SAINT VINCENT AND THE GRENADINES

PUBLIC PROCUREMENT ACT 2018

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SAINT VINCENT AND THE GRENADINES

ACT NO. 34 OF 2018

I ASSENT

[L.S.]

DR. FREDERICK BALLANTYNE
Governor-General
31st December, 2018.

AN ACT to provide for the general requirements in relation to public procurement, for exempt and partially exempt procurement, for the establishment of procurement authorities, for source selection, the solicitation procedures and the award of contracts, for the administration of contracts, for the assessment of procurement, for the review process; and to provide for connected and incidental matters.

[By Proclamation]

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

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Public Procurement Act 2018.

(2) This Act shall come into force on a date fixed by the Governor-General by Proclamation published in the Gazette.

(3) If a provision of this Act has not come into force within two years after the day on which this Act is assented to, the provision automatically comes into force on the next day.

Interpretation

2. (1) In this Act, unless the context requires otherwise—

Cap. 252

"accounting officer" has the meaning given in section 2 of the Finance Administration Act:

"bid" means an offer made in response to an invitation by a procuring entity and includes any bid, proposal or quotation;

"bidder" means any person, including a consortium (that is, association of several persons, or firms or companies), participating in a procurement process conducted by a procuring entity;

"bidding document" means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid;

"bid security" means a firm commitment such as a certified cheque, bid bond or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of the bid by the procuring entity, execute such contractual documents as may be required within the time specified;

"Board" means the Central Procurement Board established under section 7;

"CARICOM" means the Caribbean Community established by Article 2 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau in the Bahamas on the 5th day of July, 2001;

"Central Procurement Office" means the Central Procurement Office established under section 12;

"chief executive officer", in relation to a statutory body or state-owned enterprise, includes the general manager and managing director of the statutory body or state-owned enterprise or equivalent office;

"confidential information" means any information that is—

(a) available to a procurement official; and

(b) not a matter of public knowledge or is not available to the public on request;

"consultant" means a natural or legal person, providing consulting services;

"consulting services" means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills, study, design and organize specific projects, advise clients, conduct training or transfer knowledge;

"contract administrator" means the accounting officer or chief executive officer or their delegates referred to in section 54;

"contractor" means a natural or legal person who concludes a contract with a procuring entity to provide goods, works or services;

"co-operative or pooled procurement agreement" means the co-operative or pooled procurement agreement referred to in section 18;

"corruption" without limitation to section 85 of the Criminal Code, includes, the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or in contract execution; Cap. 171

"days" means working days;

"department" includes a non-ministerial department of Government and a ministry;

"design contest" means the competitive procedures which enable a procuring entity to acquire, mainly in the field of physical planning and development, architecture and engineering or data processing, a design or plan selected by a committee after being put out to competition, with or without prizes.

"donor" includes any organisation or Government which provides grants or any other technical assistance to the Government;

"employee" includes a public officer;

"electronic reverse auction" means an online, real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by

bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bid prices;

"Finance Administration Regulations" means the Finance Administration Regulations made under section 50 of the Finance Administration Act;

Cap. 252

"financial year" means the period of twelve months beginning the 1st day of January and ending the 31st day of December in any year;

"framework agreement" means an agreement between one or more procuring entities with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include agreement on prices which may be either pre-determined or be determined at the stage of actual procurement through competition or a process allowing their revision without further competition;

"fraudulent practice" includes—

(a) a misrepresentation of fact in order to influence a procurement or the exercise of a contract to the detriment of the procuring entity; and

(b) collusive practices amongst bidders, before or after bid submission, designed to establish bid prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;

"goods" means objects of every kind and description including raw materials, products, computer software, software licences and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

"Government" includes a statutory body and a state-owned enterprise established by the Government of Saint Vincent and the Grenadines;

"invitation to bid" means a document and any amendment thereto published by the procuring entity inviting bids relating to the procurement;

"Member State" includes all Member States of the OECS listed in the Schedule 1;

"Minister" means Minister for the time being charged with responsibility for Finance;

"OECS" means the Organisation of Eastern Caribbean States established under the Treaty of Basseterre 1981 signed on 18 June 1981 at Basseterre, St. Kitts and continued under the Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union done at Castries Saint Lucia on the 18th June, 2010;

"procurement contract" means the written agreement made between a procuring entity and a contractor with respect to a procurement and includes an agreement evidenced by the issue of a purchase order;

"procurement officer" in relation to the procurement of goods, services or works is the public officer designated by the accounting officer under section 15;

"procuring entity" includes a, department, local authority, statutory body and state-owned enterprise for which a procurement is made;

"public funds" means public money as defined in section 2 of the Finance Administration Act or other public financial assets; Cap. 252

"public officer" means a public officer as defined in section 105 (1) of the Constitution; Cap. 10

"public-private partnership" means an agreement, between one or several procuring entities with an investor, which gives the investor the right—

(a) to construct, on his or her own cost, a highway, an airport, a harbour or such other complex or high value infrastructure object;

(b) to manage and maintain such infrastructure object for a specific period of time specified in years; and

(c) to charge users of such infrastructure object a fee to cover the construction and management costs;

"public procurement" means the purchase, lease, rental of goods, works or services by a procuring entity governed by this Act;

"Public Procurement Manual" means the manual developed by the Central Procurement Office under section 13(b) and issued by the Minister;

"Regulations" means regulations made under this Act;

"request for proposals" includes any document, whether attached to or incorporated by reference, in a request for proposals;

"request for quotations" includes any document, whether attached to or incorporated by reference, in a request for quotations;

"responsive" in relation to a bid, proposal or quotation, means compliant in all material aspects with the requirements of the bidding documents, request for proposals or request for quotations;

"Review Commission" means a Procurement Review Commission appointed under section 66;

"Secretary" means the secretary to the Board referred to in section 10;

"small value procurement" means contracts for goods, works and services of low value, as prescribed

"services" in relation to procurement of goods, services or works, includes—

(a) an object of procurement;

(b) reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services if the value of those goods does not exceed the value of the services;

(c) the supply of professional or consulting services or other labour, time or effort;

(d) the supply of electricity, telecommunications, water and other similar services;

(e) goods, products or other tangible property supplied in connection with electricity, telecommunications, water and other similar services;

(f) labour, time or effort, not involving furnishing a tangible end-product other than a report or goods or other

tangible property produced or supplied incidental to the labour, time or effort; and

(g) the supply of insurance coverage and other similar services;

"statutory body" means

(a) a corporation established by an Act, all members of which or all members of the board of management, board of directors or governing board of which, are appointed by

(i) an Act

(ii) the Cabinet

(iii) a minister;

(iv) a public officer; or

(v) any combination of subparagraphs (i) to (iv),

whether or not the appointment is subject to the approval, advice or other approbation of another person or equity; or

(b) a company registered under Companies Act where the Government or any person controlled by Government is entitled to exercise control directly or indirectly over the affairs of the company;

"supplier" includes a person who concludes a contract with a procuring entity to provide goods;

"value for money" means best returns for each dollar spent in terms of quality, timeliness, reliability, after sales service, upgradeability, price source, and a combination of whole-life cost and quality to meet the requirements of the procuring entity;

"works" means -

(a) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road, sea port or airfield;

(b) any other civil works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing; and

(c) service which is tendered and contracted on the basis of performance of a measurable physical output such

as drilling, mapping, satellite photography or seismic investigations:

Provided that, contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the services covered by the contract.

(2) Nothing in this Act or the Regulations shall be construed so as to affect the common law of contract.

Purposes of Act

3. The purposes of this Act are —

(a) to simplify, clarify and modernise public procurement;

(b) to promote transparency in public procurement;

(c) to encourage competition in public procurement;

(d) to foster and encourage broad participation in procurement proceedings;

(e) to ensure fair and equitable treatment of all persons participating in the public procurement system;

(f) to foster increased economy and efficiency in procurement activities;

(g) to provide for integrity and accountability;

(h) to promote sustainable procurement.

Application

4. (1) This Act applies to every department of the Government and statutory body.

(2) Every procuring entity shall ensure that its procurement activities and decisions comply with this Act and the Regulations.

Conflict with other laws

5. If there is a conflict between this Act or the Regulations and any other law in matters relating to public procurement, this Act or the Regulations shall prevail.

PART 2

ADMINISTRATION OF THE PROCUREMENT SYSTEM

Division 1

Responsibilites of Minister

Responsibilities and powers of Minister

6. (1) The Minister is responsible for —

(a) formulating and issuing policies relating to public procurement in Saint Vincent and the Grenadines; and

(b) adopting directives, procedures, guidelines and technical notes for the implementation of this Act; and

(2) The Minister shall exercise the powers conferred on him or her under this Act in a manner so as to ensure the effective execution of the public procurement policy of the Government.

Division 2

Central Procurement Board

Establishment of Central Procurement Board

7. (1) There is hereby established a Central Procurement Board.

(2) The Minister shall by instrument in writing appoint the members of the Board who shall include —

(a) the Director General Finance and Planning, or his or her designate;

(b) the Permanent Secretary in the ministry of trade, or his or her designate;

(c) the Permanent Secretary in the ministry of transport and works or his or her designate;

(d) the Accountant General or his or her designate; or

(e) three members appointed from the private sector.

(3) A public officer shall not be a designate of more than one member.

(4) Section 63 applies to the members of the Board referred to in subsection 2(e) as if they were public officers.

(5) A member is entitled to be paid such remuneration and to be reimbursed for such reasonable expenses as the Minister may approve.

(6) The Board is deemed to be properly constituted notwithstanding that there is—

(a) a vacancy on the Board; or

(b) a defect in the appointment of a member or the designation of a designate.

(7) Where a matter in respect of the procurement of goods, services or works by a procuring entity is before the Board for

consideration, the Board may invite representative of the procuring entity to address it on the matter as it considers fit.

Schedule 2

(8) Subject to this Division, the Schedule 2 has effect in relation to the constitution, operation and procedures of the Board.

Chairperson and deputy chairperson

8. (1) The Director General Finance and Planning or his or her designate shall be the chairperson of the Board.

(2) The Board may designate an ex officio member other than the Director General Finance and Planning to be deputy chairperson.

(3) The deputy chairperson shall, in the absence of the chairperson, discharge and exercise the duties and powers of the chairperson.

(4) In the absence of both the chairperson and the deputy chairperson, any remaining ex officio member may discharge the duties and exercise the powers of the chairperson at a meeting of the Board.

Responsibilities, functions and powers of Board

9. (1) The Board is responsible for—

(a) the general administration of this Act;

(b) providing, to the Minister, advice in respect of the public procurement policy;

(c) above the thresholds prescribed in the Regulations issued pursuant to section 73.(2).(k), approving as it considers necessary, pre-qualified suppliers or contractors to whom invitations to bid or requests for proposals or quotations may be issued for the procurement of goods, services or works;

(d) above the thresholds prescribed in the Regulations issued pursuant to section 73 (2) (k), approving the award of contracts in accordance with this Act and the Regulations;

(e) the suspension and debarment of suppliers, contractors and service providers under this Act.

(2) In the discharge of its responsibilities, functions and powers, the Board may—

(a) call for such records, information or other documents as it may require from any procuring entity;

(b) examine such records, information or other documents and take copies or extracts from them;

(c) perform all acts and things as it may consider incidental or conducive to the exercise of its powers.

(3) The Board may co-opt other persons capable of assisting it with expert advice, but no such person shall have the right to vote on any matter considered by the Board.

(4) (a) In the case of a statutory body the responsibilities of section 9 (1) (c) and (d) shall be exercised by and the functions and powers of section 9 (2) and (3) shall be vested in a procurement board consisting of at least five members to be established by the relevant statutory body.

(5) The procurement board of the statutory body shall report to the Central Procurement Board on its procurement activities as directed by the Central Procurement Board.

Secretary to the Board

10. (1) There shall be a Secretary to the Board, who shall be a public officer appointed by the Minister.

(2) The Secretary shall, in addition to the responsibilities assigned under this Act—

(a) provide such administrative support to the Board as the Board may direct; and

(b) carry out such other tasks in relation to procurement as are assigned to him or her under this Act, the Regulations or by the Board.

(3) Where the Secretary has notice that—

(a) a supplier, contractor or service provider fails to comply with this Act, the Regulations or any directives, procedures, guidelines and technical notes issued by the Minister; or

(b) any circumstance exists that may lead to the suspension or debarment of a person under Part 9,

the Secretary shall, in writing, report to the Board such failure or the existence of such circumstance.

Annual report

11. (1) The Board shall not later than three months after the close of each financial year—

(a) prepare an annual report on public Procurement for that financial year;

(b) submit a copy of the report to the Director of Audit and the Minister.

(2) The Minister shall, not later than forty five days after receipt of the report, lay the report before the House of Assembly and publish the report.

(3) The contents of the annual report shall be prescribed by Regulations.

Division 3

Central Procurement Office

Establishment of Central Procurement Office

12. There shall be established a Central Procurement Office within the Ministry of Finance comprising the Chief Procurement Officer and other public officers qualified, trained or knowledgeable in procurement matters.

Functions of Central Procurement Office

13. The Central Procurement Office shall have the following functions—

(a) assisting procuring entities by providing implementing tools and documents;

(b) developing directives, procedures, guidelines and technical notes and a Public Procurement Manual for consideration and issuance by the Minister;

(c) monitoring the operation of the public procurement process in accordance with this Act and the Regulations;

(d) providing procurement information and managing statistical databases;

(e) developing or causing to be developed a procurement website for disseminating information, including the publication of procurement opportunities and bidding documents;

(f) assisting in the introduction of information technology in public procurement; and making available to the public all Acts, regulations, Orders, policies and guidelines relating to public procurement in Saint Vincent and the Grenadines;

(g) designing and delivering or causing to be delivered training and capacity development initiatives for participants in public procurement;

(h) providing such operational advice in respect of procurement services as the Minister or Board may request;

(i) maintain a list of suspended and debarred suppliers, contractors and service providers, referred to in section 9.(1). (e);

(j) carrying out such other functions as specified in this Act.

Chief Procurement Officer

14. (1) The office of the Chief Procurement Officer shall be a public office.

(2) The Chief Procurement Officer—

(a) is, subject to section 6 and the directions of the Board, responsible for the overall supervision of the Central Procurement Office.

(b) may, subject to the approval of the Minister, issue guidelines with respect to the application of this Act and the Regulations;

(c) shall, at all times, have access to all procuring entities or places where procurement activities take place; and

(d) may require a procurement officer to furnish him or her with any information and provide access to any document which the Chief Procurement Officer considers necessary for the purposes of section 13 (c).

Division 4

Accounting and Procurement Officers

Accounting officers

15. (1) Subject to Divisions 2 and 3, the accounting officer of a procuring entity shall, in relation to procurements by the procuring entity, be responsible for—

(a) integrating the procurement expenditure of the procuring entity into its budget;

(b) the planning, organisation and the evaluation of bids;

(c) the execution of procurements; and

(d) ensuring that—

(i) the procuring entity procures goods, services and works in compliance with the provisions of this Act and the Regulations;

(ii) adequate funds are available in the annual budget for the procurement by the procuring entity; and

(iii) the procuring entity does not evade an appropriate procurement procedure.

(e) below the thresholds prescribed in the Regulations issued pursuant to section 73 (2) (k), approving pre-qualified suppliers or contractors to whom invitations to bid or requests for proposals or quotations may be issued for the procurement of goods, services or works;

(f) below the thresholds prescribed in the Regulations issued pursuant to section 73 (2) (k), approving the award of contracts in accordance with this Act and the Regulations.

(2) Where, subsequent to the conclusion of a procurement contract entered into by a procuring entity, any variation which causes the total contract amount to exceed the original contract price, the accounting officer of the procuring entity shall refer the matter together with all the bidding documents and, where applicable, the contract documents to the Board for approval.

(3) The procuring entity shall—

(a) not later than one month after the close of each quarter of the financial year, prepare a report in respect of its activities for the immediately preceding quarter; and

(b) upon completion of the report at (a) submit to the Chief Procurement Officer a copy of the report

(4) The accounting officer may designate a public officer as a procurement officer.

(5) Every procurement officer shall maintain complete, accurate and up-to-date procurement document files, that is to say, record of the information in respect of the procurement of goods, services or works by the procuring entity or the department.

(6) The records of the procurement of goods, services or works shall contain—

(a) the file number of the relevant procurement documents file;

(b) the estimate of the cost of the procurement and a statement of the money available or likely to be available to cover the cost of the contract and any contingency which is reasonably expected to arise under the contract;

(c) the contract number;

(d) the names of the contractor;

(e) the names of the officer of the contractor who signed the contract;

(f) the original amount of the contract;

(g) where applicable, the particulars of the performance security furnished by the contractor;

(h) the amount, if any, of the contract price which is retained as security and the period for which such security is retained;

(i) the dates of commencement and completion of the contract; and

(j) particulars of any variation in the contract, progress payments, final payment, change orders, penalties deducted and other similar information.

(7) Such records shall be retained for a period of seven years after the termination of the procurement contract.

Division 5

Bid Evaluation Committees

Bid evaluation committees

16. (1) A procuring entity shall, in order to evaluate bids, set up an ad hoc bid evaluation committee for each procurement.

(2) The bid evaluation committee shall evaluate the bids applying only those criteria that are specified in the bidding document and in the manner set out in the bidding document.

(3) The bid evaluation committee shall prepare, and submit to the procuring entity, an evaluation report—

(a) detailing the examination and evaluation of bids; and

(b) including recommendations for awards.

(4) The bid evaluation committee shall arrive at its recommendations by consensus.

(5) In the exercise of its function, the bid evaluation committee—

(a) shall act without fear or favour; and

(b) shall not be subject to the direction or control of any other person or authority.

(6) A procuring entity may engage the services of a technical expert on procurement to support the bid evaluation committee.

(7) The Board may issue guidance governing the functioning of the bid evaluation committee.

PART 3

EXEMPTIONS

Contracts in respect of national defence and security

17. (1) Where the Minister responsible for national security certifies, in writing, that the confidentiality of any procurement for the purpose of national defence or security is necessary to protect the security of Saint Vincent and the Grenadines, the Minister shall make an Order—

(a) exempting such procurement, wholly or in part, from this Act; and

(b) requiring such procurement to be kept confidential.

(2) An Order under subsection (1) shall—

(a) exempt the procurement to the minimum extent necessary to protect the national interest;

(b) where the procurement is exempted in part, specify the extent of the exemption; and

(c) be sent, without delay, to the Secretary.

(3) Where the Minister makes an order under subsection (1), no person shall disclose any confidential information or document relating to the procurement—

(a) to any public officer except to a public officer requiring the information or document to perform his or her functions; or

(b) to any person outside Government except when lawfully required to do so under any other enactment or when the Minister responsible for national security so authorises in writing.

(4) A contract for procurement under this section shall be made or entered into, be in the prescribed form and be executed on behalf of the Government in accordance with this Act except to the extent that it is exempted by an order under subsection (1).

(5) Every procurement for the purpose of national defence or security is confidential to the extent that the Minister responsible for national security certifies, in writing, that the confidentiality of that procurement, wholly or in part, is necessary to protect the security of the State

Procurements under co-operative and pooled procurement agreements

18. (1) Subject to Regulations made for that purpose the Minister may enter into a co-operative or pooled procurement agreement for the procurement of goods or services or works with any one or more of the following—

(a) the government of any other state or territory;

(b) a statutory body, or public authority outside Saint Vincent and the Grenadines; or

(c) the Eastern Caribbean Central Bank or any other regional organisation within the OECS.

(2) The procurement of the goods, services or works shall be made through a central organisation within the OECS using the procurement procedures of the central organisation.

(3) A copy of—

(a) an agreement made under subsection (1); or

(b) an agreement to vary or cancel a co-operative or pooled procurement agreement,

shall be filed with the Secretary, without delay, after such agreement is executed.

(4) Subject to regulations made for that purpose, the Minister may enter public-private agreements (that is to say, contracts for private investment) in the area of works or services.

Donor-funded procurements

19. (1) Where the procurement of goods, services or works is funded, wholly or in part, by a donor on the condition or on the understanding that the Government uses or causes to be used—

(a) the procurement procedures of the donor; or

(b) the procurement procedures approved or agreed to by the donor,

the procurement shall be made in accordance with the procurement procedures of the donor or, as the case may be, the procurement procedures approved or agreed to by the donor.

(2) The accounting officer for the relevant procuring entity shall send to the Board a statement setting out the condition or understanding relevant to such procurement.

Record of exempted procurements

20. The Secretary shall, for each financial year, keep and maintain a record of—

(a) every procurement and order referred to in section 17; and

(b) every co-operative and pooled procurement agreement and any variations and cancellations referred to in section 18.

PART 4

GENERAL PROCUREMENT REQUIREMENTS AND PROCUREMENT PLANNING

Requirement for procurement planning

21. (1) Every procuring entity shall apply the prescribed mechanism for planning in detail for all proposed procurements in each financial year with the object of realistically determining the requirements of the procurement entity having regard to—

(a) its available resources;

(b) delivery time or completion date of the outputs of such procurements; and

(c) the benefits which are likely to accrue to the procuring entity in the future.

(2) Without limiting the generality of subsection (1), a procuring entity shall, before commencing procurement proceedings for any procurement of goods, services or works—

(a) enquire as to the probability of obtaining the goods by the transfer of goods from another procuring entity or department;

(b) ensure that the procurement is not made in excess of its requirements;

(c) ensure, to the extent that is practicable in the circumstances, that the procurement is made in accordance with the annual Procurement plan prepared by the procuring entity; and

(d) commit the amount of the estimate in the budget in accordance with the Finance Administration Act, and the Finance Administration Regulations. Cap. 252

Execution of agreements

22. All contract shall be executed in accordance with the Finance Administration Act.

Determination of need for procurement

23. (1) In every case of a procurement to be made under this Act, the procuring entity shall first determine the need (including anticipated requirement) for the procurement. .

(2) While assessing the need under subsection (1), the procuring entity shall, to the extent possible, take into account the estimated cost of the procurement and shall also decide on the following matters, namely—

(a) the scope or quantity of the procurement, if determined;

(b) limitation on participation of bidders in accordance with section 27, if any applicable, and justification thereof;

(c) the method of procurement to be followed with justification thereof;

(d) need for pre-qualification, if any; and

(e) any other matter as may be prescribed.

(3) The procuring entity shall maintain all documents relating to the determination of the need for procurement under subsections (1) and (2).

(4) The procuring entity may publish information regarding planned procurement activities for the forthcoming year or years on the Central Procurement Office website.

Obligations related to value of procurement

24. A procuring entity shall neither package nor split its procurement or take any other action so as to limit competition among bidders or to avoid its obligations under this Act, provided that in the interest of efficiency, economy and timely completion of the procurement supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages as prescribed in the Regulations.

Description of the subject matter of procurement

25. (1) The description of the procurement shall be set out in the pre- qualification document, bidder registration document, request for proposals or quotations and the bidding document, as the case may be, in such manner that—

(a) it meets the essential needs of the procuring entity;

(b) to the extent practicable,—

(i) it is objective, functional, generic and measurable; and

(ii) it sets out required technical, qualitative and performance characteristics;

(c) it is in accordance with the guidelines as may be prescribed.

(2) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards, provided that a procuring entity may, for reasons to be recorded in writing, base the technical specifications on equivalent international standards even in cases where national technical regulations or recognised national standards or building codes exist.

(3) No requirement or reference is to be made in the technical specifications to a particular make or source, or a particular process which characterises the products or services provided by a specific bidder or to a trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other practical way of describing the

procurement requirements, and words such as "or equivalent" are included in the specifications.

Time limit for processing of procurement

26. (1) Subject to such regulations as may be prescribed, every procuring entity shall indicate in the pre-qualification document, bidder registration document, request for proposals or quotations or bidding document, as the case may be, the expected time limit for completion of various stages of the process of procurement.

(2) The procuring entity shall endeavour to adhere to the time limit specified under subsection (1) and shall record reasons for any modification of such time limit.

Participation of bidders

27. (1) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof, except when so authorised or required under the provisions of this Act or the Regulations made thereunder, or under the provisions of any other law for the time being in force.

(2) The procuring entity, at the time of inviting the participation of bidders in the procurement process shall declare whether participation of bidders is limited and the grounds for such limitation and such declaration may ordinarily be not altered subsequent thereto.

(3) Nothing in this section shall be construed as restricting the Government from imposing or enforcing measures limiting participation on account of the need to protect the national interest.

Qualifications of bidders

28. (1) A procuring entity may determine and apply one or more of the requirements specified in subsection (2) for a bidder to be qualified for participating in a procurement process.

(2) A bidder participating in the procurement process shall —

(a) possess the necessary professional, technical, financial and managerial resources and competence required under the pre-qualification document, bidder registration document, (request for proposals) or quotations or bidding document, as the case may be, issued by the procuring entity;

(b) not—

(i) be insolvent, in receivership, bankrupt or being wound up;

(ii) have its affairs administered by a court or a judicial officer;

(iii) have any of their directors and officers, convicted of any criminal offence related to professional misconduct or making of false statements or misrepresentations with respect to their qualifications to enter into a procurement contract, within a period of two years preceding the commencement of the procurement process, or not otherwise have been disqualified pursuant to debarment proceedings;

(iv) be in arrears with respect to taxes, duties, social security contributions, rates, or payments due to the Government;

(v) have its business activities suspended; and

(vi) be subject to any legal proceedings for any of the foregoing reasons;

(3) The procuring entity may require a bidder to provide such information or declaration as is necessary to make an evaluation in accordance with subsection (1).

(4) Any requirement pursuant to this section shall be set out in the pre-qualification document or bidder registration document, if any, and in the bidding document and shall apply equally to all bidders.

Pre-qualification of bidders

29. (1) Prequalification is appropriate for large or complex contracts, custom-designed equipment or plant, specialised services, complex information technology systems or for turnkey design and build contracts, for which the high cost of preparing bids could discourage competition.

(2) The pre-qualification shall be valid for such period as may be specified by the procuring entity in the pre-qualification document.

(3) The procuring entity shall invite bids from all pre-qualified bidders during the period referred to in subsection (2) and in case bids are not invited within such period, fresh pre- qualification shall be done before inviting bids.

(4) For the purpose of subsection (1), a procuring entity shall invite applications for prequalification from prospective bidders by giving wide publicity, in a manner as may be prescribed, to the invitation to pre-qualify and shall exhibit the particulars of the bidders that are qualified on the Central Procurement Office or Government website.

(5) Where a procuring entity has undertaken a pre-qualification process under subsection (1) in respect of any procurement, bidders who are pre-qualified shall be entitled to continue in the procurement proceedings.

(6) The procuring entity shall prequalify applicants in accordance with the provisions of section 28 and the criteria set out in the pre-qualification document.

(7) The procuring entity shall promptly notify all applicants of the result of prequalification

(8) Every pre-qualification process shall be carried out in such manner and in accordance with such procedure, as may be prescribed.

Registration of bidders

30. (1) With a view to identifying reliable bidders for a procurement or a class of procurement, the Central Procurement Office may maintain a panel of registered bidders.

(2) For the purpose of subsection (1), the Central Procurement Office may invite offers from prospective bidders by giving wide publicity in such manner as may be prescribed, and such bidders who fulfil the qualification specified in section 28 may be registered in such manner as may be prescribed by following the criteria set out in the bidder registration document.

(3) The Central Procurement Office procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once in a year.

(4) The results of the registration process shall be communicated to the bidders and the list of registered bidders shall be exhibited on the website of the Central Procurement Office or the Government.

Contents of bidding document

31. (1) Subject to the Regulations, the bidding document shall contain at least—

(a) the description of the procurement;

(b) in case of procurement of —

(i) goods, its specifications including the nature, quantity, time and place or places of delivery;

(ii) works, the nature and location or locations of the works;

(iii) services, the nature of the services and the location or locations where they are to be provided;

(c) the manner, date , place and time for submission of bids;

(d) the criteria for evaluation of bids including any margin of domestic preference

(e) the terms and conditions of the procurement contract;

(f) any other information which the procuring entity considers necessary for the bidders to submit their bids.

(2) The Minister shall prescribe the conditions to be included in (the bidding document and) model bidding documents for various types of procurements developed by the Central Procurement Office.

Single envelope and two envelope bids

32. (1) Subject to the provisions of this Act and the Regulations made there under, a procuring entity may opt to—

(a) call for bids, if it is of the opinion that it is essential to evaluate the technical and commercial aspects before considering the financial aspect, in two envelopes, namely—

(i) the technical and commercial bid containing the technical, quality and performance aspects, commercial terms and conditions; and

(ii) the financial bid containing the price and other financial details:

(b) call for bids, containing the technical and commercial aspects and financial aspects including the price in one envelope, if all the elements are to be evaluated together.

(2) In case the procuring entity calls for bids in accordance with the provisions of subsection (1)(a), the technical and-commercial

bid shall be opened and evaluated first, including evaluation based on the provisions specified in section 37(2), if applicable, and the financial bid of only those bids which have been found technically and-commercially acceptable, shall be opened and evaluated.

Time limit for submission of bids

33. (1) While fixing the last date by which bids are to be submitted by the bidders, the procuring entity shall take into account—

(a) the reasonable time required for the bidders to prepare and submit their bids; and

(b) the time frame envisaged for procurement.

(2) The time period set out in subsection (1) shall be no less than that prescribed in the Schedule 3.

Schedule 3

(3) The minimum time as may be allowed for submission of bids shall be the same for all bidders.

Pre-bid clarifications

34. (1) Any bidder may, in writing, seek clarification of the bidding documents from the procuring entity.

(2) The period within which the bidders may seek clarifications under subsection (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents.

(3) The procuring entity's response thereto shall be provided simultaneously in writing to all bidders without identifying the source of the request.

(4) A procuring entity may hold a pre-bid conference or site visit respect of a particular procurement and the records of such conference and or site visit shall be provided simultaneously and in writing to all bidders.

Modification to bidding document

35. (1) A procuring entity may make modifications to the bidding documents at any time prior to the deadline for the submission of bids.

(2) If necessary, the procuring entity shall extend the deadline for submission of bids so as to allow bidders an opportunity to take such modifications into account in preparing their bids.

Procedure relating to submission, opening and evaluation of bids.

36. Subject to the terms and conditions as may be laid down in the bidding documents, submission of bids, bid securities, modification and withdrawal of bid, opening and evaluation of bids, including constitution of committees for those purposes shall be in accordance with the Regulations.

Criteria for evaluation

37. (1) Save as otherwise provided in this Act or the Regulations made thereunder or in any other law for the time being in force, the evaluation criteria shall relate to the of procurement and may, as applicable, include—

(a) the price;

(b) the cost of operating, maintaining and repairing goods or works

(c) the time for delivery of goods, completion of works or provision of services

(d) the characteristics of the procurement, such as the functional characteristics of goods or works or the environmental characteristics.

(e) the terms of payment and of guarantees in respect of procurement;

(f) where relevant, quality based criteria such as the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the procurement.

(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid, provided that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding document and a record of such trials and testing shall be maintained in such manner as may be prescribed.

(3) In open competitive bidding, a procurement entity may grant a margin of preference for the benefit of bids using national labour or services or for the benefit of bids offering domestically produced goods and such margin of preference shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings.

(4) As far as practicable, all non-price evaluation criteria shall be objective and quantifiable.

(5) The criteria for evaluation of bids, including whether the requirements specified in subsection (3) are applicable, shall be contained in the bidding documents.

(6) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents;

(7) No criterion or procedure, other than those mentioned in the bidding document, shall be used by the procuring entity in evaluating bids.

Rejection of bids

38. (1) A procuring entity shall reject a bid if, the procuring entity determines that—

(a) the bidder is not qualified in terms of section 28; or

(b) the bid departs from the essential requirements specified in the bidding document; or

(c) the bidder submitting the bid, his or her agent or anyone acting on his or her behalf has engaged in corruption or fraudulent practices; or

(d) a bidder, in accordance with the Regulations, has a conflict of interest that materially affects fair competition or diligent performance of the procurement contract or framework agreement or is prejudicial to the interests of the procuring entity.

(2) Every decision of a procuring entity to exclude a bid shall be for such reasons as may be recorded in writing.

(3) Every decision of the procuring entity under subsection (2) shall be communicated to the concerned bidder in writing;

Price negotiations

39. Save as otherwise provided in section (47) or in such other circumstances and subject to such conditions as may be prescribed, no price negotiation shall be held by a procuring entity with a bidder with respect to a bid submitted by him or her.

Cancellation of procurement process

40. (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it—

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with the provisions of sub- sections (4) and (5).

(2) After taking a decision to cancel the procurement, the procuring entity shall not open any bid or proposals and shall return such bids or proposals.

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.

(4) If the bidder whose bid has been accepted fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the procuring entity shall cancel the procurement process, provided that the procuring entity, on being satisfied that the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, award the contract to the next successful bidder in the following circumstances, namely—

(a) where the successful bidder has withdrawn from the procurement process on account of a situation which constitutes a force majeure; or

(b) where the procuring entity determines that —

(i) cancellation of the procurement process shall result in insurmountable delay or substantial cost escalation; and

(ii) the procurement is of such critical nature that cancellation of the procurement process shall adversely impact the public interest.

(5) If a bidder is convicted of any offence under this Act in respect of a procurement process, the procuring entity may—

(a) cancel that procurement process, if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;

(b) rescind the concerned contract or forfeit the payment of all or a part of the contract value, if the procurement contract has been entered into between the procuring entity and the convicted bidder.

Award of contract

41. (1) Subject to the provisions of section 38 and any regulations that may be made, the procuring entity shall consider a bid as successful—

(a) where price is the only award criterion, the bid with the lowest bid price which is otherwise acceptable in terms of the criteria and procedures for evaluating bids as specified in the bidding document;

(b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding document;

(c) where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding document.

(2) A bid shall be treated as successful under subsection (1) after the Board or Accounting Officer, as appropriate has approved the procurement in terms of that bid.

(3) As soon as the procuring entity, with the approval of the Board or Accounting Officer as appropriate, decides to accept a bid, it shall communicate that fact to all participating bidders and also exhibit the decision on the website of the Central Procurement Office.

(4) In the absence of a challenge under Part 10 by an unsuccessful bidder within ten days of service of the notice in accordance with subsection (3), the procuring entity may award the contract to the successful bidder.

(5) While communicating acceptance of a bid, the procuring entity shall advise the successful bidder to complete the requirements within a specified time, including signing of any agreement or furnishing any security, if necessary, to conclude the procurement contract.

Terms and conditions of procurement contract

42. (1) The terms and conditions of the procurement contract entered into shall be in accordance with the provisions of this Act, the Regulations applicable to such procurement contract and the conditions indicated in the bidding document.

(2) The Minister may prescribe terms and conditions of contract which shall be incorporated in the procurement contract entered into by procuring entities as applicable.

(3) Every procurement contract shall specify the period within which sums due and payable, in respect of any procurement, shall be paid.

PART 5

PROCUREMENT PROCEDURES AND PROCESSES AND AWARD OF CONTRACT

Methods of procurement

43. Subject to the provisions of this Act and the Regulations, a procuring entity may use any of the following methods, namely—

(a) open competitive bidding;

(b) limited competitive bidding;

(c) two-stage bidding;

(d) single source procurement;

(e) electronic reverse auctions;

(f) request for quotations;

(g) request for proposals for consulting services;

(h) direct invitation for consulting services.

Open competitive bidding

44. (1) Every procuring entity shall utilise open competitive bidding as the standard method of procurement.

(2) Where the procuring entity uses a method of procurement other than open competitive bidding one or more of the conditions for the use of that method must be met and shall be recorded.

(3) In case of open competitive bidding, the procuring entity shall invite bids by publishing the invitation in any newspaper having wide circulation in Saint Vincent and the Grenadines or any other Member State of the OECS or the Government website and any other media as may be prescribed.

Limited competitive bidding

45. (1) A procuring entity may use limited competitive bidding only if—

(a) It determines that—

(i) the procurement can be supplied only by a limited number of bidders; or

(ii) the time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of the procurement.

(2) Subject to the Regulations, under the procedure for limited competitive bidding the procuring entity shall invite bids by writing directly, on the same day, to—

(i) all the bidders who can supply of the procurement in accordance with the provisions of subsection (1)(a)(i); or

(ii) an adequate number of bidders who can supply of the procurement selected in a non-discriminatory manner to ensure effective competition, in case of subsection (1)(a)(ii).

Two-stage bidding

46. A procuring entity may use two-stage bidding only where the procurement is —

(a) large complex facilities awarded as single responsibility (including as turnkey) contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant;

(b) works of a complex and special nature;

(c) complex information and communication technology that are subject to rapid technology advances, it may be undesirable or impractical to prepare complete technical specifications in advance; or

(d) un-priced technical proposals invited on the basis of a conceptual design or performance specifications, subject to technical as well as commercial clarifications and adjustments, to be followed, second, by amended bidding documents and the submission of final technical and priced bids in the second stage.

Single source procurement

47. (1) A procuring entity may use single source procurement only where —

(a) the goods, services or works are available only from one supplier or contractor;

(b) a supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;

(c) owing to an urgency brought about by unforeseen events and not attributable to an act or omission of the procuring entity;

(d) the procuring entity seeks to enter into a procurement contract with a supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs;

(e) the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that—

(i) additional supplies are required to be procured from the supplier or contractor by reason of standardization;

(ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity;

(iii) the limited size of the proposed procurement in relation to the original procurement provides justification for such procurement;

(iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision to use single source procurement;

(v) the procurement falls below the threshold for small value procurement prescribed in the Regulations.

(2) The procurement officer of the procuring entity shall—

(a) make a record of the procurement proceedings;

(b) specify in such record the grounds for the decision of the procuring entity and the circumstances which justify the use of single source procurement;

(c) file a copy of the procurement contract in the procurement documents file; and

(d) submit to the Board a copy of the record of the procurement proceedings.

Electronic reverse auction

48. (1) A procuring entity may choose to procure the procurement by the method of electronic reverse auction, if—

(a) it is feasible for the procuring entity to formulate a detailed description of the procurement;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured; and

(c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(2) Subject to the Regulations, the procedure for electronic reverse auction shall include the following, namely—

(a) the procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions section 44 or 45, as the case may be;

(b) the invitation shall, in addition to the information as specified in section 31, include details relating to—

(i) access to and registration for the auction;

(ii) opening and closing of auction;

(iii) norms for conduct of the auction;

(iv) any other information as may be relevant to the method of procurement.

Request for quotations

49. (1) A procuring entity may use request for quotations for contracts where the value is not more than the monetary value prescribed, in the following situations, namely—

(a) procurement of readily available goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or

(b) works or services that are not specially provided to the particular description of the procuring entity and are readily available in the market.

(2) Subject to the regulations, the procedure for request for quotations shall include the following, namely—

(a) quotations shall be invited from as many potential bidders as practicable but no less than three;

(b) each bidder shall be permitted to give only one quotation;

(c) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

Framework agreements

50. The procedure for framework agreement shall be as prescribed and shall include the following, namely—

(a) the manner in which the framework agreement is to be entered into; and

(b) the manner in which a procurement contract has to be entered into using a framework agreement.

Request for proposals for consulting services

51. (1) A procuring entity may procure consulting services —

(a) from firms by requests for proposals in accordance with this section and the Regulations.

(b) of individuals as prescribed in the Regulations.

(2) Without limiting the generality of subsection (1), a procuring entity may procure consulting services by requests for proposals on the basis of—

(a) quality alone;

(b) quality and cost;

(c) quality and fixed budget; or

(d) least cost and acceptable quality.

(3) Where a procuring entity intends to issue a request for proposals for the procurement of consulting services, the procuring entity shall, for the purpose of ensuring effective competition, prepare a short-list of consultants from among the consultants who have expressed interest

in the assignment and have the relevant experience, managerial and organisational capabilities to perform the required services satisfactorily.

(4) Where the estimated value of the consulting services to be procured—

(a) does not exceed the prescribed threshold, the procuring entity may prepare the shortlist of qualified consultants on the basis of its own knowledge, information and market research; or

(b) exceeds the prescribed threshold, the procuring entity shall—

(i) seek expressions of interest from qualified consultants by publishing a request for expressions of interest notice in any newspaper having wide circulation in Saint Vincent and the Grenadines or any other Member State of the OECS or the website of the Government; and

(ii) include in the shortlist any consultant who has expressed interest in the proposed procurement and has the relevant experience and managerial and organizational capabilities to perform the required services satisfactorily.

(5) The procuring entity shall—

(a) issue a request for proposals to every short-listed consultant inviting that consultant to—

(i) confirm his or her interest to participate in the procurement proceedings, and

(ii) submit a technical or financial proposal, as appropriate in accordance with subsection (2), which contains the prescribed information and is responsive to the requirements of the request for proposals; and

(b) evaluate each technical proposal on the basis of criteria specified in the request for proposals including—

(i) the consultant's relevant experience for the assignment,

(ii) the quality of the methodology proposed,

(iii) the qualifications and expertise of the key staff proposed,

(iv) the quality of the technical proposal submitted within a pre-determined fixed budget,

(v) the consultant's proposed measures to ensure the transfer of knowledge; and

(vi) where applicable, the extent of participation by citizens of Saint Vincent and the Grenadines and any other Member State of the OECS in the key staff positions proposed by the consultant for the performance of the assignment.

(6) Subject to subsection (8), after the public announcement or disclosure of the results of the evaluation of the technical proposals, the procuring entity shall consider and evaluate the financial proposals of the bidders which attained the minimum pass mark in the technical proposals.

(7) In all cases where bidders submit both technical and financial proposals for an assignment, the evaluators of the technical proposals shall not have access to the bidders' financial proposals until after the evaluation of the technical proposals has been completed.

(8) Where the request for proposals is made on the basis of the criteria specified in subsection (2)(a), (b) or (c), the financial proposal of every consultant whose technical proposal attained the required minimum technical mark shall, in accordance with the prescribed procedure, be read out or otherwise publicly announced or disclosed to the bidders who attend or participate in the procurement proceedings, whether by electronic means or otherwise.

(9) Notwithstanding subsection (6), where the consulting services to be procured are—

(a) of an exceptionally complex or specialised nature;

(b) likely to have considerable downstream impact on future projects or the national economy; or

(c) of such nature that they may be carried out in substantially different ways and, therefore, likely to lead to the submission of proposals with which will not be comparable,

the procuring entity shall base the selection of the successful bidder exclusively on the technical quality in accordance with subsection 2(a).

(10) The procuring entity may negotiate the final terms and conditions of the contract with the successful consultant having regard to—

(a) the terms of the request for proposals;

(b) the scope of the proposed services;

(c) deliverables and progress reports;

(d) facilities to be provided by the procuring entity; and

(e) subject to subsection (11), the financial proposal.

(11) Where price is a factor in the evaluation of proposals, the fee for services shall not be subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.

(12) Following the evaluation of technical and, where submitted, financial proposals the procuring entity shall invite for contract negotiations—

(a) in the case of procurement proceedings conducted in accordance with subparagraph 2 (a), the bidder that has submitted the highest-ranked technical proposal;

(b) in the case of procurement proceedings conducted in accordance with subparagraph 2 (b), the bidder whose proposal has achieved the highest combined technical and financial score;

(c) in the case of procurement proceedings conducted in accordance with subparagraph 2 (c), the bidder whose proposal has achieved the highest technical score and whose financial proposal is within the fixed budget specified in the request for proposals.

(d) in the case of procurement proceedings conducted in accordance with subparagraph 2 (d), the bidder whose financial proposal offers the lowest price among all those proposals which achieved the minimum required technical passing mark.

(13) Simultaneously, the procuring entity shall notify the successful consultant and every other short-listed consultant of its decision.

(14) In the absence of a challenge under Part 9 by an unsuccessful consultant within ten days of service of the notice in accordance with subsection (13), the procuring entity may award the contract to the successful consultant.

(15) Where the negotiations fail to result in an acceptable contract—

(a) the procuring entity shall notify the consultants of the reasons for failure of negotiations and invite the next-ranked bidder; and

(b) subsections (10), (11) and (12) shall apply to the next ranked bidder, with such modifications, adaptations and qualifications as the circumstances require.

(16) The procurement officer shall—

(a) file a copy of the decision of the procuring entity in the procurement documents file; and

(b) submit a copy of such decision to the Board.

Direct invitation for consulting services

52. A procurement entity may use direct invitation without competition with the prior approval of the Board where—

(a) only one firm is qualified, or one firm has experience of exceptional worth for the assignment;

(b) in exceptional circumstances, such as in the case of urgent need, emergency situation or natural disaster;

(c) for an assignment that represents a natural continuation of previous work carried out by a consultant within the previous twelve months, where continuity in the technical approach and experience acquired makes continuation with the same consultant preferable to a new, competitive selection, subject to the consultant's performance of the original assignment having been satisfactory.

Confidentiality

53. (1) The procurement entity shall treat proposals and any negotiations on selection procedures as confidential and avoid the disclosure of their contents to competing consultants.

(2) A party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other.

PART 6

CONTRACT ADMINISTRATION

Contract administrator

54. (1) The accounting officer or chief executive officer of a procuring entity shall be the contract administrator for the procuring entity.

(2) The accounting officer or chief executive officer may, in writing, delegate to a senior officer any responsibilities of the accounting officer or Chief Executive Officer under this Part.

Duties of contract administrator

55. (1) The contract administrator shall administer the contract in accordance with the terms and conditions of the contract, Regulations and the procedures prepared by the Central Procurement Office, but shall not agree to any change in the contract price or the material terms of a procurement contract without the prior approval, in writing, of the Board.

(2) Without limiting the generality of subsection (1), the contract administrator shall—

(a) keep an accurate record of all dealings with the contractor including minutes of every meeting with the contractor and the details of any matter discussed or decision made; and

(b) represent the interests of Saint Vincent and the Grenadines and the procuring entity under every procurement contract.

(3) The contract administrator shall not permit any performance to commence before a procurement contract has been executed.

(4) The contract administrator shall report any substantial breach of contract to the Board .

PART 7

TRANSPARENCY

Notification of awards of procurement contract

56. (1) For all contracts, including framework agreements, awarded under this Act, the procuring entity shall publish a specific public notice of the award of a procurement contract within two weeks of the signature of the contract.

(2) The form of publication under subsection (1) shall be prescribed in the Regulations and shall include—

(a) the name and reference number of the procurement, as per the procurement plan;

(b) the name of each supplier or contractor or service provider to which a procurement contract or framework agreement was awarded;

(c) the contract price;

(d) the summary of the scope of the contract and its duration;

(3) Section (1) is not applicable to contracts for small value procurement.

(4) The procuring entity shall disclose records of the procurement proceedings, whether before or after the award of procurement contract if a court of competent jurisdiction makes an order directing the disclosure.

PART 8

ETHICAL STANDARDS AND PROCUREMENT INTEGRITY

Definitions in respect of this Part

57. (1) In this Part—

"conflict of interest" includes any circumstance in which a person—

(a) is in a decision-making position; and

(b) has a direct or indirect interest which affects or influences or is likely to affect or influence the ability of the person to perform his or her job duties or fulfil his or her responsibilities;

"financial interest" includes a financial liability;

"public procurement functions" means involvement in relation to a procurement through—

(a) planning or conducting public procurement proceedings or contract administration;

(b) a decision, approval, determination or recommendation or other similar thing;

(c) the preparation of any bidding document;

(d) the exercise of influence;

(e) giving any advice; or

(f) making an investigation or audit.

"public official" means—

(a) a member of the Board or the Review Commission; or

(b) a public officer or other person employed by a procuring entity.

(2) For the purposes of this Part a person has a financial interest in a business entity if that person functions in any of the following capacities—

(a) as a director, officer or employee of the business entity;

(b) as a partner in the business entity;

(c) as a shareholder of the business entity;

(d) as a trustee of the business entity; or

(e) in any other capacity as may be prescribed, other than a financial interest or class of financial interest excluded by the Regulations.

(3) A person has a substantial financial interest in a business entity if the person—

(a) owns or has under his or her control—

(i) equity in the business entity which represents ten percent or more of the stock, shares, fair market value or other interest in the business entity, or

(ii) real property used for the business entity, if the interest is an equitable or legal ownership with a fair market value in excess of fifty thousand dollars;

(b) in any year, receives funds from the business entity that exceed ten percent of the person's gross income for the previous year;

(c) is a compensated member of the board of directors or other governing board of the business entity; or

(d) serves as an elected officer of the business entity.

Effect of breach of ethical standard

58. Without prejudice to any proceedings which may be instituted under this Act or any other enactment a person who breaches an ethical standard set out in this Part—

(a) subject to paragraph (b), is liable to suspension or debarment in accordance with the relevant sections of this Part; or

(b) is liable to disciplinary action under the applicable law, if the person is a public officer.

General duty

59. The conduct of all persons involved with public procurement, whether as members of the Board, a procuring entity, suppliers, contractors or service providers shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.

Duties of procuring entities

60. (1) Every procuring entity shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement matters, in accordance with guidelines and qualification requirements issued—

(a) in the case of the Public Service, by the Board; and

(b) in the case of a statutory body, by the Board after consultation with the relevant Permanent Secretary, the chairperson or chief executive officer of the relevant statutory body.

(2) Every procuring entity shall—

(a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act;

(b) make an annual plan for budgeting purposes and plan each step of procurement for major contracts in accordance with this Act and the Regulations; and

(c) record and preserve all documentation relating to any procurement proceedings in accordance with this Act and the Regulations.

Conduct of procurement officials

61. (1) A procurement official shall—

(a) exercise his or her public procurement functions—

(i) diligently, impartially, conscientiously and fairly in accordance with the procedures set out this Act and the Regulations; or

(ii) in such a manner so as to promote the purposes set out in section 3;

(d) discharge his or her duties impartially so as to ensure fair competitive access to procurement by suppliers, contractors and service providers;

(e) at all times in the execution of his or her duties, act in the public interest;

(f) in carrying out his or her duties and conducting himself or herself, avoid conflicts of interest, whether actual, perceived or potential;

(g) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;

(h) subject to this Act, not disclose any information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information; and

(2) In the discharge of his or her public procurement functions, a procurement official shall—

(a) keep up-to-date with advances and changes in his or her area of expertise;

(b) comply with the legislative or administrative requirements related and relevant to the proper exercise of his or her functions;

(c) treat members of the public and other staff members with courtesy and sensitivity to their rights;

(d) provide all necessary and appropriate assistance to members of the public;

(e) make decisions objectively on the basis of the relevant criteria and information;

(f) maintain adequate documentation to support any decision which he or she makes;

(g) at all times in the discharge of his or her procurement functions, behave in such a way so as not—

(i) to discredit his or her position, and

(ii) to reflect adversely on the Public Service or, as the case may be, the relevant procuring entity;

(h) strive to obtain value for public money spent;

(i) strive to avoid waste and extravagance in the use of public resources;

(j) not take or seek to take improper advantage of any official information gained in the course of employment;

(k) not wilfully supply incorrect or misleading information to bidders, suppliers, contractors, service providers or other members of the public and to staff; and

(l) not indulge in favouritism or nepotism.

(3) It is expected that every procurement official shall—

(a) be efficient and economical in the use and management of public resources;

(b) be scrupulous in the use of public property and services; and

(c) not permit abuse of such property and services by other persons.

Conduct of bidders and suppliers, etc.

62. (1) A bidder or a supplier, contractor or service provider shall not offer or give, directly or indirectly, any improper inducements or otherwise engage in or abet any corrupt or fraudulent practice, in order—

(a) to influence any procurement proceedings or the execution of any procurement contract; or

(b) to interfere in the ability of any other person to participate in procurement proceedings.

(2) A bidder or a supplier, contractor or service provider shall not engage in—

(a) any coercive practice threatening to harm, directly or indirectly, any other person or the property of any other person so as to—

(i) influence the participation of the other person in procurement proceedings, or

(ii) affect the execution of a contract; or

(b) collusion, before or after a bid submission, designed to—

(i) allocate procurement contracts among bidders,

(ii) establish bid prices at artificial non-competitive levels, or

(iii) otherwise deprive a procuring entity of the benefit of free and open competition.

(3) A procuring entity shall—

(a) reject a bid of a bidder if the bidder offers, gives or agrees to give an inducement referred to in subsection (1); and

(b) promptly, notify the bidder concerned and the Board of the rejection of the bid.

(4) Where a bidder or supplier, contractor or service provider contravenes any provision of subsection (1) or (2), another person shall not participate in the bidding process if that other person is responsible for—

(a) preparing the specifications or bidding documents for the bidder or supplier, contractor or service provider;

(b) supervising the execution of a procurement contract for the bidder or supplier contractor or service provider; or

(c) supervising a related company of the bidder or supplier contractor or service provider.

Conflicts of interest

63. (1) A procurement official, who in relation to an actual or a proposed procurement is exposed to an actual, a perceived or a potential conflict of interest circumstance, shall promptly disclose in writing the exposure to his or her accounting officer or Chief Executive Officer or, as the case may be, the contract administrator.

(2) The disclosure referred to in subsection (1) includes the notification of all relevant personal, financial, business or other interests of the procurement official, in particular—

(a) any directorship, partnership, agency or any shareholding in any business entity;

(b) any interest in any activity or business in which or with which the business entity is engaged; or

(c) any interest in goods, services or works recommended or supplied by the business entity under this Act.

(3) The accounting officer or Chief Executive Officer of the procuring entity shall investigate, review and resolve every suspected or reported conflict of interest in relation to any procurement officer employed in or assigned to the procuring entity.

(4) Where, after a review or an investigation, it is determined that there is a conflict of interest, the procurement official concerned shall—

(a) immediately cease to exercise his or her public procurement functions in relation to the procurement;

(b) without delay, give notice of disqualification from public procurement functions in relation to the procurement to any person specified by the Regulations; and

(c) refrain from exercising any public procurement function in relation to the procurement.

Suspension and debarment

64. (1) The procuring entities and bidders under publicly financed contracts shall proceed in a transparent and accountable manner during the procurement and execution of such contracts.

(2) Where a procuring entity has grounds for believing that any bidder has engaged in conduct prohibited by section 62, it may engage the debarment procedure established in this section.

(3) Once the Board initiates the debarment proceedings by establishing a Debarment Committee, the bidder subject to the debarment investigation shall be automatically suspended from participation in the contract award procedure and the procuring entity shall—

(a) reject a proposal for award of such contract;

(b) not entertain any other bid from the bidder under investigation in any contract award procedure for which it is responsible until such time as the debarment procedure has been concluded.

(4) The name of a bidder under investigation shall be published on the list of suspended bidders maintained by the Central Procurement Office in accordance with section 13 and such suspended bidders shall not be entitled to participate in any contract award procedure conducted by or be awarded any contract by any procuring entity until such time as the debarment procedure has been concluded.

(5) After determination by way of the debarment procedure in Schedule 4 that practices prohibited by section 62 were engaged in by any bidder during the procurement, award of contract or the execution of that contract, the bidder, its directors or its affiliates as defined subsection 7 may - Schedule 4

(a) be required to reimburse the portion of disbursed funds or cancel the portion of undisbursed funds to a contract for goods, works or services; and

(b) be declared ineligible for the period prescribed in the debarment procedure to be awarded a publicly financed contract.

(6) No procuring entity shall award a contract to a bidder which has been debarred.

(7) For the purpose of this section—

(a) a 'bidder' shall be a person wishing to participate in a bid, to provide quotations or proposals and may include any 'affiliate' of that person;

(b) an 'affiliate' shall mean business concerns, organisations or individuals which, directly or indirectly—

(i) either control or have the power to control the bidder; or

(ii) is controlled by or may be subject to the control of the bidder;

(c) indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organised following the debarment or proposed debarment of a bidder which has the same or similar management, ownership, or principal employees as the bidder that was debarred or proposed for debarment.

(8) Any person wishing to participate in an invitation to bid, to provide quotations or proposals in accordance with this Act may be debarred for a specific period of time from future procurement opportunities invited under this Act where one of the offences identified in section 62 have been committed.

(9) Where an alleged offence has been committed, the bidder shall be investigated by a Debarment Officer within the procuring entity making the allegation.

(10) Where further action is justified, the Debarment Officer will refer the allegations to the Board pursuant to the procedure set out in the Schedule 4.

(11) After reasonable notice is given to the bidder involved, and a reasonable opportunity has been given to such bidder to be heard, the Board may, for cause, debar a person, as prescribed in the Schedule 4.

PART 9

CHALLENGES AND REVIEW

Right to challenge

65. (1) Except in the case of a decision by a procuring entity to cancel procurement proceedings in accordance with section 40, a bidder who has suffered, or is likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity or the Board by or under this Act may challenge the procurement proceedings at any time before the entry into force of the procurement contract.

(2) The aggrieved bidder shall, in writing, first file the notice of challenge with the procuring entity.

(3) The procuring entity may, upon the examination of a challenge, dismiss the challenge—

(a) if the challenge is not submitted within fifteen days of the date on which the proposed award is notified to the bidders in accordance with sections 41(4) or 51(14), or

(b) if the procuring entity is of the opinion that the challenge is—

(i) frivolous,

(ii) not made in good faith,

(iii) devoid of sufficient grounds for a hearing, or

(iv) not supported by evidence of probative value.

(4) The procuring entity shall within fifteen days, in writing, notify the challenger of the reason for its decision setting out, where the

challenge is dismissed, the grounds for dismissal or, where the challenge is upheld, the corrective measures to be taken by the procuring entity.

(5) The challenger has the right to seek a review of the decision under section 66 if—

(a) its challenge has been dismissed by the procuring entity, or

(b) the procuring entity has failed to provide a decision in accordance with subsection (3).

(6) The decision of the procuring entity shall form part of the record of the procurement proceedings

Review by the Procurement Review Commission

66. (1) An application for review shall be filed with the Central Procurement Office within five days of the date on which the procuring entity made or should have made its decision in accordance with section 65(3).

(2) On receipt of the application for review—

(a) the Central Procurement Office shall, without delay, simultaneously inform the Board and the Minister; and

(b) the Minister shall, without delay and within no more than ten days, appoint an ad hoc Review Commission for the purpose of hearing the application for review.

(3) Where an application for review is filed, the Central Procurement Office shall, promptly, serve a copy of the notice of challenge and the necessary supporting documents on the suppliers, contractors, service providers and any governmental authority whose interests are affected or are likely to be affected by the review.

(4) Any bidder, supplier, contractor, service provider or any governmental authority whose interests are affected or are likely to be affected by the challenge proceedings has a right to participate in such proceedings.

(5) A bidder, supplier or contractor which fails to participate in the review proceedings is not entitled to file a subsequent challenge on the same facts and grounds in respect of the same matter.

(6) The Review Commission shall consist of a chairperson and two other members appointed by the Minister in accordance with subsection (7).

(7) The Minister shall, in accordance with prescribed selection procedures, appoint—

(a) the chairperson of the Review Commission from among attorneys-at-law who have been practising or have practised for a period of not less than ten years before a judge of the High Court; and

(b) the other members of the Review Commission from among persons who have wide experience and qualifications in legal, administrative, economic, financial, public procurement, engineering or scientific and technical matters.

Schedule 5

(8) The proceedings of the Review Commission are prescribed in the Schedule 5.

Remedies

67. Where an application for review is determined in the favour of the applicant, the Review Commission may—

(a) prohibit the procuring entity from acting or making a decision in an unauthorised manner or from following an incorrect procedure;

(b) annul in whole or in part any unauthorised act or decision of the procuring entity;

(c) order a new contract award procedure to be carried out by the procuring entity;

(d) award the successful applicant compensation limited to the recovery of the costs of bid preparation and participation in the bidding proceedings.

PART 10

CIVIL LIABILITY AND OFFENCES

Civil liability

68. (1) No person shall collude or attempt to collude with any other person—

(a) to make any proposed price higher than otherwise have been the case;

(b) to have that other person—

(i) refrain from submitting a bid, proposal or quotation, or

(ii) withdraw or change a bid, proposal or quotation; or

(c) to submit a bid, proposal or quotation with any specified price or with any specified inclusions or exclusions.

(2) If a person contravenes subsection (1) the following shall apply—

(a) both persons referred to in subsection (1) shall be disqualified from entering into a contract for the procurement; or

(b) if a contract has already been entered into with either person referred to in subsection (1), the contract shall be voidable at the option of the procuring entity.

(3) The voiding of a contract by the procuring entity under subsection (2)(b) does not limit any other remedy the procuring entity may have.

General penalty

69. A person who commits an offence under this Part for which no penalty is specified is liable—

(a) on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years; or

(b) on conviction on indictment to a fine of five hundred thousand dollars or to imprisonment for a term of ten years or to both such fine and imprisonment.

Limitation of liability

70. (1) No action for damages may be commenced against a procurement officer or official for anything done or not done by that person in good faith while performing their official functions under this Act.

(2) For the avoidance of doubt, a procurement official is not liable to disciplinary action in respect of the disclosure of any information or document if the procurement official proves that the disclosure of the information or document—

(a) was required for the purpose of the performance of his or her duties within the scope of his or her employment in conformity with the provisions of this Act and the Regulations;

(b) was made by reason of an order or the direction of a court of competent jurisdiction within or outside Saint Vincent and the Grenadines; or

(c) is permitted under the provisions of any law of Saint Vincent and the Grenadines.

Cap. 124

(3) Subsection (1) does not, by reason of section 4 of the Crown Proceedings Act, relieve the Crown of liability in respect of a tort committed by any person referred to in subsection (1) to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) were not enacted.

PART 11

MISCELLANEOUS

National preferences, etc.

71. (1) Subject to this section, where the cost of the procurement of goods, services or works is not paid out of donor funds—

(a) the Board may, subject to the approval of the Minister, allow for a margin of preference to national suppliers, contractors or service providers in accordance with the Regulations and the procurement policy of the Government; and

(b) the Central Procurement Office shall, after consultation with the Board, establish methods to facilitate participation in the procurement by individuals or small national enterprises in accordance with this Act.

(2) In open competitive bidding, a procuring entity may grant a margin of preference in the evaluation of bids to bidders which offer goods manufactured locally or which propose using local labour and services compared to bidders offering goods manufactured or labour and services sourced outside Saint Vincent and the Grenadines or the territory of any other Member State of the OECS.

(3) Where a procuring entity intends to grant a margin of preference under this section, the procuring authority shall specify in the bidding documents—

(a) the margin of preference intended to be granted to bidders offering goods manufactured locally or which propose using local labour and services; and

(b) any information required to establish the eligibility of a bid submitted in respect of such margin of preference.

(3) The Board shall, in allowing any margin of preference, have regard to economic and social development factors.

(4) The margin of preferences shall—

(a) be non-discriminatory in respect of the targeted groups or persons;

(b) allow competition amongst the eligible groups or persons;

(c) be monitored and evaluated.

(5) The Minister may, after consultation with the Board, make Regulations in respect of price preferences including the limits and the formulae for the computation of the margins of preference.

Design contests and concessions

72. The Minister may, after consultation with the Board, make Regulations in respect of concessions and the procurement of plans, samples, draft plans, layouts and facilities related to art or technology by design contests.

Regulations

73. (1) The Minister may, after consultation with the Board, make such Regulations as appear to him to be necessary and expedient for the proper carrying out of the intent of this Act.

(2) Without limiting the generality of subsection (1), the Minister may, after consultation with the Board, make Regulations—

(a) prescribing anything required to be prescribed under this Act;

(b) in respect of procurements by all permitted procurement methods;

(c) in respect of national preferences for the award of contracts for good, services or works or classes of goods services or works;

(d) in respect of incentives in the area of public procurement for the development of local business;

(e) in respect of the award and execution of contracts;

(f) in respect of the confidentiality of solicitations, awards of contract and contract performance;

(g) in respect of the course of action to be taken when no contract can be awarded after a solicitation, including a further solicitation or the waiver of those solicitation procedures and the negotiation of a contract;

(h) prescribing the fee for a copy of bidding documents, applications to pre-qualify or other similar documents;

(i) in respect of deposits payable for applications for review;

(j) in respect of the selection procedures for members of the Review Commission;

(k) establish the threshold levels of authority for the approval of contracts by the Board or Accounting Officer.

Transitional provision

74. (1) A procuring entity may continue any procurement proceedings in respect of the procurement of goods, services or works—

(a) commenced before the coming into operation of this Act; and

(b) which have not been determined, terminated or completed,

as if this Act were not enacted, but the provisions of this Act shall apply to any contract which is awarded or executed as a consequence of such proceedings.

(2) Where—

(a) a procurement contract is executed before the commencement of this Act; and

(b) the procurement contract is still subsisting,

this Act shall apply to the procurement contract as if that procurement contract were executed under this Act.

(3) The Minister may make Regulations providing for any transitional matter arising as a consequence of the coming into operation of this Act or the Regulations.

Repeal

75. The Purchases and Tenders Procedure Orders, 1967 is repealed.

SCHEDULE 1

(Section 2(1))

MEMBER STATES OF THE OECS

Anguilla

Antigua and Barbuda

British Virgin Islands

Commonwealth of Dominica

Grenada

Montserrat

Saint Christopher and Nevis

Saint Lucia

Saint Vincent and the Grenadines

SCHEDULE 2

(Section 7(8))

CONSTITUTION OPERATION AND PROCEDURES OF THE PROCUREMENT BOARD

Quorum

1. Any five members present at a meeting of the Board shall constitute a quorum of the Board.

Decisions of the Board

2. (1) Decisions of the Board shall be by a majority of the members or delegates present and voting, and in the event of an equality of votes, the chairperson has a second or casting vote.

(2) A decision of the majority of the members or designates present and able to vote is a decision of the Board.

Frequency, place, day and time of Board meetings

3. (1) The Board shall meet as often as may be necessary to perform its duties and exercise its powers in an expeditious manner.

(2) A meeting of the Board shall be held on the days and at the times that the chairperson may determine.

Notice of Board meeting

4. (1) The chairperson shall cause written notice of the place, day, time and agenda of the meeting of the Board to be given to each member, and to each designate, known to the chairperson to be attending the meeting, not less than seventy-two hours before the time scheduled for the holding of the meeting, unless the member or designate waives notice of the meeting in writing.

(2) Notice shall be given to a member or designate by—

(a) handing a copy of the notice to the member or designate;

(b) leaving a copy of the notice with an adult at the office of the member or designate;

(c) e-mailing or faxing a copy of the notice to the member or designate at the e-mail address or fax number of the member or, as the case may be, the designate; or

(d) any other means approved by resolution of the Board.

Waiver of notice

5. A member or designate may in writing waive notice of a meeting.

Decision of chairperson

6. The decision of the person presiding at a meeting of the Board is final on the following matters—

(a) the agenda for a meeting;

(b) the conduct of the meeting;

(c) the procedure for handling motions.

Board may hold meeting by signing resolution

7. (1) When every member of the Board or the designate of that member signs a resolution, a meeting of the Board relative to the resolution is deemed to have been held.

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

Meetings by other methods

8. The Board may hold a meeting using a method of communication which permits all the members participating to communicate with each other simultaneously, if all the members or designates participating consent to holding the meeting in that way.

Termination of appointment

9. The Minister, on the recommendation of the Board, may terminate the appointment of the person appointed under sections 8(2) or 81 of the Act as a member of the Board only if the person—

(a) is unable to perform the functions of his or her office by reason of a mental or physical infirmity;

(c) is convicted of an offence involving dishonesty; or

(d) is absent from three consecutive meetings of the Board without reasonable excuse.

Disclosure of personal interest

10. (1) A member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall, as soon as reasonably practicable after the relevant facts concerning the matter come to his or her knowledge, disclose the nature of his o her interest to the Board.

(2) A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Board.

(3) Where a member discloses any personal interest in a matter at a meeting of the Board, the member—

(a) shall not be present at the meeting while the matter is being dealt with by the Board; and

(b) shall not take part in any deliberations or vote relating to the matter.

Committees

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

(2) The Board shall appoint a member chairperson of the committee and, if it considers advisable, a deputy chairperson.

(3) A committee may consist of members of the Board or persons other than members of the Board or designated persons or any combination thereof.

(4) A designate may act for a member who is appointed to a committee.

Subject to this section and the Second Schedule, the Board may make rules governing its procedure.

SCHEDULE 3

(Section 33(2))

MINIMUM SUBMISSION PERIODS

1. Procuring entities shall set a deadline for submission of bids, quotations and proposals so as to allow sufficient time for their preparation and submission, with a view to maximizing competition, according to the nature and characteristics of the works, goods or services to be contracted.

2. Minimum periods shall be:

(a) twenty days for open competitive bidding and requests for proposals for consulting services;

(b) forty days for open competitive bidding and requests for proposals for consulting services advertised internationally;

(c) twenty days for limited competitive bidding;

(d) twenty days for applications to prequalify.

3. The deadline for submission of bids starts to run from the date of publication.

SCHEDULE 4

(Sections 64(5), 64(9) and (10))

SUSPENSION AND DEBARMENT PROCEDURE

1. Debarment Officer

(1) The head of every procuring entity shall appoint a Debarment Officer to investigate allegations of prohibited practices and to recommend whether to propose that a bidder should be debarred.

(2) The Debarment Officer should ordinarily be a senior civil servant of that procuring entity.

2. Initiating the debarment procedure

(1) If any officer of a procuring entity suspects that a bidder participating in a contract award procedure or an affiliate of such bidder has committed a prohibited practice defined in section 62 of the Act or has been the subject of a civil judgment or criminal conviction in

respect of a prohibited practice, he or she may bring this to the attention of the relevant Debarment Officer together with any documentary evidence at his or her disposal.

(2) The Debarment Officer shall consider or investigate allegations of the commission of prohibited practices.

(3) If, as a result of the information provided or of his or her own investigation, the Debarment Officer is satisfied that there is sufficient evidence to support a finding of a prohibited practice, he or she may prepare a Draft Notice of Proposed Debarment and submit the same to the Central Procurement Board.

(4) Within 10 days of receiving the Draft Notice of Proposed Debarment, the Chairman of the Central Procurement Board shall convene a meeting of the Board to review its contents and decide whether or not to proceed.

(5) If the Central Procurement Board determines that the Draft Notice of Proposed Debarment does not contain sufficient evidence to support the proposed debarment or sanction, it will notify the Debarment Officer of its decision and of the reasons for the decision.

(6) If new facts or evidence come to light, the Debarment Officer may, at his or her discretion, amend and resubmit a revised Draft Notice of Proposed Debarment for consideration by the Central Procurement Board.

(7) If the Central Procurement Board agrees with the conclusions of the Debarment Officer as set out in the Draft Notice, it will initiate the debarment proceedings by establishing a Debarment Committee in accordance with section 3 and immediately enter the name of the accused bidder in the List of Suspended Bidders.

(8) The Central Procurement Board may also constitute a Debarment Committee where, on the basis of information provided under section 10(3) of the Act, it considers that there are grounds for investigation of the allegations.

3. Debarment Committee

(1) The Debarment Committee shall consist of three members as follows: (i) the Chief Procurement Officer who shall also be the chairman of the Debarment Committee; (ii) a legal officer of the Attorney-General's Office and (iii) the head of a procuring entity other than that which proposes the debarment or suspension. The Central Procurement Office shall provide the secretariat services.

(2) The decision of the Debarment Committee shall be by majority vote, the Chairman having the casting vote.

(3) The Debarment Committee shall have the task, on the basis of a referral from the Central Procurement Board, of determining whether there is sufficient evidence in each case to debar a bidder accused of a prohibited practice and to issue a Notice of Debarment.

4. Notice of Proposed Debarment

(1) Where the Debarment Committee is established pursuant to section 2(8), the Debarment Committee shall send to the bidder (known as the 'Respondent') a Notice of Proposed Debarment in the same terms as the Proposal submitted by the Debarment Officer. If an accusation is made against an affiliate of a bidder, such affiliate must also be named.

(2) The Notice of Proposed Debarment will be communicated to the named Respondent and any affiliate specifically named therein by registered mail and will inform the Respondent of the details of the proposed debarment, the evidence to be relied upon and the applicable procedure.

(3) If within 10 days the Respondent does not inform the Debarment Committee of its intention to contest the allegations or responds to the Notice admitting all or part of the allegations, the Debarment Committee will and without need of a hearing issue a decision imposing the sanction recommended in the Notice of Proposed Debarment, taking into account any mitigating factors disclosed by virtue of section 6(3).

(4) If the Respondent informs the Debarment Committee that it intends to contest the allegations recommended in the Notice of Proposed Debarment, the Committee will, within 5 days inform the Respondent of the procedure to be followed, including any hearing proposed.

5. Hearings and evidence

(1) The Hearing shall take place in the manner provided for by the Debarment Committee.

(2) A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Debarment Committee as suitable for the purposes of such representation.

(3) The Hearing shall be closed to the public save that, with the consent of the Debarment Committee, persons having a justifiable interest in the proceedings may be admitted.

(4) The Debarment Committee shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

(5) Formal rules of evidence shall not apply and any type of evidence may form the basis of arguments presented. The Debarment Committee retains the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

6. Recommendation of the Debarment Committee

(1) At the conclusion of the hearing, the Debarment Committee shall recommend to the Board whether the proposed debarment is in the interests of the procuring entity and the Government on the basis of the evidence presented.

(2) The existence of a proven cause for debarment does not necessarily require that the bidder be debarred or receive the sanction proposed in the Notice of Proposed Debarment. The seriousness of the bidder's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. The burden rests on the Respondent to provide evidence of mitigating factors which might tend to reduce or remove the desirability for debarment.

(3) Before arriving at any debarment recommendation, the Debarment Committee should consider factors such as the following:

(a) the severity of the Respondent's conduct;

(b) the degree of involvement of the Respondent in the prohibited practice (including whether the conduct involved was "active" or "passive");

(c) the magnitude of any losses caused by the Respondent and damage caused by the Respondent to the credibility of the procurement process;

(d) the past conduct of the Respondent involving a prohibited practice;

(e) the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the procuring entity;

(f) whether the bidder has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Debarment Committee or taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(g) whether the bidder's management recognises and understands the seriousness of the misconduct giving rise to the cause for debarment and has instituted or agreed to institute new or revised review and control procedures and ethics training programs or other programmes to prevent recurrence;

(h) any other factor that the Debarment Committee deems relevant.

(4) Where the Debarment Committee determines that there is insufficient evidence to support the proposed debarment sanction, it shall recommend to the Board that no debarment sanction be imposed.

(5) Based on the recommendation of the Debarment Committee in the terms of subsection (4), the Board shall:

(a) notify the bidder and any affiliate of the decision not to impose any debarment sanction, and

(b) immediately lift the automatic suspension imposed under section 64(3) of the Act.

7. Debarment sanction

(1) The debarment sanction shall be taken by the Board on the basis of the recommendation of the Debarment Committee. It may take one of the following forms:

(a) Reprimand: a formal "Letter of Reprimand" based on the Respondent's conduct but which falls short of debarment.

This may be used where it is the Respondent's first offence and where the offence is relatively minor or where there are sufficiently compelling mitigating factors. It should not be used for a second or subsequent offence.

(b) Conditional Non-Debarment: a sanction which threatens debarment where certain conditions are not met.

Based on the gravity of the offences and the existence of mitigating factors, the Debarment Committee may decide that the Respondent be required to comply with certain remedial, preventative or other measures as a condition to avoid debarment. In the event the Respondent fails to demonstrate compliance with the conditions within the time periods established by the Debarment Committee, a debarment would automatically become effective for a period of time established by the Debarment Committee, i.e. it would be converted into a Temporary Debarment.

(c) Temporary Debarment: the primary sanction which debars the Respondent from participation for a specific period of time not to exceed five (5) years.

Based on the gravity of the offence and of any mitigating factors, the Debarment Committee may impose a temporary debarment of one, three or five years. Whilst this is dependent on the circumstances of the case, it would be expected that a first offence would attract the shortest duration with subsequent offences attracting longer periods of debarment. Sufficiently serious offences could, however and in the absence of mitigating factors, attract longer periods of debarment even where they are first offences.

(d) Permanent Debarment: this is the most serious sanction and will be used rarely.

It is appropriate only in cases of particularly egregious offences where the Respondent has consistently failed to correct its practices following at least two orders of temporary debarment, at least one of which must have been accompanied by a compliance programme of remedial, preventative or other measures intended to assist the Respondent in overcoming any institutional impediments to improvement.

(2) Other than in the case of permanent debarment, the debarment decision of the Board will be final and will take effect immediately, without prejudice to any other action taken by any other government organisation under applicable law.

(3) In the case of permanent debarment, the decision shall automatically be referred to a Debarment Adjudicator to be appointed on an ad hoc basis with the concurrence of the Attorney-General's Office who shall review the facts and evidence presented during the investigation or hearings before confirming or rejecting the proposed Notice of Debarment. The Debarment Adjudicator shall

(a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;

(b) only reject the proposed Notice where, in his or her opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

8. Scope and consequences of debarment

(1) The Board may extend the effect of the Notice of Debarment to include any affiliates of the bidder provided they are:

(a) specifically named in the Notice of Proposed Debarment; and

(b) given an opportunity to respond.

(2) Following debarment, the name of the debarred bidder, affiliates, joint venture partner, officer, director, shareholder, partner, employee or other individual, as appropriate, shall be included in the List of Debarred Bidders maintained by the Central Procurement Office;

(3) In respect of bidders and other persons properly included in the List of Debarred Bidders, all government agencies shall:

(a) exclude such bidders and other persons from receiving contracts awarded by them;

(b) not solicit offers from, award contracts to, or consent to subcontracts with them;

(c) reject any bids received from them in response to an invitation for bids;

(d) not evaluate any proposals, quotations, or offers received from them or enter into discussions with them during the period of ineligibility;

(e) not consent to their appointment as a sub-contractor to a bidder which has not been debarred.

(4) If the period of ineligibility expires or is terminated prior to award, the procuring officer may, but is not required to, consider such bids proposals, quotations, or offers.

(5) Notwithstanding the debarment of a bidder or other person, procuring entities may continue contracts or subcontracts in existence at the time of the debarment unless the head of the procuring entity directs otherwise.

9. Review and appeals

(1) A debarred bidder may seek review of a debarment with the Board at any time when:

(a) newly discovered material evidence or facts come to light which tend to exculpate the debarred bidder;

(b) a conviction or civil judgment upon which the debarment was based has been reversed;

(c) there has been a bona fide change in ownership or management of the bidder;

(d) the bidder has successfully complied with any remedial, preventative or other measures imposed by the Board in the context of a Conditional Non-Debarment or Temporary Debarment.

(2) A request for review shall be made in writing and the procedure for review shall be determined by the Board at its discretion.

(3) Where a bidder is not satisfied with the decision of the Board in respect of a Conditional Non-Debarment or Temporary Debarment only, he or she may apply in writing to the Board who will refer the case to the Debarment Adjudicator within five days of the receipt of the request.

(4) The procedure for the appeal shall be determined by the Debarment Adjudicator at his discretion but a decision must be finalised within a reasonable period of time and, in no case, more than thirty days after the request has been received by the Debarment Adjudicator.

(5) The Debarment Adjudicator shall review the facts and evidence presented during the investigation or hearings before confirming or rejecting the Notice of Debarment adopted by the Board. The Debarment Adjudicator shall

(a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence;

(b) only reject the proposed Notice where, in his opinion, the preponderance of the evidence does not establish that the Respondent engaged in a prohibited practice.

SCHEDULE 5

(Section 65(8))

BID CHALLENGE PROCEDURE

Procedure for Review

1. (1) An application for review shall be made in writing and addressed to the Central Procurement Office and in the manner prescribed in section 5 of this Schedule, setting out—

(a) the grounds of the challenge; and

(b) whether the procuring entity has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the complaint, and if it has done so, the reasons why the bidder is dissatisfied with them.

(2) Within five days after receiving an application under section 65 (1) of the Act, the Central Procurement Office shall register the application for review in accordance with section 7 of this Schedule.

(3) The submission of an application for review to the Central Procurement Office in terms of subsection (1), within the five-day period specified in section 66 (1) of the Act, shall suspend the challenged procurement proceedings until the Procurement Review Commission —

(a) makes its final decision; or

(b) upon hearing the parties, decides to cancel the suspension on the grounds that it is satisfied that urgent public interest considerations require the procurement to proceed.

(4) The decision of the Procurement Review Commission shall be binding on the bidder that lodged the application and the procuring entity whose bid procedure is the subject of the review.

(5) The Procurement Review Commission shall dismiss the application where—

(a) the grounds for review do not constitute a valid basis for the review; or

(b) the bidder that lodged the application has failed to establish the grounds for review.

(6) Where the Procurement Review Commission finds that a bidder that lodged an application for review has established valid grounds for the review, it may, as appropriate, apply the remedies of section 67 of the Act.

(7) The decision of the Procurement Review Commission is subject to judicial review only on a question of law.

Duties of the Procurement Review Commission

2. (1) Once appointed, members of the Procurement Review Commission shall conduct the review independently and impartially in accordance with the Procedure and shall, in all respects relating to their status and ethical standards, be bound by the rules applicable to public servants.

(2) A member of the Procurement Review Commission who has a direct or indirect personal interest in a matter being considered or to be considered shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Central Procurement Office which shall appoint an alternative member.

(3) The obligation of subsection (2) is a continuing obligation on members of the Procurement Review Commission appointed. They are required to disclose immediately to the Central Procurement Office their interest as soon as such interest arises.

Central Procurement Office

3. (1) The Central Procurement Office shall act as the Secretariat of the Procurement Review Commission and shall be responsible for the organisation and management of review procedures.

(2) The business of the Procurement Review Commission and all clerical matters arising out of the conduct of a review under this procedure shall be carried out by the Central Procurement Office. In particular, all applications, replies and subsequent communications shall be addressed to the Procurement Review Commission at the Central Procurement Office unless otherwise specified.

(3) Copies of all relevant forms to be used for the review procedure shall be available for collection at the office of the Central Procurement Office and a copy of such forms shall be sent to all interested parties upon request.

(4) Following the receipt of an application for review, the Central Procurement Office shall prepare and provide to the Procurement Review Commission the case file and the terms of reference in the form provided for in the Central Procurement Office's Manual of Procedures.

Representation

4. A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Procurement Review Commission as suitable for the purposes of such representation.

Submission of Application for Review

5. (1) Any bidder wishing to submit an Application for Review shall submit the following documents to the Central Procurement Office:

(a) a completed Review Application in the Form provided for by the Central Procurement Office;

(b) copies of any documentary evidence relied upon in support of the claim set out in the Review Application Form;

(c) where the request is made by an agent of the Applicant, an appropriate power of attorney.

(2) The Central Procurement Office shall record receipt of the Application in the Review Register and assign it a Case Reference Number.

(3) The Central Procurement Office shall immediately verify that the Application for Review is in conformity with the provisions of sections 1(1) and 5(1) of this Schedule.

(4)Any Application for Review found not to be in conformity with the above shall be rejected and returned to the Applicant together with a statement of the reasons for rejection. The Applicant may then re-submit its corrected Application for Review.

(5) Upon recording receipt, the Central Procurement Office shall immediately notify the procuring entity against whom the Application has been made (the Respondent) of the Application for Review and include with the notice a complete copy of the Application. Such notification shall ordinarily take place at the latest the day following the submission of the Application.

Submission of Reply

6. (1) Within five days of the receipt of the notification from the Central Procurement Office, the Respondent shall submit to the Central Procurement Office a Reply containing the following documents:

(a) a written reply to the Application for Review in the Form provided by the Central Procurement Office;

(b) copies of any documentary evidence relied upon in support of the Reply;

(c) where the reply is made by an agent of the Respondent, an appropriate power of attorney.

(2) The failure to submit a Reply within the specified period will not prevent the conduct of the review procedure and the Respondent will remain bound by any decision of the Procurement Review Commission.

(3) Where the Respondent fails to submit a Reply within the specified time limit, the Central Procurement Office may proceed with the formal assignment of the case to the Procurement Review Commission.

(4) The Procurement Review Commission shall, if it is satisfied that the Application for Review was duly served on the Respondent and the party has failed to serve a Reply without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

Registration

7. (1) Following receipt of the Reply, the Central Procurement Office shall collate all the relevant documents into a single case file, including the Application for Review, the Reply, the documentary evidence provided by the parties and the powers of attorney, if any.

(2) The Central Procurement Office shall formally assign the case to the Procurement Review Commission and provide each member with a copy of the case file.

(3) Following confirmation of assignment of the case to the Procurement Review Commission and receipt by the Central Procurement Office of the procedural instruction for the review from the Procurement Review Commission, the Central Procurement Office shall register the commencement of the review procedure in the Review Register as the 'date of commencement'.

(4) The Central Procurement Office shall immediately notify the parties of the date of commencement and provide them with a copy of the case file and the procedural instructions for the review.

(5) The Central Procurement Office shall simultaneously notify the bidders, suppliers, contractors, service providers and any governmental authority whose interests are affected or are likely to be affected by the review in accordance with section 66 (3) of the Act.

Opening of Review Procedure

8. (1) The Procurement Review Commission shall, taking into account the nature of the case defined in the terms of reference, determine the order, time and place of its any Hearing he or she intends to hold.

(2) At the request of the parties, the Procurement Review Commission may proceed to make its decision in the absence of a Hearing. In such a case, the Procurement Review Commission, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties, may proceed to reach a decision without a Hearing.

(3) In determining the order and time of the Hearing, the Procurement Review Commission shall give sufficient consideration to preventing the delay of the proceedings.

(4) The Central Procurement Office shall communicate this decision to the parties in the form provided for in the Manual of Procedures.

Hearing

9. (1) The Hearing shall take place in the manner provided for by the Procurement Review Commission.

(2) If one of the parties, despite having received notice of the Hearing, fails to appear, the Procurement Review Commission, if satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.

(3) The Hearing shall be closed to the public save that, with the consent of the Procurement Review Commission, persons having a justifiable interest in the proceedings may be admitted.

(4) The Central Procurement Office shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

Evidence

10. (1) All relevant documentary evidence relied upon by the parties in support of their claims and replies shall be put before the Procurement Review Commission in the form of copies of the Application for Review and Reply Forms provided for in the Manual of Procedures.

(2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Procurement Review Commission, it is relevant and only with the Procurement Review Commission's consent.

(3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.

(4) The Procurement Review Commission may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

Conclusion of the Proceedings

11. (1) The Procurement Review Commission shall, when satisfied that all contentions and evidence of the parties have been submitted, conclude the proceedings.

(2) The Procurement Review Commission shall deliver its decision to the Central Procurement Office within ten days of the date of commencement, subject to any adjournment that proves necessary in the opinion of the Procurement Review Commission which may not exceed a further ten days.

(3) The decision of the Procurement Review Commission shall be confined to the issues raised by the Application for Review and Reply.

(4) The decision shall be formulated in accordance with the Form provided for in the Manual of Procedures.

(5) The Central Procurement Office shall immediately notify the all parties of the decision.

(6) The decision of the Procurement Review Commission shall be final and binding, subject only to judicial review on a point of law.

Passed in the House of Assembly this 20th day of December, 2018.

NICOLE HERBERT
Clerk of the House of Assembly.

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