

# PUBLIC PROCUREMENT ACT, 2021

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## PUBLIC PROCUREMENT ACT, 2021

### AN ACT TO PROVIDE FOR THE FRAMEWORK AND PROCEDURES FOR THE PUBLIC PROCUREMENT OF GOODS, WORKS AND SERVICES; TO ESTABLISH A PUBLIC PROCUREMENT DEPARTMENT; TO PROMOTE TRANSPARENCY AND INTEGRITY IN PUBLIC PROCUREMENT AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

#### 1. Short title.

- (1) This Act may be cited as the Public Procurement Act, 2021.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

#### 2. Interpretation.

- (1) In this Act—
  - “**alternative bid**” means a response to a bid that does not meet the exact requirements of the specification but offers an alternative for consideration, and is submitted with an intentional variation to a specification or terms and conditions;
  - “**bid**” means a proposal or quotation, in accordance with the type of procurement method used, submitted by a bidder in response to an invitation by a procuring entity;
  - “**bidder**” means a person who submits a bid in response to an invitation by a procuring entity;

- “Board”** means the Public Procurement Board established under section 15;
- “centralised procurement”** means procurement conducted by the Public Procurement Department on behalf of the procuring entities;
- “commonly used goods”** includes cleaning supplies, office supplies, food and such other goods as may be used by a procuring entity from time to time;
- “competitive bidding”** means a method of procurement that provides an equal access to all bidders without discrimination;
- “complex nature”** means procurement where it is not feasible to formulate detailed specifications of the goods, works or services or the specifications provide for goods made to order or for a new method and the degree of competition is restricted to a small market;
- “consultant”** means the provider of services for a specific project;
- “contractor”** means a person under contract with a procuring entity to provide works;
- “Department”** means the Public Procurement Department established under section 6;
- “electronic procurement system”** means the computerized system utilized by the Department to manage the process of procurement on the internet for the acquisition of goods, works and services;
- “emergency or extreme urgency”** means—
- (a) the threat or impact of a natural disaster, catastrophe, war, or force majeure;
  - (b) a situation where the environment may be seriously compromised;
  - (c) a situation where the condition or quality of goods or works may deteriorate unless the goods or works are procured urgently to maintain the goods or works in their actual value; or
  - (d) a situation where an investment project may be delayed due to the lack of the goods, works or services;
- “end-user department”** means the procuring entity which benefits from the procurement carried out by the Department;
- “Financial Secretary”** means the principal advisor to the Minister of Finance regarding the financial operations of the country; [means principal financial advisor to the Minister of Finance;]
- “goods”** means objects of every kind and description including —

- (a) commodities, raw materials, products and equipment;
- (b) objects in solid, liquid or gaseous form; and
- (c) services incidental to the supply of goods where the value of such services does not exceed the value of the goods themselves;

**“Government Business Enterprise”** means an entity owned or controlled by the government that provides services in the market or undertakes commercial activities;

**“high value procurement”** means contract or order for goods, works or services with an estimated value of at least one hundred thousand dollars;

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

**“international bidding”** means the method of procurement that is not limited to national bidders;

**“joint purchasing”** means processing by two or more procuring entities to obtain the benefits of volume purchases and a reduction in administrative expenses;

**“limited bidding”** means a method of procurement where circumstances, such as limited numbers of suppliers available or urgency, do not justify or permit the use of the competitive bidding method of procurement;

**“Minister”** means the Minister of Finance;

**“officer”** means any person employed in the service of the Government;

**“procurement”** means the solicitation of the supply of goods, works and services;

**“procurement contract”** means a supply agreement between a procurement entity and a supplier or contractor resulting from the procurement;

**“Procurement Review Tribunal”** or **“Tribunal”** means the Procurement Review Tribunal established under section 62;

**“procurement unit”** means the unit within a procuring entity responsible for procurement;

**“procuring entity”** means –

- (a) a government ministry or department;
- (b) a public body that is the recipient of public moneys and authorized to apply those moneys to public procurement; or
- (c) a town committee or local council established under the provisions of the Local Government Act (Ch. 37);

- “public body”** means a statutory body or a Government Business Enterprise;
- “public moneys”** means all revenues, resources and receipts of any kind in cash or cash equivalent including financial assets of the Government;
- “purchase order”** means a formal written request for goods works or services by a person so authorized by the procuring entity;
- “research and development contracts”** means contracts for goods, works or services which are —
- (a) performed solely for purposes of research, testing or development; and
  - (b) not performed with the aim of ensuring profitability or recovering research and development costs;
- “responsive bid”** means a bid that substantially complies with the conditions, requirements and specifications set out in the invitation to bid or requests for proposals of interest;
- “restricted bidding”** means a method of procurement that limits the request for bids to a selected number of suppliers, from which a final choice is made;
- “selective bidding”** means a competitive bidding method of procurement preceded by pre-qualification;
- “services”** means the supply of professional services including —
- (a) intellectual services or other labour, time or effort; and
  - (b) circumstances in which the value of the service does not exceed the value of the services, reports goods, products or other tangible property produced or supplied incidental to the rendering of the services;
- “Special Drawing Rights”** means an international reserve asset, created by the IMF in 1969 to supplement its member countries’ official reserves;
- “statutory body”** means a body corporate established by an Act of Parliament over which the Government exercises control;
- “supplier”** means a person in a procurement contract with a procuring entity to supply goods, works or services;
- “threshold”** means a value limit of a procurement contract net of value added tax;
- “works”** means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works including —



- (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and furnishing; and
  - (b) services incidental to construction, such as drilling, mapping satellite, photography, seismic investigations and similar services, provided pursuant to a procurement contract where the value of such services does not exceed the value of the construction itself.
- (2) For the purpose of this Act —
  - (a) subject to paragraph (b), thresholds shall be calculated and expressed in Bahamian dollars; and
  - (b) thresholds contained in the *Third Schedule* shall be based on Special Drawing Rights applied in the context of international agreements to which The Bahamas is a party and the Minister may amend by order such thresholds in accordance with any applicable changes made to the level of Special Drawing Rights thresholds.

### **3. Application of Act.**

- (1) Subject to subsections (3) and (4), this Act shall apply to all procurement carried out by a procuring entity.
- (2) This Act shall not apply to —
  - (a) the extent that they conflict with the procurement rules of a donor or funding agency, the application of whose rules is mandatory pursuant to or under an obligation entered into by the Government, and the rules of such donor or funding agency shall prevail over this Act to the extent of such conflict;
  - (b) procurement contracts governed by different procedural rules and awarded —
    - (i) for the direct purpose of providing international assistance, including development aid;
    - (ii) pursuant to a concluded international agreement relating to the stationing of troops;
    - (iii) pursuant to an international agreement between the Government and one or more foreign country and covering goods, works or services intended for the joint implementation or exploitation of a project by the Government and one or more third parties; or
    - (iv) in support of military forces located outside the territory of The Bahamas;
  - (c) the acquisition or rental of property, existing buildings, or other immovable property or the rights thereon;

- (d) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
  - (e) adjudication, arbitration and conciliation services;
  - (f) employment contracts;
  - (g) research and development services;
  - (h) actuarial and accounting services;
  - (i) legal advisory services and briefs;
  - (j) the procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes, including food aid; and
  - (k) the procurement of electricity, telecommunications, water and sewerage as provided for in any other law.
- (3) Where the Minister responsible for national security or defence, with the approval of the Cabinet, determines that a procurement related to national defence or national security requires the application of special measures, the provisions of this Act may be modified or suspended.
- (4) The Minister responsible for national security or defence shall report the application of the special measures and the suspension of the provisions of the Act pursuant to subsection (3) to the Chief Procurement Officer who shall forward this information to the Financial Secretary for inclusion in the annual report.
- (5) The processes for award of procurement contracts as set out in sections 15 to 22 of this Act do not apply to public bodies to the extent that these provisions conflict with published procurement guidelines of the public bodies.

#### **4. Participation in procurement.**

- (1) A person shall not be eligible to participate in the procurement of goods, works and services unless that person is registered in the electronic procurement system utilized by the Public Procurement Department.
- (2) This section shall not apply in relation to procurement of goods, works and services by the international bidding method of procurement.

#### **5. Procurement by public bodies.**

- (1) Save for subsection (2) of this section and for sections which apply to the reporting by the Chief Procurement Officer, this Act shall not apply to the procurement carried out by public bodies.

- (2) Notwithstanding the provisions of any other Act, public bodies shall—
- (a) establish within one hundred and twenty days of the commencement of this Act, guidelines for procurement of goods, works and services and publish these guidelines on the official website of the public bodies and the electronic procurement system or other website as may be approved by the Chief Procurement Officer;
  - (b) ensure that guidelines for the procurement for goods, works and services are competitive, non-discriminatory and safeguarded by appropriate standards of transparency;
  - (c) utilize the electronic procurement system or other system approved by the Public Procurement Department;
  - (d) publish a notice of the award of the procurement contract for all goods, works and services valued over twenty five thousand dollars on the website of the public bodies and on the electronic procurement system and in at least one newspaper published and in general circulation in The Bahamas within sixty days of the award of the procurement contract;
  - (e) provide a report on procurement activities of the public body to the Chief Procurement Officer at least once every two months in such form as may be approved by the Chief Procurement Officer;
  - (f) provide any information on procurement activity of the public body as may be required upon demand by the Chief Procurement Officer for inclusion in the annual report and other reports prepared by the Chief Procurement Officer in pursuance of this Act; and
  - (g) comply with any regulations made by the Minister with respect to procurement by public bodies.

## **PART II – PUBLIC PROCUREMENT AUTHORITIES**

### **ESTABLISHMENT OF PUBLIC PROCUREMENT DEPARTMENT**

#### **6. Establishment of Public Procurement Department.**

- (1) There is established a department to be known as the Public Procurement Department.
- (2) The Department shall consist of a Chief Procurement Officer, who shall be responsible for the day to day management of the Department and other officers as may be necessary to carry out the functions of the Department.

## 7. Functions of Department.

The functions of the Department are—

- (a) to implement policies and standards on public procurement;
- (b) to conduct centralised procurement in accordance with section 8;
- (c) to develop standard bidding documents and contract documents for goods, works and services to be used by procuring entities;
- (d) to develop, introduce and manage, for the procurement of goods, works and services in The Bahamas, an electronic procurement system providing for —
  - (i) electronic advertising;
  - (ii) convening and receipt of bids;
  - (iii) the development of framework agreements and contracts;
  - (iv) the use of electronic reverse auctions;
  - (v) an electronic procurement registry;
  - (vi) materials management;
  - (vii) a centralised electronic catalogue of commonly used goods and non-commonly used goods;
  - (viii) the publication of all information on procurement pursuant to provisions of this Act; and
  - (ix) any and all procurement modalities leading to the optimal use of public resources;
- (e) to ensure capacity building and human resource development for public procurement;
- (f) to promote public awareness of public procurement in consultation with other departments;
- (g) to issue appropriate instructions to procuring entities for the development of appropriate reporting formats and base line price indicators;
- (h) to establish and maintain a mechanism for the creation of a registration and classification system for contractors;
- (i) to establish and maintain a secretariat to support the activities of the Public Procurement Board;
- (j) to advise on certification and professional education requirements for the staff of procuring entities;
- (k) obtain the requisite approvals for the procurement of specialised and sensitive goods and materials related to national security;
- (l) to implement guidance and practices designed to support, enhance and measure the participation of micro small and medium enterprises (“MSMEs”) in public procurement;

- (m) to develop sustainable procurement practices and guidance aiming to reduce the adverse environmental and social impact through better selection and improved usage of purchased goods and services;
- (n) to encourage suppliers to adopt practices that minimize their adverse environmental and social impacts in relation to their own operations and supply chains;
- (o) to develop, periodically update and issue in consultation with the procuring entities and with the approval of the Board, procurement manuals and guidance notes for use by procuring entities;
- (p) to ensure that the Act and any regulations made thereunder are consistent with all international agreements and obligations entered into by The Bahamas; and
- (q) to perform such other duties as are necessary, incidental or conducive to the fulfilment of the Department's objectives.

## **8. Centralised procurement.**

- (1) The Department shall, pursuant to its functions under section 7, organise the central procurement of commonly used goods on behalf of all procuring entities, and in so doing shall —
  - (a) prepare and dispatch a consultation document to each procuring entity with a view to identifying the annual aggregated requirements for the centralization of procurement; and
  - (b) request each procuring entity to provide an indication of the goods, works or services that are required by way of centralised procurement.
- (2) The Department shall, in determining whether the aggregation of demand is appropriate, take into consideration —
  - (a) which goods are commonly used goods and likely to attract the same potential bidders;
  - (b) when the goods, works or services will be ready for bidding;
  - (c) when delivery, implementation or completion of the goods, works or services are required; and
  - (d) any other special factors related to the specific goods, works or services.

## **9. Appointment of Chief Procurement Officer.**

The Chief Procurement Officer shall be appointed, by the Governor-General acting on the advice of the Public Service Commission after consultation with the Minister on such terms and conditions as the Governor-General may determine.

## **10. Functions of Chief Procurement Officer.**

The functions of the Chief Procurement Officer are—

- (a) the day to day management of the affairs of the Department;
- (b) the administration, organization and supervision of the staff of the Department;
- (c) to provide periodic reporting to the Financial Secretary of –
  - (i) procurement activities of procuring entities, statutory bodies and Government Business Enterprises;
  - (ii) any written statement of the Minister pursuant to section 16(2); and
  - (iii) all procurement contracts awarded by the limited method of procurement and the distribution of goods obtained by the limited method of procurement;
- (d) to prepare an annual report on procurement by procuring entities for the Financial Secretary to be transmitted to the Minister ; and
- (e) to manage the funds, budget and other property of the Department.

## **11. Tenure of Chief Procurement Officer.**

The Chief Procurement Officer —

- (a) may hold office for a period of five years and shall, at the expiration of such period, be eligible for a reappointment;
- (b) shall not be eligible for reappointment to office after having served a period of ten years in total.

## **FINANCIAL PROVISIONS**

## **12. Funds and revenue.**

The funds, revenue and resources of the Department shall consist of—

- (a) such sums as may be appropriated by Parliament; and
- (b) all other sums which may in any manner become payable to the Department.

## **13. Deposit to Consolidated Fund.**

All sums received by the Department pursuant to section 12(b) shall be deposited into the Consolidated Fund.

#### **14. Accounts and audit.**

- (1) The Department shall prepare for every financial year, an annual budget of revenue and expenditure which shall be submitted to the Minister at least three months prior to the commencement of the financial year.
- (2) The Department shall keep proper accounts and other records in relation to the Department and shall prepare in respect of every financial year a statement of accounts of the Department.
- (3) The accounts of the Department for every financial year shall be audited annually by auditors appointed by the Department with the approval of the Minister from among members of The Bahamas Institute of Chartered Accountants.
- (4) Three months after the end of each financial year, the Department shall submit a copy of the audited accounts to the Minister together with a copy of any report made by the auditor.
- (5) The Minister shall lay a copy of every audited account before the House of Assembly together with a copy of the report made by the auditor on the accounts.

### **ESTABLISHMENT OF PUBLIC PROCUREMENT BOARD**

#### **15. Establishment of Public Procurement Board.**

- (1) There shall be established a board to be known as the Public Procurement Board which shall have the duties as specified in section 16.
- (2) The Board shall consist of —
  - (a) a Chairperson appointed by the Prime Minister who shall be competent and knowledgeable in public procurement, accounting, engineering, business or related fields;
  - (b) the Financial Secretary, *ex officio* or his representative;
  - (c) the Permanent Secretary of a Government Ministry designated by the Prime Minister in rotation for a period of three years with no Ministry being eligible for designation for two consecutive three year terms;
  - (d) two persons from civil society appointed by the Prime Minister;
  - (e) two persons appointed by the Prime Minister after consultation with the heads of professions established by law; and
  - (f) a public officer appointed by the Prime Minister to act as secretary to the Board.

## **16. Duties and powers of Board.**

- (1) The duties and powers of the Board are —
  - (a) to establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
  - (b) to review the recommendations of a tender committee for the award of procurement contracts in excess of two hundred and fifty thousand dollars, and —
    - (i) approve the recommendation for the award of the procurement contract;
    - (ii) require the tender committee to make a fresh or further evaluation on specified grounds; or
    - (iii) defer the approval of a recommendation for award and advise the tender committee on procurement matters the Board may consider conducive to the exercise of its functions;
  - (c) to make recommendations to the Minister for the award of procurement contracts in excess of two hundred and fifty thousand dollars but not exceeding one million two hundred thousand dollars;
  - (d) to make recommendations to the Cabinet for the award of procurement contracts in excess of one million two hundred thousand dollars.
- (2) Where a Minister does not accept the recommendations of the Board pursuant to subsection (1)(c), the Minister shall provide a written statement of his objection and shall —
  - (a) refer the recommendation back to the Board for further advice; or
  - (b) direct that a new procurement process be carried out.

## **PROCURING ENTITIES AND UNITS**

## **17. Functions of procuring entities.**

- (1) The procurement of goods, works or services shall be conducted by the procuring entity in a fair, equitable and transparent manner using competitive bidding procedures —
  - (a) based on the application of objective and non-discriminatory technical specifications, selection and award criteria;
  - (b) with a view to providing the Government with value for money goods, works and services, by the most timely, cost-effective and efficient means possible; and
  - (c) in accordance with any regulations made hereunder.



- (2) A procuring entity which directly purchases goods, works and services from or through the Department shall be deemed to have complied with this Act to the extent that the Department has complied with it.
- (3) A procuring entity shall report to the Chief Procurement Officer at least quarterly or at other times as determined by the Chief Procurement Officer, all procurement, including completed or cancelled procurement contracts.
- (4) A procuring entity shall utilize the electronic procurement system managed by the Department for all procurement.

**18. Procurement units.**

- (1) The head of each procuring entity shall establish a procurement unit in the procuring entity.
- (2) Where the head of a procuring entity determines that the level of procurement does not justify the creation of a procurement unit, the head of the procuring entity shall —
  - (a) nominate a single public officer to carry out the functions of a procurement unit; or
  - (b) request procurement to be carried out on the entity's behalf by the Department.
- (3) The head of a procuring entity shall determine the size, location and structure of its procurement unit having regard to its procurements and the number of trained and experienced staff available.

**19. Functions of procurement units.**

- (1) The functions of a procurement unit shall include —
  - (a) the planning of procurement for the procuring entity;
  - (b) the preparation of invitations to bid and of bidding documents;
  - (c) the publication and distribution of invitations to bid;
  - (d) the reception and safeguarding of bids; and
  - (e) the administration and implementation of a procurement contract.
- (2) Where the value of a procurement contract does not exceed fifty thousand dollars the procurement unit shall —
  - (a) open and evaluate the bids; and
  - (b) the award of the procurement contract or purchase order in relation thereto.
- (3) Where the value of a procurement contract exceeds fifty thousand dollars the procurement unit shall—
  - (a) perform secretariat services for the relevant tender committee;

- (b) prepare the recommendations for the Board, the Minister or the Cabinet in relation to the procurement contract.
- (4) A procurement unit shall not seek procurement for goods, works or services in excess of the funds at its disposal.

## TENDER COMMITTEES

### **20. Tender committees.**

- (1) Each procuring entity shall establish a tender committee to award all procurement contracts whose value is more than fifty thousand dollars.
- (2) A tender committee shall be appointed as required by the head of the procuring entity and comprise a minimum of three and a maximum of five members including —
  - (a) the head or deputy head of the procuring entity;
  - (b) the principal accounting officer of the procuring entity;
  - (c) the head of the procurement unit; or
  - (d) two other members as required to provide technical, legal or commercial expertise.
- (3) A tender committee may appoint technical evaluation advisers to assist the procurement unit in evaluating bids and making recommendations for the award of the procurement contract.

### **21. Functions and powers of tender committees.**

- (1) The functions of a tender committees include —
  - (a) the verification of proper procurement planning and preparation of the procurement;
  - (b) the opening of bids;
  - (c) subject to the provisions of this Act, the awarding of procurement contracts and rejection of unsuccessful bids; and
  - (d) the performance of any other functions specified under this Act.
- (2) A tender committee shall have power to —
  - (a) approve proposed invitations to bid, notices, requests, and other documents related to procurement;
  - (b) review and approve evaluation reports make recommendations with respect to the award of procurement contracts; and
  - (c) approve procurement contract documents.
- (3) A tender committee shall make recommendation to the Board with respect to the award of procurement contracts where the value of the proposed

procurement contract exceeds the sum of two hundred and fifty thousand dollars.

## **22. Financial threshold for proposed contracts.**

- (1) Where the value of a proposed procurement contract —
  - (a) is in excess of fifty thousand dollars, but not exceeding two hundred and fifty thousand dollars, the tender committee shall award the procurement contract subject to the approval of the Minister responsible for the procuring entity;
  - (b) is in excess of two hundred and fifty thousand dollars, but not exceeding one million two hundred thousand dollars, the tender committee shall forward to the Board the recommendation for award together with all necessary documentation; and
  - (c) is in excess of one million two hundred thousand dollars, the Board shall make a recommendation to the Cabinet and seek the approval thereof.
- (2) Where a recommendation for award is made pursuant to subsection (1)(c), the Board shall first seek the approval of the Minister responsible for the procuring entity.
- (3) Where an approval for a recommendation is sought from Cabinet pursuant to subsection (1)(c) is rejected, the Cabinet may —
  - (a) refer the recommendation back to the Board for further advice; or
  - (b) direct that a new procurement for goods works or services be carried out.
- (4) The Minister may by order increase the financial thresholds for the award of procurement contracts set out in subsection (1) to accommodate price inflation as determined by the Consumer Price Index prepared by the Department of Statistics or other body responsible for the preparation of official statistics .

## **23. Division of procurement.**

A procuring entity shall not, for the purposes of determining the appropriate procurement method, divide a procurement with the intention of avoiding the prescribed financial thresholds in section 22.

## **24. Division into lots.**

- (1) Notwithstanding section 23, a procuring entity may divide a procurement which could be procured as a single procurement contract into a package, consisting of several lots that are to be tendered together, where it is anticipated that the award of several separate procurement contracts may result in the best overall value for the procuring entity.

- (2) A procurement shall not be divided into lots —
  - (a) where the award of several separate procurement contracts would create problems of compatibility or inter-changeability between goods procured as separate lots or would unduly strain contract administration resources; and
  - (b) where the award of several separate procurement contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) A procuring entity, where a procurement which could be procured as a single procurement contract is divided into lots shall —
  - (a) permit bidders to bid for a single lot, any combination of lots, or all lots; and
  - (b) demonstrate, prior to procurement contract award, that the recommended procurement contract award or combination of procurement contract awards offers the best overall value for the procuring entity.

## **PART III - PROCUREMENT PLANNING AND METHODS**

### **PROCUREMENT PLANNING**

#### **25. Procurement plans.**

- (1) Every procuring entity shall prepare, in writing, a draft procurement plan for each financial year and shall revise the plan as appropriate during the course of the year.
- (2) The draft procurement plan shall be presented to the Chief Procurement Officer who shall forward the draft procurement plan to the Financial Secretary before the 31 day of March in every year.
- (3) The draft procurement plan referred to in subsection (1) shall include —
  - (a) a detailed breakdown of the goods, works and services required;
  - (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
  - (c) an indication of whether goods, works and services will be procured —
    - (i) as a single package;
    - (ii) through aggregation with another procuring entity; or
    - (iii) through centralised procurement by the Department;
  - (d) an indication of the anticipated procurement method for each procurement, including any need for pre-qualification, and the

- anticipated time for the procurement to be completed taking into account the applicable approval requirements;
- (e) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding; and
  - (f) such other details as may be relevant to any goods works and services in the procurement plan.
- (4) Every procuring entity shall submit a final procurement plan to the Chief Procurement Officer for submission to the Financial Secretary before the 30 September in each year.
  - (5) The procuring entity in preparation of a draft procurement plan and a final procurement plan shall take into consideration the budgeted allocated sums for that current financial year.
  - (6) Notwithstanding subsection (5), every procuring entity shall ensure approved budgetary availability, prior to the commencement of each procurement process, with the exception of emergencies.
  - (7) Every draft procurement plan and every final procurement plan submitted by a procuring entity shall be published on the official website of the Department and on the electronic procurement system.

## METHODS OF PROCUREMENT

### **26. Selection of procurement method.**

- (1) A procuring entity shall, as part of the procurement, planning process select the most appropriate method of procurement for each procurement being one of the methods as provided for in sections 27 to 36.
- (2) The selection of procurement method shall take into account —
  - (a) the estimated value of the procurement, calculated in accordance with the valuation rules shown in the *Second Schedule*;
  - (b) the potential sources for the procurement including —
    - (i) the competitiveness of the national and international market for the goods, works or services; and
    - (ii) the likely interest of potential national and international bidders, given the size and nature of the requirement; and
  - (c) the nature of the goods, works or services required.

### **27. Competitive bidding.**

- (1) The procurement of goods, works and non-consultancy services shall be undertaken by means of a competitive bidding method of procurement.

- (2) Every procuring entity must use the competitive bidding method of procurement in the procurement of goods, works or services except where the procuring entity uses one of the following methods of procurement—
  - (a) international bidding;
  - (b) selective bidding;
  - (c) restricted bidding;
  - (d) limited bidding;
  - (e) request for quotation; or
  - (f) request for proposals of interest.
- (3) A procuring entity shall, where a method of procurement other than the competitive bidding method of procurement is used, include in the record of the procurement a written justification of the decision to utilize the procurement method, including the grounds for taking such a decision.

**28. Types of competitive bidding.**

Procurement by the competitive bidding method of procurement may be carried out in a single stage or in two stages.

**29. Single stage competitive bidding.**

- (1) The single stage of the competitive bidding method of procurement may be used for the procurement of standard goods, works and services when all the information and specifications necessary to calculate a realistic price or to develop terms of reference are available before the bidding process.
- (2) The single stage of the competitive bidding method of procurement shall allow prospective bidders to submit their financial proposal and their technical proposal at the same time.

**30. Two stage competitive bidding.**

- (1) Competitive bidding may be held in two stages where —
  - (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; or
  - (b) due to the complex nature of the goods, works or services to be procured, the procuring entity wishes to consider and discuss with bidders various technical or contractual solutions and their relative merits before deciding on the final technical or contractual specifications.
- (2) A procuring entity may, in the first stage of the two-stage bidding method, engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents in order to —

- (a) further understand the proposals; or
  - (b) indicate to bidders the changes required to make the proposals acceptable and to seek the bidder's willingness to make such changes.
- (3) A procuring entity shall keep minutes of first-stage bidding discussions engaged in pursuant to subsection (4) and such minutes shall form part of the procurement records.
- (4) A procuring entity may, at the end of the first stage of the two-stage bidding method —
- (a) reject those bids which are not responsive, and in respect of which bidders are unwilling or unable to change to meet the —
    - (i) basic requirements;
    - (ii) minimum performance; or
    - (iii) required completion time; and
  - (b) revise the technical specifications, evaluation criteria, and procurement contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
- (5) A procuring entity shall, in the second stage of the two-stage bidding method, invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.
- (6) A bidder who does not wish to submit a final bid may withdraw from the bidding proceedings without forfeiting the bid security that such bidder may have been required to provide and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised documents.

### **31. International bidding method of procurement.**

- (1) Where the estimated contract amount in a proposed procurement is higher than the value of the thresholds set out in the *Third Schedule* procurement of goods works and services shall be by the international bidding method of procurement and—
- (a) all procurement notices shall be published in accordance with section 39(1);
  - (b) all invitations to bid or to pre-qualify, and bidding documents, shall be in English;
  - (c) a procuring entity shall allow sufficient time for the invitation to bid to reach potential bidders and to enable them to prepare and submit applications to pre-qualify and bid in accordance with the instructions given in the bidding documents;

- (d) all bidders shall express their bids in Bahamian dollars unless otherwise specifically permitted within the bidding documents;
  - (e) the general and special conditions of the procurement contract shall be a kind generally used in international trade; and
  - (f) the technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade.
- (2) This section applies to the competitive bidding method of procurement, the selective bidding method of procurement and the restricted bidding method of procurement.

### **32. Selective bidding method.**

- (1) The selective bidding method of procurement may be used in cases of the high value procurement of goods, works or services or the complex nature of the goods, works or services where it is necessary or desirable to identify, prior to the submission of bids, those bidders that are qualified.
- (2) The requirements and criteria for assessing the qualifications of bidders in the selective bidding method of procurement shall be in accordance with section 41.
- (3) In the pre-qualification stage of the selective bidding method of procurement the procuring entity shall —
  - (a) provide pre-qualification documents to all bidders responding to the invitation to pre-qualify; and
  - (b) respond promptly to any request by a bidder for clarification of the pre-qualification documents received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to pre-qualify.
- (4) The pre-qualification documents shall provide bidders with the information required to prepare and submit applications for pre-qualification.
- (5) The procuring entity —
  - (a) shall make a decision with respect to each application to pre-qualify;
  - (b) shall invite all bidders who have been pre-qualified to submit bids in the procurement;
  - (c) may at any time prior to the award of contract require a pre-qualified bidder to demonstrate its qualifications in accordance with the same criteria used to pre-qualify such bidder; and
  - (d) shall disqualify any bidder who fails to demonstrate its qualifications if requested to do so.



- (6) Once bidders are pre-qualified the provisions of the competitive bidding method of procurement shall apply to the selective bidding method of procurement.

### **33. Restricted bidding.**

- (1) The restricted bidding method of procurement may be used where —
  - (a) the goods, works or services are only available from a small number of suppliers; or
  - (b) the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement.
- (2) The procuring entity shall in the case of the restricted bidding method of procurement of goods, works and services invite bids from —
  - (a) all potential bidders with respect to the procurement for goods, works and services specified in subsection (1)(a);
  - (b) sufficient bidders to ensure effective competition, with respect to the nature of the procurement specified in subsection (1)(b); and
  - (c) in all cases, a minimum of three bidders.
- (3) The procuring entity may, in selecting bidders to be invited to bid, use —
  - (a) the electronic procurement system;
  - (b) the persons pre-qualified to submit bids;
  - (c) the procuring entity's own knowledge of the market; or
  - (d) any other appropriate sources of information.
- (4) The procuring entity shall, where it uses the restricted bidding method of procurement pursuant to subsection (1)(b), publish a notice in accordance with section 39 stating —
  - (a) the nature of the goods services or works to be procured;
  - (b) that the procuring entity is using the restricted bidding method of procurement on the grounds that the time and cost of considering a large number of bids are disproportionate to the estimated value of the procurement having regard to the nature of the procurement;
  - (c) the proposed bidders; and
  - (e) the deadline for a request for information or participation in the procurement.
- (5) The provisions of the competitive bidding method of procurement shall apply to the restricted bidding method of procurement.

### **34. Limited bidding.**

- (1) A procuring entity may award a procurement contract by the limited bidding method of procurement where —
  - (a) no suitable bids have been submitted in response to a competitive bidding method of procurement or a selective bidding method of procurement and the procuring entity makes the procurement contract subject to the condition that the requirements of the initial bid may not be substantially modified by the bidder;
  - (b) for technical or artistic reasons or for reasons connected with protection of exclusive rights, the procurement contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
  - (c) for reasons of emergency or extreme urgency provided the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part, including where—
    - (i) the country is seriously threatened or impacted by a natural disaster, catastrophe, war or an event of force majeure;
    - (ii) the life or quality of life or the environment may be seriously compromised;
    - (iii) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain the capital goods in their actual value or usefulness;
    - (iv) an investment project may be seriously delayed for want of an item of a minor nature,  
the goods or services could not be obtained in time by means of competitive or selective bidding procedures;
  - (d) the procurement contract is for additional deliveries of goods or services by an original supplier in circumstances where a change of supplier would —
    - (i) compel the procuring entity to procure goods or services not meeting the requirements of interchangeability with already existing goods or services procured under the initial procurement; and
    - (ii) cause significant inconvenience or substantial duplication of costs to the procuring entity;
  - (e) the procuring entity procures prototypes or goods or services developed at its request in the course of and for a specific contract for research, experiment, study or original development;

- (f) additional services within the objectives of the original bid documentation but not included in the initial procurement contract have, through unforeseen circumstances, become necessary to complete the services described in such documentation and the total value of procurement contracts awarded for such additional services do not exceed twenty-five per cent of the amount of the initial procurement contract;
- (g) the procurement contract is for new services —
  - (i) consisting of the repetition of similar services which conform to a basic project for which an initial procurement contract was awarded following the competitive bidding method of procurement or the selective bidding method of procurement; and
  - (ii) for which the procuring entity has indicated in the notice of procurement that a limited bidding method of procurement might be used in awarding procurement contracts for such new services;
- (h) the procurement contract is for goods purchased on a commodity market; or
- (i) the procurement contract is for purchases —
  - (i) made under exceptionally advantageous conditions of unusual disposals which arise only in the very short term such as from liquidations, receiverships or bankruptcies; and
  - (ii) which are not routine purchases from regular suppliers.
- (2) Under the limited bidding method of procurement —
  - (a) the procuring entity shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery, except where circumstances of emergency or extreme urgency render this task impractical because of the time involved;
  - (b) a quotation shall be invited from at least one and, where possible, additional suppliers or contractors;
  - (c) the procuring entity may give a time limit to the bidders to prepare and submit bids or may fix a time limit by mutual agreement with the bidders;
  - (d) the compliance of an offer or offers with the specifications, terms and conditions shall be considered; and
  - (e) negotiations to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices.

- (3) Where a procuring entity awards a procurement contract by the limited bidding method of procurement in accordance with subsection (1)(c), that procuring entity shall within 21 days—
  - (a) provide written justification of the decision to utilize the procurement method, including the grounds for taking such a decision; and
  - (b) ensure that the procured goods, works or services are distributed in accordance with the urgent need which necessitated the procurement and submit written evidence of the distribution to the Chief Procurement Officer.

### **35. Request for quotations.**

- (1) The request for quotations method of procurement may be used for the procurement of goods, works and services where —
  - (a) the procurement is for readily available goods that are not specially manufactured to the particular specifications of the procuring entity and its estimated value does not exceed five thousand dollars;
  - (b) the estimated value of the procurement of works does not exceed ten thousand dollars; or
  - (c) the estimated value of the procurement of services does not exceed five thousand dollars.
- (2) A quotation shall, under the request for quotations method of procurement, be requested in writing from as many bidders as practicable and, in all cases, from a minimum of three bidders.
- (3) A request for quotations shall contain a clear statement of the requirements of the procuring entity and shall provide information with respect as to quality, quantity, terms, time of delivery, and any other special requirements.
- (4) Bidders shall be given adequate time to prepare and submit their quotations and each bidder shall be permitted one quotation only which may not be altered or negotiated.
- (5) The procuring entity shall place a purchase order with the bidder providing the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.
- (6) A purchase order shall include —
  - (a) the quoted price;
  - (b) the procurement contract number;
  - (c) the name of the bidder;
  - (d) the name of the officer of the bidder who signed the quotation; and
  - (e) the terms and the date of delivery.

### **36. Request for proposals.**

- (1) A procuring entity shall, for the purpose of procuring the services of a consultant —
  - (a) prepare a list of three to six consulting firms comprising, consultants of the same category and similar capacity and business objectives;
  - (b) provide the request for proposals for services to the listed firms; and
  - (c) establish a shortlist of at least three consulting firms from among those listed firms being firms having the capacity to perform the consultancy required services as demonstrated in their submissions.
- (2) The procuring entity shall, where the estimated value of the procurement of the services of a consultant exceeds one million dollars, prepare the list referred to in paragraph (a) of subsection (1) by inviting requests for proposals of interest through publication of a notice —
  - (a) in the *Gazette*; and
  - (b) where appropriate, in a relevant trade publication or technical or professional journal; or
  - (c) by any other electronic means.
- (3) The procuring entity may, where the estimated value of the procurement of the services of a consultant is less than one million dollars, prepare the list referred to in paragraph (a) of subsection (1) by inviting requests proposals of interest—
  - (a) from market knowledge or other sources of information; and
  - (b) in the case of procurement of the services of a consultant which have an estimated value above fifty thousand dollars but less than one million dollars, or are particularly complex, through advertisements.
- (4) The request for proposals of interest shall provide bidders shortlisted pursuant to subsection (1)(c) with the information necessary to enable them to participate in the procurement and to submit proposals that are responsive to the needs of the procuring entity, including —
  - (a) the name and address of the procuring entity;
  - (b) the nature, time frame and location of the services to be provided, the terms of reference, the required tasks and the outputs;
  - (c) the criteria to be used in evaluating and comparing proposals and their relative weights as compared to price;
  - (d) the contractual terms of the procurement and the manner of entry into force of the procurement contract;
  - (e) instructions for preparation and submission of proposals and the place and deadline for submission of proposals;

- (f) the final selection procedures to be applied;
  - (g) information on conflict of interest restrictions and information with respect to anti-fraud and corruption legislation, including the grounds for potential debarment from future participation in procurement of goods, service or works that may result from the procurement under consideration; and
  - (h) such matters as may be specified in standard bidding documents issued by the Department.
- (5) Technical evaluation advisers appointed by the tender committee shall advise the procuring unit on the cost of the procurement.

**37. Prohibition of multiple bids by same beneficial owner.**

- (1) A procuring entity in reviewing all bids shall confirm the beneficial ownership of each bidder to ensure that multiple bids from the same beneficial owner does not undermine the bidding process.
- (2) A procuring entity in ensuring that the bidding process is not undermined, may request from a bidder documentation to satisfy the procuring entity that the beneficial ownership of a bidder is independent from all other bidders.
- (3) In the event that it is discovered that —
  - (a) multiple bids have been submitted by the same person;
  - (b) there has been a breach of the code of conduct or the trade of inside information by any bidder; or
  - (c) a bidder is found to be in breach of this subsection or any other provision of this Act,  
the procuring entity —
    - (i) shall disqualify the bid or bids; and
    - (ii) may continue the process where there are two or more compliant bidders remaining; or
    - (iii) cancel the procurement in its entirety.
- (4) Where a bidder is in breach of subsection (3), the procuring entity may recommend to the Department that the bidder be debarred in accordance with section 74.

## PART IV – BIDDING PROCESS

### 38. Bidding documents.

- (1) Bidding documents shall specify, with respect to the goods, works or services, the —
  - (a) quality;
  - (b) quantity;
  - (c) certification;
  - (d) testing and test methods;
  - (e) qualification criteria for potential bidders; and
  - (f) any other means,for evaluating the conformity of the performance of the contract to the requirements.
- (2) The procuring entity shall in preparing any relevant bidding documents and pre-qualification documents —
  - (a) use the appropriate standard bidding documents issued by the Department;
  - (b) use the procurement manuals and guidance notes issued by the Department;
  - (c) provide descriptive information in a manner that does not favour a particular bidder unless the description of the goods, works or services is necessary to identify the goods, works or services that the procuring entity needs; and
  - (d) provide the desired performance or output requirements of the objective of the procurement.
- (3) Where bidding documents require technical specifications, the bidding documents shall include —
  - (a) the purpose and objectives of the goods;
  - (b) a full description of the procurement of goods, works or services;
  - (c) a generic specification to an appropriate level of detail which specifications shall include no reference to a particular trademark or name, patent, design or type, specific original producer or service provider unless —
    - (i) there is no other practical way of describing the procurement; and
    - (ii) words such as “or equivalent” are included in the specifications;

- (d) a the functional features of the goods, including any environmental or safety features;
- (e) where appropriate, performance parameters, including outputs, time scales and any indicators or criteria by which satisfactory performance ~~can~~ may be measured and judged;
- (f) process and materials descriptions;
- (g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
- (h) inspection and testing requirements; and
- (i) any applicable national or international standards of the goods, works and services.

### **39. Publication of procurement notice.**

- (1) A notice of invitation to bid or invitation to pre-qualify in a bidding process, (“procurement notice”) shall be—
  - (a) published in the *Gazette* or in one or more national newspapers of wide circulation to reach sufficient bidders to ensure effective competition; and
  - (b) published on the electronic procurement system.
- (2) Where a procuring entity considers it ~~is~~ necessary to ensure wide competition the procuring entity—
  - (a) may send a procurement notice, after the date of publication of the procurement notice in subsection (1), directly to potential bidders; and
  - (b) shall keep a record of any bidders to whom a procurement notice is sent directly, which shall form part of the procurement record.
- (3) A notice published under subsection (1), shall include information on —
  - (a) the identity and address of the procuring entity and the contact details of the person from whom further information may be obtained;
  - (b) the nature and time-frame of the procurement, including the place of delivery of goods or services and the location of any works;
  - (c) the price of the bidding documents and the manner of obtaining the bidding documents or, where applicable, any pre-qualification documents required;
  - (d) the place and deadline for submission of bids or of applications to pre-qualify;
  - (e) the method of procurement; and
  - (f) such other matters as may be provided in the guidance notes issued by the Department.



**40. Provision of bidding documents to bidders.**

- (1) The procuring entity shall, at the same time as the publication of a procurement notice, provide the requisite bidding documents —
  - (a) to all potential bidders who respond to the invitation to bid; or
  - (b) in the case of the selective bidding method of procurement, to all bidders who have been pre-qualified.
- (2) The bidding documents shall be published on the electronic procurement system.
- (3) The procuring entity may charge a fee for the bidding documents.
- (4) The bidding documents shall provide all the information required in order for bidders to submit bids that are responsive to the needs of the procuring entity, including information —
  - (a) stating the nature and time frame of the procurement, including information with respect to the contractual terms of the procurement, and the manner of entry into force of the procurement contract;
  - (b) in all bidding other than the selective bidding method of procurement, providing the prescribed bidder qualification and documentation requirements in order to secure evidence that a bidder meets the necessary qualification criteria to perform the procurement contract as regards the bidder's —
    - (i) professional and technical qualifications and competence;
    - (ii) financial resources, equipment and other physical facilities;
    - (iii) managerial capability;
    - (iv) experience in the object of the procurement;
    - (v) business reputation; and
    - (vi) personnel;
  - (c) on site visits and pre-bid conferences;
  - (d) providing instructions for preparation and submission of bids, including the deadline for submission of bids and the time and place of bid opening;
  - (e) giving the components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
  - (f) providing the criteria and methodology for evaluation of bids and the selection of the successful bidder —
    - (i) quantified in monetary terms;
    - (ii) expressed in the form of pass or fail requirements and, where this is not possible, expressed by relative weights; and

- (iii) stating that the evaluation criteria for consideration by the procuring entity shall consist only of the —
    - (aa) bid price;
    - (bb) cost of operating, maintaining and repairing the goods or works;
    - (cc) time for delivery of the goods, completion of the works or provision of the services;
    - (dd) functional characteristics of the goods or works; and
    - (ee) terms of payment and of guarantees in respect of the goods, works or services;
  - (g) stating the margin for domestic preference;
  - (h) on any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
  - (i) stating whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
  - (j) where suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, providing a description of the portion or portions for which bids may be submitted;
  - (k) stating the required validity period of bids;
  - (l) providing the amount and acceptable forms of any required bid, performance or other security;
  - (m) stating the conditions of the procurement contract which will be entered into with the successful bidder;
  - (n) providing notice of conflict of interest restrictions and anti-fraud and corruption rules;
  - (o) stating the manner in which bidders may obtain review of actions, omissions and decisions of the procurement entity; and
  - (p) on such other matters as may be prescribed by regulations or in procurement manuals and guidelines issued by the Department.
- (5) The procuring entity shall, for the purposes of subsequent communications with bidders, make a record of the name, postal address, telephone and fax numbers and email address of all persons to whom an invitation to bid is issued and shall file a copy of such record in the files maintained by the Department.

## EXPRESSION OF INTEREST

### **41. Pre-qualification criteria of potential bidder.**

Subject to section 42(2), a procuring entity may, in order to satisfy the qualification criteria established in the bidding documents, invite potential bidders to express interest in the bidding process by providing evidence of that bidder's—

- (a) technical abilities, in relation to the nature, quantity, importance or use of the works, or services, by evidence of —
  - (i) experience and reliability;
  - (ii) financial resources, equipment and other physical facilities;
  - (iii) personnel;
  - (iv) managerial capability;
  - (v) possession of the necessary professional and technical qualifications and competence; and
  - (vi) subject to the right of the bidder to protect its intellectual property rights and trade secrets, possession of the requisite intellectual property rights or trade secrets;
- (b) legal capacity to perform the procurement contract furnished by evidence that —
  - (i) the bidder has satisfied all the legal requirements to carry on business in The Bahamas and, where the bidder has its headquarters outside The Bahamas, is entitled to carry on business in the foreign jurisdiction;
  - (ii) the bidder is not insolvent, in bankruptcy, in receivership or under liquidation; and
  - (iii) legal proceedings have not been taken, and are not anticipated to be taken, that would materially affect the ability or the legal capacity of the bidder to carry out the procurement contract;
- (c) good standing with the Government and fulfilment of its obligations to pay taxes, licence fees and other fees or charges, including national insurance contributions, or conclusion of arrangements satisfactory to the Minister and the National Insurance Board to fulfil such obligations;
- (d) integrity, including evidence that neither the bidder nor any beneficial owner, director, officer, manager or supervisor of the bidder has, within a period of three years preceding the date of issuance of the invitation to bid, been —

- (i) convicted of any criminal offence, whether in The Bahamas or elsewhere —
  - (aa) relating to the bidder's or his professional conduct;
  - (bb) relating to the making of false statements or misrepresentations as to the bidder's or his qualifications to enter into a procurement contract;
  - (cc) involving dishonesty; and
  - (dd) under anti-corruption legislation; or
- (ii) suspended or debarred by administrative or judicial proceedings from participating in procurements, whether in The Bahamas or elsewhere; or
- (e) any other documentary evidence to certify the potential bidder's eligibility.

#### **42. Permitted criteria.**

- (1) The procuring entity shall, in establishing the qualifications referred to in section 41, be limited to criteria designed to demonstrate that a bidder possesses —
  - (a) the necessary professional and technical qualifications and competence;
  - (b) financial resources;
  - (c) equipment and other physical facilities;
  - (d) managerial capability;
  - (e) experience in the procurement ~~object~~ of goods, works or services; and
  - (f) business reputation and personnel, to perform the procurement contract.
- (2) The qualification criteria referred to in subsection (1) shall —
  - (a) not be unduly restrictive or designed to reduce competition; and
  - (b) be prepared for each procurement taking into account the size, complexity and technical requirements of the proposed procurement contract.
- (3) The procuring entity shall not impose any requirement as to qualifications in the invitation to bid other than the qualification criteria specified in section 41.
- (4) This section shall govern entry, or the denial of entry, on or to any list or register of suppliers, providers of services or contractors held by a procuring entity, and any system of pre-qualification, based on qualification criteria.

## INVITATION TO BID

### **43. Invitation to bid.**

- (1) Where a method of procurement does not require a procurement notice, the procuring entity shall issue an invitation to bid.
- (2) An invitation to bid shall include —
  - (a) bidding documents in accordance with section 38(1);
  - (b) the information required under section 38(3); and
  - (c) requirements regarding —
    - (i) minimum bidding periods;
    - (ii) alternative bids;
    - (iii) provision of performance security;
    - (iv) domestic preference; and
    - (v) provision of bid security.

### **44. Minimum bidding periods.**

- (1) All bidding documents shall be made available upon publication of the invitation to bid.
- (2) Except for the limited bidding method of procurement, the bidding period shall commence on the date of the first publication and shall finish on the date of the bid submission deadline.
- (3) The minimum bidding period shall be, in respect of —
  - (a) the competitive bidding method of procurement, thirty calendar days;
  - (b) the international bidding method of procurement, forty-five calendar days;
  - (c) the restricted bidding method of procurement, twenty calendar days;
  - (d) the selective bidding method of procurement, thirty calendar days; and
  - (e) the limited method of procurement, thirty calendar days.
- (4) In the selective bidding method of procurement, all bidders shall, be given a minimum of thirty calendar days following the publication of a notice to pre-qualify to submit their pre-qualification applications.
- (5) In determining the appropriate bidding period for each procurement, the procuring entity shall, take into account in addition to the minimum bidding period specified in subsection (3) -

- (a) the time required for preparation of bids, having regard to the level of detail required and the complexity of the bids;
- (b) any need for bidders to submit authenticated legal or similar documents as part of their bids and the time required to obtain such documents;
- (c) the location of potential bidders and the time required to obtain the bidding documents and for the delivery and submission of bids to the procuring entity; and
- (d) any restrictions relating to the time the goods, works or services are required.

#### **45. Alternative bids.**

- (1) Alternative bids shall not, except where specifically indicated in the bidding documents, be permitted.
- (2) A procuring entity may permit alternative bids where it is anticipated that bidders may be able to offer goods, works or services which, although they do not conform precisely to the description of requirements, meet the objectives of the procurement in an alternative manner.
- (3) Alternative bids may be permitted —
  - (a) in areas of rapidly changing technology or where a need could be satisfied in a number of different ways; and
  - (b) where the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.
- (4) The bidding documents shall, where alternative bids are permitted, state that the alternative bid does not need to conform precisely to the description of the procurement but the bid must —
  - (a) meet the objectives or performance of the procurement prescribed in the description of the procurement;
  - (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
  - (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of the procurement in terms of technical performance, price, operating costs or any other benefit.

#### **46. Domestic preferences.**

- (1) A margin of domestic preference may be applied to eligible bids —
  - (a) where so indicated in the bidding document; and

- (b) strictly in accordance with any rules for domestic preference prescribed by regulations.
- (2) All bidding documents permitting a margin of domestic preference to be applied to eligible bids shall clearly state the —
  - (a) eligibility requirements for the margin of preference in terms of ownership, location of bidder or production facilities, origin of labour, raw materials or components, extent of sub-contracting or association with local partners, or any other relevant factor;
  - (b) documentation required as evidence of eligibility for the margin of preference; and
  - (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (3) The Minister may by order specify the percentage for domestic preference and the allocation of procurements to small and medium sized businesses.

#### **47. Performance security.**

- (1) A procuring entity may request a performance security to secure the contractor's obligation to fulfil the procurement contract and shall set out in the bidding documents and the procurement contract the requirements for such performance security.
- (2) The value of a required performance security shall be no more than ten per cent of the value of the procurement and may be expressed either as a fixed amount or as a percentage of the value of the procurement.
- (3) The procuring entity shall, in determining the amount of performance security required, take into account —
  - (a) the cost to the contractor of obtaining a performance security;
  - (b) the value of the procurement contract;
  - (c) the risk of a contractor failing to fulfil his contractual obligations; and
  - (d) the extent of protection offered to the procuring entity through alternative means, such as payment retentions.
- (4) The value of a performance security may, where appropriate, be progressively reduced in line with the contractor's progress in delivering or completing the goods, works or services to which the security relates.
- (5) The bidding documents and procurement contract shall state that the performance security must —
  - (a) be in accordance with the format and wording provided in the bidding documents;

- (b) be in a form acceptable to the procuring entity;
  - (c) where the security is issued by a financial institution, be from an institution acceptable to the procuring entity; and
  - (d) be valid for the period prescribed in the procurement contract.
- (6) The conditions for forfeiture of the performance security shall be specified in the procurement contract.
- (7) The procuring entity shall authorize the release of the performance security promptly to the contractor upon —
- (a) completion of all the contractor's contractual obligations which are subject to the security; or
  - (b) termination of the procurement contract for a reason that is not attributable to any fault of the contractor.

**48. Bid security.**

- (1) A procuring entity —
- (a) may require a bid security in order to deter non-compliant bids and encourage bidders to fulfil the conditions of their bids; and
  - (b) shall include in the bidding documents any requirement for a bid security.
- (2) The value of a bid security shall be expressed as a fixed amount between two and five percent of the estimated value of the procurement contract.
- (3) The procuring entity shall, in determining the amount of bid security required, take into account the —
- (a) cost to bidders of obtaining a bid security;
  - (b) estimated value of the procurement contract;
  - (c) risk of bidders failing to fulfil the conditions of their bids; and
  - (d) need for the amount of the bid security to be high enough to deter irresponsible bids but not so high as to discourage competition.
- (4) The bidding documents shall state that a bid security must be —
- (a) in accordance with the format and wording provided in the bidding documents;
  - (b) in a form acceptable to the procuring entity, including —
    - (i) a bank guarantee;
    - (ii) an equivalent instrument, such as a security issued by a insurance company or stand-by letter of credit;
    - (iii) property pledged by the bidder; or
    - (iv) alternative forms of bid security acceptable to the procuring entity and specified in regulations;



- (c) from a financial institution acceptable to the procuring entity; and
  - (d) valid for a period of twenty-eight days after the expiry of the bid validity period, or for such other period as may be prescribed in the bidding documents.
- (6) A procuring entity may forfeit a bid security ~~only~~ where there is a —
- (a) modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
  - (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
  - (c) failure by the successful bidder to sign a procurement contract in accordance with the terms set out in the bidding documents; or
  - (d) failure by the successful bidder to provide a security for the performance of the procurement contract if required to do so by the bidding documents.
- (7) A procuring entity shall release the bid security to an unsuccessful bidder upon the earlier of the —
- (a) expiry of the term of the security; or
  - (b) formation of a procurement contract with the successful bidder and submission of any required performance security.
- (8) The bid security of a successful bidder shall not be released until a performance security, if required, has been received.

**49. Request for proposals award, quality and cost selection.**

- (1) The selection of the successful proposal in a request for proposals method of procurement shall, be based on the —
- (a) technical quality of the proposal, the consultant's relevant experience, the expertise of its staff, the proposed work methodology, and the price of the proposal;
  - (b) quality of the technical proposal submitted within a predetermined fixed budget; or
  - (c) best financial proposal submitted by the consultants that have obtained an acceptable technical score pre-disclosed in the request for proposals.
- (2) The method of selection and the criteria to be applied in the selection of the consultant shall be set out in detail in the request for proposals.
- (3) A consultant may be selected exclusively on the basis of the technical quality of the proposal where —
- (a) the head of the procuring entity has approved the use of such method; and

- (b) the services —
  - (i) are of an complex nature;
  - (ii) will have a considerable impact on future projects or national economy; or
  - (iii) may lead to the submission of proposals which are difficult to compare.

**50. Amendment or withdrawal of bid.**

- (1) A bidder may amend or withdraw a bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the date and time for the close of submission of bids.
- (2) The notice of amendment or withdrawal shall be submitted in the same manner as the original bid and clearly labelled “Amendment of Proposal” or “Withdrawal of Proposal” and shall comply with any additional directions, in the invitation to bid.

## BID OPENING

**51. Bid opening.**

- (1) Bids shall be opened or accessed—
  - (a) electronically, by the procurement unit; or
  - (b) by the tender committee at the time and place indicated in the bidding documents.
- (2) The time of the opening of the bids shall coincide with or follow immediately after the deadline for submission of bids, allowing a minimum time interval for logistical reasons.
- (3) Bidders or their representatives may attend the opening of the bids and the procurement unit or the tender committee, shall cause to be read out and recorded —
  - (a) the name of each the bidder;
  - (b) the total amount of each bid;
  - (c) any discounts or alternatives offered; and
  - (d) the presence or absence of any required bid security or essential supporting documents.
- (4) A copy of the record of the bid opening shall be made available to any bidder on request.
- (5) No decision regarding the disqualification or rejection of a bid shall be taken or announced in the bid opening session.

- (6) A bidder shall not, after the opening of the bids and until the preliminary decision on award has been notified to the successful bidder, make any unsolicited communication to the procurement unit, the tender committee or the Board or attempt in any way to influence the examination and evaluation of the bids.

## **52. Submission of bids.**

- (1) A bid shall be submitted before the deadline for submission of bids in written form, duly signed and sealed, in an envelope or electronically, whichever method has been specified.
- (2) All bids shall be accompanied by a valid business licence and other supporting documents as may be prescribed in the bidding documents.
- (3) Bids received after the deadline for submission of bids shall be returned unopened or denied electronic access.
- (4) Invitations for pre-qualification and bidding documents shall permit the submission of applications to pre-qualify or bids by hand or mail, or by courier or electronically.
- (5) Bids shall remain valid for the period of time indicated in the bidding documents but modification or withdrawal of a bid during the bid validity period shall be subject to forfeiture of the bid security.
- (6) The procuring entity shall not extend, or be deemed to have extended, the validity period of a bid without the written agreement of the bidder concerned and, where a bidder agrees in writing to an extension of the validity period of its bid, the bid security where such security was required shall also be correspondingly extended.

## **EXAMINATION AND EVALUATION OF BIDS**

### **53. Examination and evaluation of bids.**

- (1) The procurement unit or the tender committee shall, following the opening of bids, examine the bids in order to determine whether —
  - (a) the bids are complete and have been properly signed by the bidder or bidding entity;
  - (b) the required documents to establish the legal validity of the bidder or the bidding entity and required bid security have been furnished; and
  - (c) the bids are responsive to the technical specifications and contract conditions set forth in the bidding documents.

- (2) A bid shall be rejected and excluded from further evaluation and comparison where the bid is —
  - (a) not complete or not properly executed;
  - (b) not accompanied by a bid security in the prescribed form where such security is required;
  - (c) not accompanied by valid supporting documents including a business licence and other documents pursuant to section 52(2); or
  - (d) not responsive to the technical specifications or procurement contract conditions or to other critical requirements in the bidding documents.
- (3) In the selective bidding method of procurement, a bid received from an entity other than the pre-qualified bidders shall be rejected and excluded.
- (4) Bids not excluded from consideration pursuant to subsection (2) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (5) The procurement unit or the tender committee—
  - (a) may seek clarification in writing from any bidder to facilitate evaluation; and
  - (b) shall not ask or permit a bidder to change the price or any other aspect of the bid.
- (6) Where a bidder amends its bid in any manner, the procurement unit or the tender committee shall reject the bid and forfeit the bid security.
- (7) In a bid —
  - (a) where there is a discrepancy between the amount in words and the amount in figures, the amount in words shall prevail. and
  - (b) where a discrepancy is due to misplacement of decimal point, the mistake shall be rectified and the bidder notified.
- (8) During an evaluation —
  - (a) minor deviations in a bid which did not merit rejection of the bid at an earlier stage, such as a minor variation, shall where possible be costed; and
  - (b) the evaluation cost of a bid referred to in paragraph (a) shall then be compared to those of other bids to determine the lowest evaluated bid.
- (9) In the selective bidding method of procurement, the qualifications of the lowest evaluated bidder shall be verified to take account of any change since the original pre-qualification.
- (10) In other methods of procurement other than the selective bidding method of procurement, the qualifications of the lowest responsive bidder shall be

checked against the criteria specified in the bidding documents and, if that bid fails, the same check shall be applied to the next ranked bid.

**54. Prohibition of negotiations.**

- (1) Where the examination and evaluation of bids has commenced in accordance with section 53, no negotiations shall take place between the procurement unit or the tender committee and a bidder with respect to a bid submitted by that bidder.
- (2) Subsection (1) shall not apply in circumstances where there is only one bidder.

**55. Unsatisfactory bids.**

Where the lowest responsive bid evaluated by the procurement unit or the tender committee exceeds the cost estimate or the available budget for the procurement contract the procuring entity shall investigate the cause for the excessive cost and —

- (a) may consider requesting new bids; or
- (b) subject to approval by the head of the procuring entity, may negotiate a satisfactory procurement contract with the lowest evaluated bidder for a reduction in the scope of the goods, works or services and a reduction in the price of the procurement

**56. Bidder debriefing.**

- (1) A procurement unit or tender committee shall, upon request from the bidder, advise the bidder of the reason for the rejection of his application to pre-qualify, or the reason for the rejection of his bid.
- (2) A debriefing shall —
  - (a) be provided in writing within fourteen days of the receipt of the request;
  - (b) state —
    - (i) at which stage of the evaluation the bid was rejected and provide brief details of any material deviation, reservation or omission leading to rejection of the bid; or
    - (ii) that a bid was responsive but failed to offer the lowest evaluated price or highest score as required; and
  - (c) not provide details on any other bids, other than information that is publicly available from bid openings or published on the electronic procurement system.

## CANCELLATION OF BIDS

### 57. Unsuccessful procurement procedures.

- (1) The procurement unit or tender committee, where no bids are received which are responsive to the procurement or the procurement is otherwise unsuccessful shall—
  - (a) investigate the failed procurement; and
  - (b) record in the procurement report the reasons why the procurement was unsuccessful and the course of action taken.
- (2) An investigation pursuant to subsection (1) shall consider all relevant issues, including whether —
  - (a) the bidding period was sufficient, having regard to the factors referred to in section 44(5);
  - (b) the requirements of the bidding documents and the terms and conditions of the proposed procurement contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;
  - (c) the procurement notice was published in an appropriate publication and on the required date;
  - (d) there was delay in issuing the bidding documents;
  - (e) any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
  - (f) there were other extraneous events or circumstances which may have affected the ability of bidders to respond;
  - (g) the evaluation process was conducted in accordance with this Act and the bidding documents;
  - (h) whether the tender committee had adequate skills and resources;
  - (i) there is any suspicion of collusion between potential bidders; and
  - (j) the original choice of method of procurement was appropriate.
- (3) The procurement unit or the tender committee shall, after completion of its investigation, take any appropriate action suggested by the cause or causes of failure including but not limited to —
  - (a) the use of an alternative method of procurement;
  - (b) amendments to the bidding documents, including bidding requirements, the type of procurement contract, or the terms and conditions of the proposed procurement contract;

- (c) alternative publication of any invitations to bid, procurement notices or bidding documents; and
- (d) the introduction of international competition.

#### **58. Disqualification.**

- (1) A procurement unit or the tender committee shall disqualify a bidder if the procuring entity discovers that the information submitted in a bid concerning the bidder's qualifications is false or misleading.
- (2) A procurement unit or the tender committee may disqualify a bidder if the procuring entity —
  - (a) confirms that the information submitted in a bid concerning the bidder's qualifications is materially inaccurate or materially incomplete; or
  - (b) gives written notice to the bidder to remedy in writing, within ten days after the bidder's receipt of the notice, the material inaccuracies or material omissions in a bid with respect to the bidder's qualifications and the bidder fails or refuses to do so within the time specified.

#### **59. Cancellation of procurement.**

- (1) A procurement shall be cancelled where the procurement unit or the tender committee makes a determination in writing that —
  - (a) the need for the procurement has ceased to exist or has changed significantly;
  - (b) insufficient funding is available for the procurement;
  - (c) there has been a significant change in the required technical details, bidding conditions, conditions of the procurement contract or other details making it necessary to commence a new procurement;
  - (d) insufficient or no responsive bids have been received;
  - (e) there is evidence of collusion among bidders; or
  - (f) cancellation is otherwise in the public interest.
- (2) Where the procurement is cancelled, all bids received, the performance security and the bid security shall be returned.
- (3) Where a procurement is cancelled the procurement unit or the tender committee shall—
  - (a) issue a procurement cancellation notice setting out the reasons for the cancellation; and
  - (b) publish the procurement cancellation notice on the government website and on the electronic procurement system.

## AWARD OF CONTRACT

### 60. Award of Contract.

- (1) A procurement contract shall be awarded to the bidder who submitted the bid —
  - (a) where the price is a determinant criterion, the lowest bid price; or
  - (b) where the price together with other evaluation criteria specified in the bidding documents are considered, the most advantageous combination.
- (2) The procuring entity shall, prior to the expiry of the bid validity period, give notice to the successful bidder of the proposed award of the procurement contract, specifying the time within which, subject to any intervening complaints filed,
  - (a) the procurement contract must be signed; and
  - (b) the performance security must be provided.
- (3) The procuring entity shall, where a procurement contract is awarded by the competitive bidding method of procurement, or has a value in excess of —
  - (a) five thousand dollars for goods and services; or
  - (b) ten thousand dollars for works,give notice to the other bidders specifying —
  - (i) the name and address of the proposed successful bidder;
  - (ii) the price of the procurement contract; and
  - (iii) that the procurement contract shall not be signed until at least fourteen calendar days have passed following the date of the notice.
- (4) The procurement unit or the tender committee, where the successful bidder fails to sign a procurement contract or to provide a required performance security within the time specified in the notice of award of the procurement contract, shall —
  - (a) accept the next ranked bidder from among the remaining bids that are in force; and
  - (b) in selecting the next ranked bidder, comply with the bid opening provisions set out in section 51 as appropriate and the notice requirements of subsection (3).
- (5) A procurement contract that is required to be signed shall enter into force when the procurement contract is signed by the supplier or contractor and by the procuring entity.



- (6) A procurement contract in accordance with the terms and conditions of the accepted bid shall, where notice is given in accordance with subsection (2), enter into force when the notice is given to the successful supplier or contractor that submitted the bid and this fact must be stated in the bidding documents.
- (7) Procurement contracts shall be signed by the head of a procuring entity or a person delegated by the head of such entity.
- (8) For the purposes of this section “bid validity period” means the period within which a bidder agrees to keep the offer binding.

**61. Contract award notice.**

- (1) The procuring entity shall publish within sixty days of the award of the procurement contract, a notice of the award of the procurement contract in accordance with the requirements for procurement notices under section 39.
- (2) A notice published under subsection (1), shall include information on —
  - (a) the title of the bid;
  - (b) the name of the procuring entity;
  - (c) the selection method of procurement;
  - (d) the awarded bidder's name and address; and
  - (e) the procurement contract price.

**61A. Beneficial owners of company to be published.**

- (1) Where a procurement contract is awarded to a person, company, or entity, pursuant to any international agreement or an agreement with a funding agency, the Ministry responsible for finance may publish on its website within sixty days of the award of the procurement contract, the name and address of each beneficial owner of the company.
- (2) This section shall apply to procurement contracts awarded by procuring entities before or after the commencement of this Act.

## **PART V – CHALLENGES AND APPEAL**

### **PROCUREMENT REVIEW TRIBUNAL**

**62. Procurement Review Tribunal.**

- (1) There is established a tribunal to be known as the Procurement Review Tribunal.
- (2) The Tribunal shall—

- (a) be an independent, *ad hoc* tribunal;
  - (b) exercise its functions, when required, by panels constituted in accordance with section 66;
  - (c) have an official seal that shall be judicially noticed;
  - (d) consist of the President and such other members as may be appointed in accordance with section 64; and
  - (e) develop its own rules of procedure.
- (3) The Tribunal shall have exclusive jurisdiction to hear and determine all appeals, matters and disputes referred to it.

**63. Appointment of Tribunal president.**

- (1) The Governor-General acting on the advice of the Judicial and Legal Service Commission shall appoint the President of the Tribunal.
- (2) A person shall not be eligible for appointment as President of the Tribunal unless such person —
  - (a) is a counsel and attorney for a period of at least ten years;
  - (b) is in good standing with The Bahamas Bar Association; and
  - (c) appears to the Judicial and Legal Service Commission to have appropriate experience and knowledge to enable him to discharge his functions as a member of the Tribunal.
- (3) A person may not be appointed to serve as President for more than an aggregate period of eight years.
- (4) Notwithstanding subsection (3), the President may continue in office for such period as may be determined by the Judicial and Legal Service Commission in order to complete any proceedings or do any other thing in relation to proceedings that were commenced before him before the end of the President's term of office.
- (5) The President may at any time resign his office by notice in writing to the Judicial and Legal Services Commission.
- (6) The Governor-General acting on the advice of the Judicial and Legal Services Commission may remove a person from office as President where the Governor-General is satisfied that the President is unable, unwilling or unfit, for whatever reasons, to perform his functions as a member of the Tribunal.
- (7) Subject to this section, the President shall hold and vacate office in accordance with the President's terms of appointment.

**64. Appointment of Tribunal members.**

- (1) The Governor-General shall, acting on the advice of the Minister, appoint a maximum of four persons to serve as ordinary members of the Tribunal and one person to serve as a legal member of the Tribunal.
- (2) An ordinary members appointed pursuant to subsection (1) —
  - (a) shall be persons with experience, expertise or professional qualifications that the Minister considers relevant to exercising the jurisdiction of the Tribunal; and
  - (b) may include economists, surveyors, accountants or persons with substantial and relevant experience in public procurement and related fields of expertise.
- (3) A person shall not be eligible for appointment as a legal member unless such person —
  - (a) is a counsel and attorney for a period of at least seven years;
  - (b) is in goodstanding with The Bahamas Bar Association; and
  - (c) appears to the Minister to have appropriate experience and knowledge to enable him to discharge his functions as a legal member of the Tribunal.
- (4) A person shall not be appointed as an ordinary or legal member of the Tribunal for more than eight years in aggregate.
- (5) Notwithstanding subsection (4), an ordinary or legal member may continue in office for such period as may be determined by the Minister in order to complete any proceedings or do any other thing in relation to proceedings that were commenced before him before the end of the ordinary or legal members' term of office.
- (6) A an ordinary or legal member may resign his office at any time by notice in writing to the President.
- (7) The Governor-General acting on the advice of the Minister may remove a an ordinary or legal member from office where the Governor-General is satisfied that the member is unable, unwilling or unfit, for whatever reasons, to perform the member's functions as a member of the Tribunal.
- (8) Subject to this section, an ordinary or legal member shall hold and vacate office in accordance with their terms of appointment.

**65. Tribunal registrar.**

- (1) The President shall appoint, and supervise, the registrar of the Tribunal who shall be responsible for the administration of the Tribunal.
- (2) The President may in writing assign such functions to the registrar as the President deems fit.

- (3) The registrar shall serve for a term of four years and shall be eligible for re-appointment.
- (4) Subject to any directions from the President, the functions, powers and duties of the registrar are—
  - (a) to register applications for appeal and all matters and disputes referred to the Tribunal;
  - (b) to maintain the register of appeal and disputes;
  - (c) to require any application or other reference to the Tribunal to be amended in accordance with the rules, practice and procedure of the Tribunal or to be re-presented after an amendment has been made at the direction of the registrar;
  - (d) to fix dates and make all other practical arrangements, including the issuing of notices to parties and witnesses, for sittings of the Tribunal or a panel of the Tribunal;
  - (e) to arrange for publication of the proceedings and judgments of the Tribunal;
  - (f) to give directions for any formal amendment of the record of the Tribunal;
  - (g) to order the provision of copies of documents to parties; and
  - (h) to grant leave to inspect the records of the Tribunal.
- (5) The registrar shall have custody of the seal and records of the Tribunal and shall exercise such other functions as may be assigned to the registrar by order of the President.

## **66. Tribunal panels.**

- (1) The functions of the Tribunal shall be exercised by panels of the Tribunal.
- (2) A panel of the Tribunal shall sit at such time and in such place as the President may direct and more than one panel may sit at a time.
- (3) The President shall make arrangements for determining which members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function.
- (4) Arrangements made pursuant to subsection (3) shall ensure that each panel is constituted as —
  - (a) the President sitting alone;
  - (b) the President sitting with two ordinary members; or
  - (c) a legal member sitting with two ordinary members.

## PROCEDURE FOR COMPLAINTS

### **67. Complaints.**

- (1) A potential bidder or actual bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act may at any stage apply by way of complaint to the procuring entity for a review of the procurement.
- (2) The procuring entity shall not process an application made pursuant to subsection (1) unless —
  - (a) the complaint which is the subject of the application is made in writing; and
  - (b) the complaint identifies the specific act of omission or commission alleged to contravene this Act and the bidding documents.
- (3) A procuring entity shall process a complaint by way of a review of the procurement where such complaint —
  - (a) concerns alleged improprieties in the solicitation of bids or applications to pre-qualify; and
  - (b) such alleged improprieties were not apparent prior to bid opening but have come to light after bid opening.

### **68. Procuring entity review procedure.**

- (1) A complaint prior to the entry into force of a procurement contract shall be made by the bidder, in writing to the head of the procuring entity.
- (2) The head of the procuring entity shall not entertain a complaint made pursuant to subsection (1) unless the complaint was submitted within fourteen working days of the bidder becoming aware of the circumstances giving rise to the complaint.
- (3) The head of the procuring entity shall, unless the complaint is resolved by mutual agreement —
  - (a) suspend the procurement unless satisfied that urgent public interest considerations require the procurement to proceed;
  - (b) review the complaint; and
  - (c) within five working days after submission of the complaint, issue a written decision to the complainant stating the reasons the complaint has been rejected or, where the complaint is upheld, the corrective measures to be taken.

### **69. Appeal to Tribunal.**

- (1) A bidder may appeal to the Tribunal where such bidder—

- (a) has not been communicated a decision by the head of procuring entity pursuant to subsection 68(3);
  - (b) is aggrieved by a decision of the head of procuring entity made pursuant to section 68; or
  - (c) has a complaint in respect of the award of a procurement contract that has already come into force.
- (2) An appeal made to the Tribunal pursuant to subsection (1) shall be filed within ten working days of.
- (a) the time limit for the procuring entity to render a decision and the procuring entity fails to render a decision;
  - (b) the communication to the bidder of the decision of the procuring entity; or
  - (c) the bidder becoming aware of the circumstances giving rise to the complaint.
- (3) Where a complaining bidder appeals to the Tribunal —
- (a) the authority of the procuring entity or tenders committee to entertain his application ceases; and
  - (b) the procuring entity shall, upon receipt from the Tribunal of notice of the appeal, promptly provide the Tribunal with all documents relating to the procurement.
- (4) The President of the Tribunal shall within ten working days of receiving an appeal—
- (a) appoint a panel to hear the matter;
  - (b) fix a date for the hearing of the appeal; and
  - (c) publish a notice of appeal on the government website and the electronic procurement system.

## **70. Panel decisions.**

- (1) A panel of the Tribunal shall give a written decision, and shall give reasons for the decision, within ten working days after the conclusion of its deliberations.
- (2) A decision of a panel of the Tribunal shall be —
  - (a) communicated promptly to the complaining bidder, the procuring entity, and any other relevant participants in the procurement; and
  - (b) binding on all the parties.
- (3) An appeal may be dismissed for —
  - (a) failure to comply with any of the prescribed requirements;
  - (b) containing only obligations that do not —
    - (i) state a valid basis for a complaint; or

- (ii) set out a detailed legal and factual statement;
  - (c) having been filed in an untimely manner —
    - (i) at the initial level of review by the procuring entity; or
    - (ii) with respect to deadlines for filing of an application with the Tribunal;
  - (d) being concerned with the implementation or administration of the procurement contract rather than the award of the procurement contract.
- (4) A panel of the Tribunal may, after considering the appeal dismiss the appeal or make an order—
- (a) prohibiting the procuring entity from acting or deciding in an unauthorized manner or from following incorrect procedure;
  - (b) revoking in whole or in part any unauthorized act or decision of a procuring entity, other than an act or decision bringing the procurement contract into force;
  - (c) reversing a decision by the head of a procuring entity, or substituting its own decision for such a decision, other than a decision bringing the procurement contract into force.
- (5) Subject to subsection (6), the submission of an appeal within the time periods specified in this Act shall suspend the procurement until a decision is issued by the panel of the Tribunal.
- (6) The President of the Tribunal may upon the application of the procuring entity end the suspension of the procurement pursuant to subsection (5) where the procuring entity satisfies the President that the continuation of the suspension of the procurement would cause disproportionate harm to —
- (a) the public interest;
  - (b) the procuring entity; or
  - (c) other suppliers and contractors.
- (7) The lifting by the President of a suspension pursuant to subsection (6) shall —
- (a) permit the procuring entity to continue with the procurement up to the award of the procurement contract; and
  - (b) not permit a contract to be concluded before a decision is made by the Tribunal panel.
- (8) The panel of the Tribunal shall in all cases ensure that all parties to a dispute are heard and given fair opportunity to make their case.

**71. Appeals on a question of law to the Court of Appeal.**

- (1) A bidder who is aggrieved by a decision of the Tribunal may appeal the decision of the Tribunal, on matters of law only to the Court of Appeal.
- (2) The Notice of Appeal must be filed within twenty-one days after the notice of the decision is given.
- (3) An appeal to the Court of Appeal shall be limited to grounds stated in the Notice of Appeal unless the Court in its discretion permits the grounds to be amended.

## **PART VI – DEBARMENT PROCEDURE**

**72. Interpretation of Part.**

For the purposes of this Part —

“**debarment**” or “**debar**” means exclusion from eligibility to be awarded a procurement contract under this Act;

“**suspension**” means a temporary status of ineligibility for procurement transactions, pending completion of an investigation or legal proceedings.

**73. Suspension.**

Where the Financial Secretary determines on the recommendation of a procuring entity or the Department, that immediate action is necessary to protect the interest of the Government, the Financial Secretary may suspend a bidder from participating in any procurement where there is adequate evidence that there may be a cause for debarment pursuant to section 74.

**74. Debarment.**

- (1) The Financial Secretary may debar a bidder —
  - (a) if that bidder is convicted or has a civil judgement against them for —
    - (i) commission of fraud or a criminal offence in connection with —
      - (aa) obtaining;
      - (bb) attempting to obtain; or
      - (cc) performing a public contract or subcontract;
    - (ii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false



- statements, non-payment of tax, violating tax laws, or receiving stolen property; or
  - (b) commission of any other offence indicating a lack of business integrity or business honesty that seriously and directly affects the bidder's present responsibility;
  - (c) upon a preponderance of evidence for —
    - (i) violation of the terms of a procurement contract, procurement subcontract or a public agreement so serious as to justify debarment including but not limited to —
      - (aa) willful failure to perform in accordance with the terms of a procurement contract; or
      - (bb) a history of failure to perform, or of unsatisfactory performance of a procurement contract;
    - (ii) failure by an officer or director of a company, within three years after final payment on any procurement contract, to timely disclose credible evidence of —
      - (aa) commission of fraud or bribery;
      - (bb) significant overpayment on the procurement contract;
  - (d) based on a determination by the Department of Immigration or the Office of the Attorney-General that the bidder is in contravention of the Immigration Act (*Ch. 191*);
  - (e) based on any other cause of so serious or compelling a nature that it affects the present responsibility of the person; or
  - (f) submitting multiple bids in contravention of section 37.
- (2) A bidder shall not be suspended or debarred unless –
- (a) he is given written notice of the grounds for his suspension or debarment; and
  - (b) he is given a reasonable opportunity to respond to the grounds for suspension or debarment within fourteen days following the receipt of the notice.

## **75. Period of debarment.**

- (1) Debarment shall be for a period commensurate with the seriousness of the cause but shall not exceed three years.
- (2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (3) A bidder may appeal his suspension or debarment to the Tribunal.

**76. Procedure for suspension or debarment.**

The procedure for suspension or debarment of a bidder shall be prescribed in regulations.

**PART VII – SURCHARGE**

**77. Surcharge by the Financial Secretary.**

(1) Subject to subsection (2) where it appears to the Financial Secretary, upon a report by the Auditor-General, the Director of Internal Audit, the Treasurer, the head or deputy head of the procuring entity or any senior officer employed in the procuring entity, that any person who is an employee or who was an employee of a procuring entity, or any person who acted as an agent of a procuring entity–

- (a) has been responsible for the procuring entity engaging in a method of procurement in contravention of this Act, that resulted in a deficiency or loss of public moneys which would not have been likely to occur had the procuring entity engaged in the appropriate method of procurement;
- (b) made an unauthorized procurement of goods, works or services contrary to the provisions of this Act; and
- (c) provides no satisfactory explanation to the Financial Secretary as to the method of selection;

the Financial Secretary may surcharge against that person the amount of the deficiency or loss of public moneys or the amount of the unauthorized procurement, or such lesser amounts as the Financial Secretary may determine.

(2) No surcharge shall be made after the expiration of five years from the date that such deficiency or loss of public moneys comes to the attention of the Auditor-General or the Treasurer.

**78. Notification of surcharge.**

- (1) The Financial Secretary shall notify the Auditor-General and the principal accounting officer of the procuring entity of any surcharge made under section 77.
- (2) The principal accounting officer of the procuring entity, on being notified under subsection (1) shall notify the person surcharged and shall, subject to sections 79 and 80 recover the amount surcharged from such person

**79. Withdrawal of surcharge.**

The Financial Secretary may, at any time, withdraw any surcharge in respect of any deficiency or loss for which a satisfactory explanation is received or if it otherwise appears that no surcharge should have been made, and the Financial Secretary shall notify the Auditor-General and the principal accounting officer of the procuring entity concerned of the withdrawal of any surcharge.

**80. Remedy of person aggrieved by surcharge.**

- (1) Any person who is dissatisfied with any surcharge made against him under section 79 is entitled to appeal to the appropriate authority within a period of thirty days after he has been notified of the surcharge.
- (2) After any further investigation as the appropriate authority may direct, the appropriate authority may make an order confirming the surcharge or directing that the person be released wholly or in part from the surcharge as may appear just and reasonable.
- (3) A copy of every order made under subsection (2) shall be transmitted to the Financial Secretary, the principal accounting officer of the procuring entity, the Auditor-General and the Treasurer.
- (4) For the purposes of this section “appropriate authority” means—
  - (a) where the person was appointed under Article 117 of the Constitution, the Judicial and Legal Service Commission;
  - (b) where the person was appointed under Article 119 of the Constitution, the Police Service Commission; and
  - (c) in every other case, the Public Service Commission.

## PART VIII MISCELLANEOUS

**81. Confidentiality.**

- (1) A procuring entity shall not disclose any information relating to the content of pre-qualification applications and bids, or the examination, clarification, evaluation or comparison of bids to –
  - (a) suppliers or contractors; or
  - (b) any other person not involved in the examination, evaluation or comparison of a bid or in making the decision whether the bid should be accepted.
- (2) No person employed in a procuring entity, or a member of the tender committee or a member of the Board shall disclose to any other person

any information obtained with respect to the procurement of goods, works or services.

- (3) A person in possession of or control over any document or information relating to any business or transaction of the procuring entity, the tender committee or the Board shall not communicate or attempt to communicate any information contained in that document or pass on the document to any person other than a person authorized under this Act to receive the document.

## **82. Conflicts of interest.**

- (1) A person employed in a procuring entity or a member of a tender committee or a member of the Board who has any conflict of interest in any procurement, or a member of the Tribunal who has any conflict of interest in any appeal before the Tribunal shall—
  - (a) disclose his interest as soon as possible after becoming aware of the procurement or of the appeal; and
  - (b) recuse himself from the evaluation and award of the procurement contract or the appeal.
- (2) The disclosure of interest shall be recorded in the records of the procurement or the records of the appeal.
- (3) Subsections (1) and (2) shall apply to technical evaluation advisers and to employees of the Department who provide secretarial services to the Board.
- (4) For the purposes of this section “conflict of interest” means any situation where a person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure;

## **83. Offences.**

- (1) No person shall, with intent to gaining any advantage or concession for himself or any other person —
  - (a) offer any member of the Board or a member of a tender committee or any employee of the Board or any employee of a procuring entity or any employee of the Department or any consultant or any person providing service under this Act, a gift of money or other thing;
  - (b) approach any member of the Board, the tender committee or any officer under this Act with respect to any matter that is before the Board or a tender committee or that is expected to come before the Board or tender committee.

- (2) No person shall solicit or accept any gift of money, a benefit or other inducement which is intended directly or indirectly—
  - (a) to influence the vote at any meeting of the Board; or
  - (b) to influence the Board or any member of the Board or tender committee with respect to any matter that is before the Board or tender committee or that is expected to come before the Board or tender committee.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to a term of imprisonment for twelve months or to both.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.
- (5) Where a person who commits an offence under subsections (1) and (2) is a corporate body, every director or officer who knowingly or negligently authorized or conspired with another person to commit the offence ~~and~~ is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both such fine or imprisonment.

#### **84. Tampering with records or other documents.**

Any person who—

- (a) falsifies, destroys, injures, defaces, removes or conceals any record, or document required to be kept under this Act; or
- (b) certifies any document to be a copy or extract of any record or document knowing such document to be false in a material particular, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.

#### **85. Offence involving collusion.**

A person who—

- (a) is involved in or participates in falsifying a bid; or
- (b) directly or indirectly influences or attempts to influence a procurement in order to obtain an unfair advantage in the award of a procurement contract,
- (c) solicits or accepts a gift, benefit or inducement or an offer of a gift, benefit or inducement by a bidder or prospective bidder or an agent of a bidder or prospective bidder for any planned or ongoing procurement that may have the effect of directly or indirectly influencing a procurement,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for five years or to both fine and imprisonment.

**86. Procurement and contract management record.**

- (1) A procuring entity shall maintain for a period of seven years from the date of completion of performance under a procurement contract or from the date of the rejection of the bids or from the date of the cancellation of the bids, a record of—
  - (a) the procurement; and
  - (b) the management of the procurement contract.
- (2) A procurement record shall include--
  - (a) any request to initiate the procurement and the consistency of the request with the procurement plan;
  - (b) a statement of the reasons and circumstances relied on to justify the use of the method of procurement used by the procuring entity in the procurement;
  - (c) a copy of any procurement notice published;
  - (d) a list of suppliers to whom a request for quotations or a request for expressions of interest were sent directly;
  - (e) any shortlist of bidders or list of pre-qualified bidders used;
  - (f) a copy of any pre-qualification document issued and any amendment or clarification to the pre-qualification document;
  - (g) a record of the submissions received;
  - (h) a record of the opening of bids;
  - (i) copies of all bids evaluated, and any clarification requested from a bidder and the response to the request for clarification;
  - (j) any evaluation report prepared, including any report prepared in respect of applications for pre-qualification;
  - (k) the minutes of any meeting held with bidders;
  - (l) a copy of the award of procurement contract notice;
  - (m) a copy of any submissions made to the tender committee;
  - (n) a copy of the decision of the procuring unit, the tender committee, the Board or Cabinet with respect to the procurement;
  - (o) any decision to cancel the procurement and the reasons for the decision to cancel the procurement;

- (p) any decision to suspend or debar a bidder and the reason for the decision;
  - (q) any application for review of the procurement and the decision made with respect to the application for review; and
  - (r) any appeal to the Tribunal and the decision of the Tribunal.
- (3) A procurement contract management record shall include—
- (a) a copy of the executed procurement contract;
  - (b) minutes of any meeting related to the management of the procurement contract, including procurement contract progress or review meetings;
  - (c) all documents evidencing delivery of goods or completion certificates in relation to procurement contracts for works or services;
  - (d) copies of reports relating to any tests performed on the good or works;
  - (e) copies of all invoices received by the procuring entity and details of all payments made by the procuring entity;
  - (f) details of any claims made, or penalties imposed by the procuring entity in accordance with the procurement contract; and
  - (g) all correspondence between the procuring entity and the bidder.
- (4) Procurement records and contract management records shall be accurately maintained and kept current 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.

## **87. Review of Act.**

- (1) This Act shall be reviewed every five years by a Committee of both Houses of Parliament appointed by the Prime Minister in consultation with the Leader of the Opposition for that purpose.
- (2) The first review of this Act shall be conducted not later than three years after the date of the first appointed day notice under this Act.

## **88. Annual report.**

- (1) The Financial Secretary shall cause an annual report to be prepared by the Chief Procurement Officer before the 30<sup>th</sup> day of September of each year on the overall functioning of the public procurement system and a report on all procurements.
- (2) The annual report shall contain—

- (a) a summary of all procurement contracts awarded by the procuring entities;
  - (b) the names of all persons bidding for the award of procurement contracts;
  - (c) the purpose of the procurement contracts;
  - (d) the value of the procurement contracts;
  - (e) the date of the award of the procurement contract;
  - (f) the aggregate value of the procurement contract awarded;
  - (g) the information contained in the periodic report by procuring entities to the Financial Secretary;
  - (h) a summary of all procurement contracts awarded by public bodies; and
  - (i) any application of special measures and the suspension of the provisions of this Act by the Minister responsible for national security or defence pursuant to section 3(3).
- (3) Where the Minister, in the interest of national defence or national security determines that the details of the award of any procurement contract shall not be contained in the annual report, the Minister shall disclose—
- (a) the number of procurement contracts awarded;
  - (b) the procuring entity awarding the procurement contracts; and
  - (c) the aggregate value of the procurement contracts.

## **89. Minister to lay annual report.**

- (1) The Minister shall by the first sitting of the House of Assembly in the month of October of each year cause the annual report of the Department to be laid before both chambers of Parliament together with the Minister's assessment of the work of the department for the relevant financial year.
- (2) The Minister, after laying the annual report in Parliament shall, publish the annual report on the electronic procurement system.

## **90. Non-derogation.**

Nothing in this Act shall derogate from the provisions of the Financial Administration and Audit Act (*No. 26 of 2010*).

## **91. Regulations.**

The Minister may make regulations generally providing for any matter necessary to give full effect to the provisions of this Act and without prejudice to the generality of this section shall, make regulations specifically providing for —

- (a) a code of conduct in respect of —



- (i) procuring entities and procurement units;
- (ii) bidders; and
- (iii) contractors and suppliers;
- (b) fees payable for the submission of bids under the Act;
- (c) the establishment, management and operation of the electronic procurement system;
- (d) the procedure for establishing and maintaining the records of procurement of goods, work and services;
- (e) prescribing the forms, the standard bidding documents, the standard procurement contracts documents, the pre-qualification documents and other documents necessary for the procurement of goods, works and services;
- (f) the form and manner for registering on the electronic procurement system;
- (g) the rules for domestic preference;
- (h) alternate forms of bid security;
- (i) the procedure for hearing of reviews and appeals to the Tribunal;
- (j) the procedure for procuring entities to make report of procurements to the Chief Procurement Officer;
- (k) the procedure for suspension and debarment of a bidder; and
- (l) the procedure, manner or form of procurement carried out by public bodies under section 5.

## **92. Repeals.**

- (1) The Financial Administration and Audit (Amendment) Act, 2013 (*No. 13 of 2013*) is repealed.
- (2) Sections 33 – 36 of the Local Government Act (*Ch. 37*) are repealed.
- (3) Regulations 59 – 61 of the Financial Regulations (*Ch. 359*) are revoked.

## **93. Transitional.**

- (1) Where a procurement contract is executed before the coming into force of this Act and the procurement contract subsists, this Act shall apply to the procurement contract as if that procurement contract were executed under this Act, except that this Act shall not adversely affect the rights of any party to the contract.
- (2) The Minister may make regulations providing for any transitional matters arising as a consequence of the coming into force of this Act.

## **FIRST SCHEDULE**

(section 15)

### **1. Procedures of the Board.**

- (1) Subject to the Act and any regulations made the Act, the Board may regulate its meetings and procedure as the Board thinks fit.
- (2) The Board shall have such structures and organization as the Minister may determine necessary for the efficient performance of its functions.

### **2. Tenure of members.**

The Chairperson and other Board members, not being ex officio members, shall hold office for a fixed term of three years and shall be eligible for re-appointment except for the appointment of the permanent secretary of a Government Ministry members appointed pursuant to section 15 (2).

### **3. Compensation of members.**

Other Board members, not being ex officio members or government officials, should be paid such remuneration, fee, allowance or reimbursement for expenses incurred in connection with the discharge of their functions as the Minister may determine.

### **4. Quorum.**

The quorum at a meeting of the Board shall be five excluding the secretary.

### **5. Meetings.**

- (1) The Board shall meet not less than once per month.
- (2) The Board shall cause minutes of all its meetings to be taken by the secretary to the Board, signed by the Chairperson, and kept in the proper form as a public document.

### **6. Voting.**

Each Board member excluding the secretary shall have one vote but the Chairperson shall, where there is an equality of votes, have a casting vote.

## **SECOND SCHEDULE**

(section 26)

### **PROCUREMENT VALUATION RULES**

- (1) For the purposes of estimating the value of a procurement, the estimated value shall —
  - (a) be cost-effective, transparent and a fair use of public moneys;

- (b) take into account —
    - (i) published national and international prices;
    - (ii) other official indicative prices;
    - (iii) local market prices;
    - (iv) prices of previous procurement contracts; or
    - (v) prices collected through the electronic procurement system;
  - (c) be based on a comparison between the references in paragraph (1) (b), whenever they exist, with a cost analysis of the relevant technical specifications of the goods, works or services to be procured;
  - (d) include any applicable taxes, duties and other charges separate from the prices of the goods, works and services and labour; and
  - (e) include reasonably foreseeable elements of the ultimate price to be paid.
- (2) Where procurement is to be conducted in multiple lots with procurement contracts to be awarded at the same time or over a given period to one or more suppliers, the calculation of the estimated value must be based on the estimated total maximum value of all lots making up the procurement.
- (3) With regard to the procurement of works, calculation of the estimated value shall take into account both the cost of all works and the total estimated value of the goods and services necessary for executing the works.
- (4) With regard to the procurement of services, calculation of the estimated value shall take into account all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for as appropriate.
- (5) Where the procurement is by lease, including hire-purchase or rental or does not specify a total price, the basis for valuing the procurement is —
- (a) for a fixed-term contract where the term is twelve months or less, the total estimated contract value for the contract's duration;
  - (b) for a fixed-term contract where the term exceeds twelve months, the total estimated contract value including the estimated residual value that is payable at the end of the contract; or
  - (c) for a contract for an indefinite period or where there is doubt as to whether the contract is to be fixed-term, the estimated monthly instalment multiplied by forty-eight.
- (6) Where the procurement contains an option for extension of the procurement contract for additional deliveries or services for the same price and under the same conditions, the basis for calculating the estimated procurement value must be the highest possible total permitted for the purchase, lease, rental or hire purchase options included.

- (7) Procuring entities shall not use a particular method for estimating the value of a procurement for the purposes of lowering the estimated contract value below any relevant procurement threshold value in order to avoid the application of any relevant procurement procedure.

### **THIRD SCHEDULE**

(section 31 (1))

#### **THRESHHOLDS FOR INTERNATIONAL BIDDING**

- |     |  |  |
|-----|--|--|
| (1) | in the case of a works contract.   | Six million, five hundred thousand Special Drawing Rights, |
| (2) | in the case of a goods contract and a contract for non-consultancy services. | One hundred fifty-five thousand Special Drawing Rights,    |

The Bahamian dollar value of the thresholds for the international bidding method set out above may vary from time to time based on the exchange rates between the Bahamian dollar and special drawing rights fixed by the International Monetary Fund