endeavours to incorporate green procurement considerations in its public procurement.

ARTICLE 35

GENERAL AND SECURITY EXCEPTIONS

The provisions contained in Articles 225 and 226 of the Revised Treaty shall apply to this Protocol, *mutatis mutandis*.

First Schedule - (Cont'd)

PART NINE

FINAL PROVISIONS

ARTICLE 36

SIGNATURE AND PROVISIONAL APPLICATION

1. A Member State may, upon the signing of this Protocol or at any later date before it enters into force, declare its intention to apply it provisionally.
2. Upon such declaration by five (5) Member States, the provisions of this Protocol shall be applied provisionally pending its entry into force in accordance with Article 38.

ARTICLE 37

RATIFICATION

This Protocol shall be subject to ratification. Instruments of Ratification shall be deposited with the Secretariat which shall transmit certified copies to the Government of each Contracting Party.

ARTICLE 38

ENTRY INTO FORCE

This Protocol shall enter into force one month after the date on which the fifth Instrument of Ratification is deposited with the Secretariat.

First Schedule - (Cont'd)

ARTICLE 39

AMENDMENTS

1. This Protocol may be amended by the unanimous decision of the Contracting Parties.
2. An amendment shall enter into force one month after the date on which the last Instrument of Ratification is deposited with the Secretariat.

ARTICLE 40

RESERVATIONS

Reservations may be entered to this Protocol with the consent of the signatory States.

ARTICLE 41

ACCESSION

1. After the entry into force of this Protocol, a Member State may accede to this Protocol.
2. Instruments of Accession shall be deposited with the Secretariat which shall transmit a certified copy to the Government of each Contracting Party.
3. Where a Member State accedes to this Protocol, it shall enter into force for that Member State one month after the date on which the Member State deposits its Instrument of Accession with the Secretariat.

First Schedule - (Cont'd)

ANNEX A

THRESHOLDS

(referred to in Article 5 paragraph 1)

This Annex specifies the threshold values at and above which public procurement contracts are governed by the Protocol on Public Procurement for the Caribbean Community.

Thresholds

TYPE OF CONTRACT	CONTRACT VALUES	
	More Developed Countries (USD)	Less Developed Countries (USD)
	\$	\$
Goods	150,000.00	150,000.00
Services	150,000.00	150,000.00
Works	3,000,000.00	4,000,000.00
Combination of goods and works or services and works	3,000,000.00	4,000,000.00
Combination of goods and services	150,000.00	150,000.00

First Schedule - (Cont'd)

ANNEX B

EXCLUDED TYPES OF PUBLIC PROCUREMENT

(referred to in Article 5 paragraph 2 (c))

1. The table, below, indicates the types of public procurement contracts for the procurement of goods, services and works that are excluded from the scope of the Protocol on Public Procurement for the Caribbean Community.
2. The table is composed of –
 - (a) three columns with the headings “Goods”, “Services” and “Works”, respectively; and
 - (b) rows in which types of public procurement contracts that are excluded from the scope of the Protocol are specified.

Goods Contracts	Services Contracts	Works Contracts
Works of art, cultural performances, products associated with creative expression for cultural performances	Works of art, cultural performances, products associated with creative expression for cultural performances	
Relating to the staging of productions in support of or associated with creative expression and cultural events, including – <ol style="list-style-type: none"> (a) artistic coordination, direction and management; 	Relating to the staging of productions in support of or associated with creative expression and cultural events, including – <ol style="list-style-type: none"> (a) artistic coordination, direction and management; 	

First Schedule - (Cont'd)

<ul style="list-style-type: none"> (b) management of artistic works and events; (c) management of intellectual property rights; (d) venue rental; (e) infrastructure and technical effects; (f) design and technical direction of cultural performances 	<ul style="list-style-type: none"> (b) management of artistic works and events; (c) management of intellectual property rights; (d) venue rental; (e) infrastructure and technical effects; (f) design and technical direction of cultural performances 	
	Legal advisory and legal representation	
Medallions and insignias for use in national honours and national awards	Medallions and insignias for use in national honours and national awards	
Goods of a sensitive nature for use in or for the purpose of national defence or national security	Services of a sensitive nature for use in or for the purpose of national defence or national security	Works of a sensitive nature for use in or for the purpose of national defence or national security
Relating to or connected with the operations of diplomatic missions or consulates	Relating to or connected with the operations of diplomatic missions or consulates	Relating to or connected with the operations of diplomatic missions or consulates
	Fiscal agency or depository services	

First Schedule - (Cont'd)

	Liquidation and management services for regulated financial institutions	
	Related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities	
	Co-sponsorship arrangements, trade and travel shows and cooperative advertising	
	Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers	Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers
	For research and development of a sensitive or confidential nature	
	Relating to the management of employee pension funds	
	Postal, courier and express courier services	
	Utility services such as services for the supply of electricity, telecommunications and piped water	

First Schedule - (Concl'd)

		Immovable property or rights in relation thereto
	Contracts of service or contracts for service for the hiring of Government employees and related employment measures	
In relation to privately funded charities	In relation to privately funded charities	In relation to privately funded charities

SECOND SCHEDULE

(Section 7(4))

TENDERS COMMITTEES

Part I

General Tenders Committee

Composition of General Tenders Committee

- 1.(1) The General Tenders Committee shall comprise *ex officio*
- (a) the Chief Procurement Officer;
 - (b) the Solicitor General;
 - (c) the Permanent Secretary in the Ministry responsible for Finance;
 - (d) the Chief Technical Officer in the Ministry responsible for Works;
 - (e) the Senior Mechanical Engineer in the Ministry responsible for Works;
 - (f) the Director of the Department of Commerce and Consumer Affairs;
 - (g) the Director of the Data Processing Department;
 - (h) the Manager of the Public Investment Unit;
 - (i) the Chief Executive Officer of Barbados Investment and Development Corporation; and
 - (j) the Chief Executive Officer of Barbados National Oil Company Limited.
- (2) A person listed in paragraph (1)(b), (c), (d), (f), (g), (h), (i) or (j) may nominate a senior officer to be a member of the committee in his place.

Chairman and Deputy Chairman

2.(1) The Chief Procurement Officer shall be the Chairman of the General Tenders Committee.

(2) The committee shall, at its first meeting in a financial year, elect one of its members, other than the Solicitor General or his nominee, to be the Deputy Chairman of the committee.

(3) Where the Chairman is absent from a meeting of the committee, the Deputy Chairman shall preside over the meeting.

Quorum

3. The quorum of the General Tenders Committee is 6 members including the Chairman or the Deputy Chairman.

Secretary

4. The Chief Procurement Officer shall designate a public officer to be the secretary of the General Tenders Committee.

Part II

Special Tenders Committee

Composition of special tenders committee

1. A special tenders committee shall comprise
 - (a) the members of the General Tenders Committee; and
 - (b) such other persons, not exceeding 5, as the Director may appoint with the approval of the Minister, having regard to the procurement concerned and the obligations of the State under the agreement for the loan to which the procurement relates.

Chairman and Deputy Chairman of special tenders committee

- 2.(1) The Chairman of the General Tenders Committee shall be the Chairman of a special tenders committee.
- (2) The Deputy Chairman of the General Tenders Committee shall be the Deputy Chairman of a special tenders committee.
- (3) Where the Chairman is absent from a meeting of the committee, the Deputy Chairman shall preside over the meeting.

Quorum

3. The quorum of a special tenders committee is two-thirds of its members including the Chairman or the Deputy Chairman.

Term of office

4. A member of a special tenders committee shall hold office for the duration of the procurement proceedings in respect of which the committee was established.

Secretary

5. The Chief Procurement Officer shall designate a public officer to be the secretary of a special tenders committee.

Part III

Drug Tenders Committee

Composition

1. The Drug Tenders Committee shall comprise
 - (a) *ex officio*
 - (i) the Director of the Drug Service;

- (ii) the Chief Procurement Officer or his nominee;
 - (iii) the Assistant Director of the Drug Service charged with responsibility for Supply and Inventory;
 - (iv) the Director of Medical Services of the Queen Elizabeth Hospital;
 - (v) the Hospital Pharmacist of the Queen Elizabeth Hospital;
 - (vi) the Chairman of the Drug Formulary Committee established by section 5 of the *Drug Service Act*, Cap. 40A or a member of that committee nominated by him; and
 - (vii) the Solicitor General or a legal officer nominated by the Solicitor General;
- (b) a pharmacist in actual private practice and not employed in the Public Service, nominated by the Barbados Pharmaceutical Society; and
- (c) a medical practitioner in actual private practice and not employed in the Public Service, nominated by the most representative association of medical practitioners.

Chairman and Deputy Chairman of Drug Tenders Committee

2.(1) The Director of the Drug Service shall be the Chairman of the Drug Tenders Committee and shall preside at meetings of the committee.

(2) The Assistant Director of the Drug Service charged with responsibility for Supply and Inventory shall be the Deputy Chairman of the committee and shall preside at any meeting from which the Chairman is absent.

Quorum

3. The quorum of the Drug Tenders Committee is 6 members including the Chairman or Deputy Chairman.

Term of office

4. A member of the Drug Tenders Committee, other than an *ex officio* member, shall hold office for 3 years and is eligible for re-appointment.

Secretary

5. The Director of the Drug Service shall designate a public officer to be the secretary of the Drug Tenders Committee.

Part IV

General Provisions

Meetings of tenders committees

1.(1) A tenders committee shall meet as often as is necessary for the proper discharge of its functions under this Act.

(2) The Chairman, in consultation with the secretary of the committee, shall determine the times and places for meetings and convene meetings accordingly.

(3) A decision of a tenders committee shall be by a majority of votes, and where there is an equality of votes, the Chairman shall have a casting vote.

Urgent decisions

2.(1) A tenders committee may make a decision on an urgent matter by the circulation of the relevant papers among the members of the committee and the expression, in writing, of the views of the majority of the members.

(2) Notwithstanding sub-paragraph (1), a member is entitled to require that a decision be deferred until the matter is considered at a meeting of the committee.

Observers and advisers

- 3.(1) A tenders committee may
- (a) permit observers to attend a meeting of the committee; and
 - (b) co-opt advisers to assist the committee in the discharge of its functions.
- (2) Observers and advisers shall not vote and advisers shall only attend the part of the meeting on which their advice is required.

Minutes

- 4.(1) A tenders committee shall keep minutes of the proceedings of its meetings.
- (2) The minutes shall include
- (a) the names of the members present at the meeting;
 - (b) the names of any advisers or observers attending the meeting;
 - (c) any disclosure of interest;
 - (d) the key issues discussed in relation to evaluation reports, including any advice given or disagreement among the members; and
 - (e) where the recommendation of a procuring entity is rejected, the reason for the rejection.
- (3) Minutes and decisions of the committee shall be made available and distributed within 7 days of the meeting of the committee to which they relate.
- (4) Minutes shall be distributed to all members of the committee and decisions shall be transmitted to the relevant procuring entity.

THIRD SCHEDULE

(Section 8)

PUBLIC PROCUREMENT TRIBUNAL

Composition

1.(1) The Tribunal shall comprise 5 persons of high integrity appointed by the Minister as follows:

- (a)* an attorney-at-law of at least 10 years' standing or a person who has held high judicial office, who shall be the Chairman of the Tribunal; and
- (b)* 4 other persons each with 5 years' experience, at a senior level, in public procurement or a related field.

(2) In selecting persons to be members of the Tribunal, the Minister shall seek to establish a balance of relevant knowledge and experience among members to ensure that the Tribunal has both

- (a)* knowledge of any applicable public procurement laws, rules, proceedings and practices; and
- (b)* a range of technical knowledge relating to various types of procurement contracts.

(3) Members are entitled to such remuneration and allowances as the Minister determines.

Term of office

2. Subject to paragraphs 4 and 5, a member of the Tribunal shall hold office for not more than 5 years but is eligible for re-appointment.

Temporary absence

3. Where a member of the Tribunal is temporarily absent or unable to act, the Minister may appoint a suitable person to act in the member's place.

Resignation

4.(1) A member of the Tribunal, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the same to be forwarded to the Minister.

(2) The Chairman may resign his office by instrument in writing addressed to the Minister.

(3) A person shall cease to be a member of the Tribunal upon the date of receipt of the instrument by the Chairman under sub-paragraph (1) or the Minister under sub-paragraph (2), unless another date for his resignation is specified in the instrument.

Removal

5. The Minister may remove a member of the Tribunal from office where the member

- (a) fails to disclose a conflict of interest in relation to a matter before the Tribunal;
- (b) fails, without reasonable excuse, to attend 3 consecutive meetings of the Tribunal;
- (c) has become bankrupt or has made an arrangement with his creditors;
- (d) is incapacitated by physical or mental illness;
- (e) engages in misconduct or has a conflict of interest as a result of engaging in paid employment that conflicts with the functions of the Tribunal; or
- (f) is otherwise unable or unfit to discharge the functions of a member.

Publication of appointments etc.

6. The names of all of the members of the Tribunal as first constituted and every change in the membership of the Tribunal shall be published in the *Official Gazette*.

Seal

7.(1) The seal of the Tribunal

- (a) shall be kept in the custody of the Chairman or such other member as the members may approve;
- (b) may be affixed to documents or instruments pursuant to a resolution of the Tribunal;
- (c) shall be affixed in the presence of the Chairman and the Secretary to the Tribunal; and
- (d) shall be authenticated by the signature of the Secretary to the Tribunal and the signature of the Chairman.

(2) All documents other than those required by law to be under seal may be signed under the hand of the Chairman or the Secretary.

Specialists

8. The Tribunal may engage specialists in technical disciplines to assist in its work where so required and may, in particular, where it determines it to be necessary in any case, consult any person having experience in any relevant field to assist it in dealing with a matter.

Tribunal may regulate procedure

9. Subject to this Act, the Tribunal may regulate its own procedure.

FOURTH SCHEDULE*(Section 115)***CONSEQUENTIAL AMENDMENTS**

Column 1	Column 2
Enactments	Amendments
<i>Financial Management and Audit (Financial) Rules, 2011.</i>	<ol style="list-style-type: none"><li data-bbox="756 779 1352 842">1. In rule 2, delete the definitions of "Special Tenders Committee" and "Tenders Committee".<li data-bbox="756 867 1352 982">2. In rules 80(7), 161(2)(a), 162(2), 195(1) and (2) and 230, delete the words "Chief Supply Officer" and substitute the words "Chief Procurement Officer".<li data-bbox="756 1014 1352 1077">3. Delete rules 204, 205, 218 to 227 and 231 to 239.<li data-bbox="756 1102 1352 1131">4. Delete the Second and Third Schedules.