

(CARICOM MODEL PUBLIC PROCUREMENT BILL)

**THE PUBLIC PROCUREMENT (CARIBBEAN COMMUNITY) ACT, 20[ ]**

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A BILL

ENTITLED

An Act to establish a Public Procurement regime in relation to contracts for goods, services, works or any combination thereof between procuring entities and suppliers where the contract value is equal to or exceeds the specified thresholds; to specify the types of public procurement to which the regime does not apply; to provide for the liberalisation and integration of the market for trade in goods, services and works between [*name of Contracting Party*] and other Contracting Parties; to make provision for the deterrence of acts of corruption and other unethical or unjust practises within public procurement; and for connected purposes.

**WHEREAS** under Article 239 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, the Protocol on Public Procurement for the Caribbean Community (hereinafter referred to as the “Protocol”) was made towards the objective of progressive integration of the national public procurement markets of the Member States into a single, unified and open market;

**AND WHEREAS** the Protocol entered into force on [            ];

**AND WHEREAS**, in partial fulfilment of the abovementioned objective, the Caribbean Community (hereinafter referred to as the “Community”) established under the Protocol the Permanent Joint Council on Public Procurement, the Community Public Procurement Notice Board and the Community Suppliers Register.

**NOW, THEREFORE, BE IT ENACTED** by ... as follows -

#### **PART I. Preliminary**

- |                                      |   |
|--------------------------------------|---|
| <b>Short title and commencement.</b> | 1. This Act may be cited as the Public Procurement (Caribbean Community) Act, 20[ ], and shall come into operation on a day appointed by the Minister by notice published in the <i>Gazette</i> . |
| <b>Interpretation.</b>               | 2. In this Act, unless the context otherwise requires –   |

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

“bidding documents” –

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

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

“Community Public Procurement Notice Board” or “Notice Board” means the electronic notice board established under Article 31 of the Protocol as the single common platform among Contracting Parties to facilitate public procurements to which this Act applies;

“Community Standard Bidding Document” –

- (a) means a standard form document published on the Community Public Procurement Notice Board for use in public procurement proceedings; and
- (b) includes –
  - (i) the standard form and content of an application for registration on the Suppliers Register;

- (ii) the standard form and content of the annual procurement plan;
- (iii) the standard form and content of an invitation to tender;
- (iv) instructions to bidders;
- (v) the standard form and content of a procurement contract;
- (vi) the conditions of a procurement contract;
- (vii) instructions on specifications and drawings;
- (viii) instructions on the formulation of relevant technical data;
- (ix) the standard form for the time of delivery or schedule of completion; and
- (x) formats for tender securities;

“Community Suppliers Register” means the register of suppliers of goods, services and works that is established under Article 32 of the Protocol and published on the Community Public Procurement Notice Board;

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

- (a) the consideration for the works to be carried out consists –
  - (i) solely of the right to exploit the activity; or
  - (ii) of a combination of the right to set out in subparagraph (i) and the right to payment; and

(b) the concessionaire bears the risk inherent in the exploitation by providing funding for the activity or otherwise;

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

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

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

“goods” means all kinds of property other than real property, money, security or choses in action;

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

“Member State” means a State listed in article 3 paragraph 1 of the Revised Treaty;

“Minister” means the Minister responsible for [finance] [trade];

“national of a Contracting Party” means

- (a) an individual who—
  - (i) is a citizen of a Contracting Party;
  - (ii) has a connection with a Contracting Party of a kind which entitles him to be regarded as belonging to or as being a native or resident of a Contracting Party for the purposes of

the laws of the respective Contracting Party relating to immigration; or

- (b) a company or other legal entity constituted in a Contracting Party in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity –
  - (i) has its registered office and central administration, and carries on substantial activity within a Contracting Party; and
  - (ii) is substantially owned and effectively controlled by an individual mentioned in paragraph (a).

“offsets” –

- (a) means any conditions or undertakings that –
  - (i) encourage local development; or
  - (ii) improve [name of Contracting Party’s] balance of payments account; and
- (b) includes –
  - (i) the applications of margins of preference for the use of domestic content or domestic suppliers;
  - (ii) the requirement of the licensing or transfer of technology;
  - (iii) domestic investment requirements; or
  - (iv) counter-trade or similar actions;

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

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

“private party” in the context of a Public-Private Partnership means a majority privately owned company or consortium;

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

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

“procurement procedure” means the series of steps to be taken by a procuring entity when executing a procurement method as a means of engaging in public procurement;

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

“procuring entity” means any central and sub-central or local government entity, State-owned entity, statutory body or other undertaking in [name of Contracting Party] that engages in public procurement;

“Protocol” means the Protocol on Public Procurement for the Caribbean Community done at Basseterre on 27 February 2019<sup>1</sup>;

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

“public funds” means monies derived from -

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<sup>1</sup> The words “signed at [ ] on [ ]” were deleted and replaced with the words above. The change was done in accordance with instructions received from the CSME Unit;

- (a) revenue including all tolls, taxes, imposts rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale and all other receipts of the Government of [name of Contracting Party], from whatever sources arising, and over which Parliament has the power of appropriation, including the proceeds of all loans raised; and
- (b) any trust or other monies held, whether temporarily or otherwise, in the name of [name of Contracting Party]'s Government;

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

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

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

goods or services by private commercial entities for commercial use;

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

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

“registered office” means the legal address of an incorporated company, association or other legal entity that is entered in the official companies register and to which all government and court communication is addressed;

“registered supplier” means a supplier who is registered in the Suppliers Register pursuant to section 62;

“Registrar / Board” means the Registrar / Board appointed under section 58;

“responsive bid” means a bid that substantially complies with the bidding documents in response to which it was submitted;

“restricted bidding” means a procurement method whereby only suppliers who are invited by the procuring entity may submit a bid;

“Revised Treaty” means of the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, The Bahamas 2001;

“services” means services provided against remuneration other than wages in an approved sector and includes consulting services;

“single-source” means a procurement method whereby the procuring entity invites only one supplier to submit a bid or quotation;

“standstill period” means a period of ten working days that commences on the day following the day on which a notice of successful bid is dispatched, during which time–

- (a) no contract may be signed with the successful bidder; and
- (b) an unsuccessful bidder may challenge certain decisions or actions of the procuring entity;

“submission” means a tender, a proposal, an offer, a quotation or a bid, including, where the context so requires, an initial or indicative submission;

“substantially owned and effectively controlled” in the context of a company or other legal entity means that –

- (a) more than 50 per cent of the equity interest therein is beneficially owned by individuals who are nationals of a Contracting Party; and
- (b) the power to name a majority of its directors or to otherwise legally direct the actions of the company or other legal entity rests with individuals who are nationals of a Contracting Party;

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

“technical specification” means a detailed description which –

- (a) specifies the characteristics of the goods, services or works to be procured or their related processes and production methods, including the applicable administrative provisions, and a requirement

- relating to conformity assessment procedures that a procuring entity prescribes; and
- (b) addresses quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labelling as they apply to a good, process, service, production or operating method;

“tender notice” means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a bid or both;

“third State” means a State that is not a party to the Revised Treaty; and

“works” –

- (a) means the carrying out any of the following activities –
  - (i) construction;
  - (ii) reconstruction;
  - (iii) assembly;
  - (iv) altering;
  - (v) manufacturing;
  - (vi) processing;
  - (vii) installation;
  - (viii) improvement;
  - (ix) commissioning;
  - (x) demolition;
  - (xi) maintenance;
  - (xii) repair; and
  - (xiii) renovation,

in relation to building, civil engineering, structural engineering, electrical engineering, mechanical engineering and other engineering and technology projects; and

(b) includes goods and services incidental to the carrying out of the activities referred to in paragraph (a), provided that the value of the goods or services does not exceed the value of the activity to which they relate.

**Purpose.**

3. The purpose of this Act is –

(a) to establish the procedures and requirements regarding public procurement contracts –

(i) of a type not excluded from the scope of this Act, pursuant to section 4; and

(ii) where each contract is of an estimated value which is equal to or greater than the relevant threshold as set out in the First Schedule;

**First Schedule.**

(b) with regards to contracts of the type referred to in paragraph (a), to facilitate and guide the progressive integration of [*name of Contracting Party*]'s public procurement market into the unified and open Caribbean Community public procurement market;

(c) in relation to public procurement activities, to establish general principles by which procuring entities shall be governed;

(d) subject to the provisions of this Act, to eliminate existing barriers to market access in the context of public procurement; and

(e) where appropriate for the purposes of public procurement, to prohibit restrictions against the entry and movement of suppliers who are not nationals of [name of Contracting Party].

**Scope of the Act.**

4. (1) Subject to subsection (2), this Act applies to all public procurement where each contract is of an estimated value, net of value-added tax, which is equal to or greater than the relevant threshold value as set out in the First Schedule.

**First Schedule.**

(2) This Act shall not apply to –

- (a) agreements between a Contracting Party and an international organisation which limit participation in public procurement opportunities due to permissible conditions and limitations stated in the agreement;
- (b) agreements entered into by a Contracting Party and a third country or Contracting Party and a Member State that is not a Contracting Party intended for the joint implementation or exploitation of a project by the parties to the agreement and financed by the third country, which limit participation in a public procurement opportunity because of specific permissible conditions and restrictions on nationality or other eligibility of suppliers;
- (c) the hiring of government employees, whether by contracts of service or contracts for service, and related employment measures; or
- (d) public procurement which is of a type specified in the Second Schedule.

**Second Schedule.**

## **PART II. *Thresholds and Contract Valuation***

|                                     |  |
|-------------------------------------|--|
| <b>Threshold adjustment.</b>        | 5. Where, pursuant to Article 6 of the Protocol, the Contracting Parties amend a threshold, the Minister may, by order subject to affirmative resolution, amend the First Schedule to reflect the adjusted threshold.  |
| <b>First Schedule.</b>              |  |
| <b>Contract valuation criteria.</b> | <p>6. (1) In determining the value of a public procurement opportunity, a procuring entity shall, where relevant, apply the following valuation criteria to the subject matter of the procurement –</p> <ul style="list-style-type: none"><li>(a) the price of the public procurement;</li><li>(b) the cost of operating, maintaining and repairing goods or the cost of construction, as the case may be;</li><li>(c) the deadline for delivery of goods, provision of services or completion of works;</li><li>(d) the functional and environmental characteristics of the subject matter of the public procurement;</li><li>(e) the terms of payment for the public procurement;</li><li>(f) all forms of remuneration, including any premiums, fees, commission and interest receivable;</li><li>(g) any guarantees in respect of the subject matter of the procurement; and</li><li>(h) the experience, reliability and professional and managerial competence of the supplier and of the personnel to be involved in providing the subject matter of the public procurement.</li></ul> <p>(2) In addition to the criteria set out in subsection (1), the valuation criteria shall include any criteria that any other enactment requires to be taken into account.</p> |

(3) To the extent practicable, all non-price valuation criteria shall be objective, quantifiable and expressed in monetary terms.

**Estimated value of public procurement opportunity.**

7. (1) Where, in relation to a public procurement opportunity, a procuring entity is unable to specify a fixed contract price, an estimated contract value shall be used, subject to the provisions of this section.

(2) The calculation of the estimated value of a public procurement opportunity shall be based on the total amount payable, net of value-added tax, as estimated by the procuring entity, including any form of option and any renewals as explicitly set out in the bidding documents.

(3) Where a procuring entity intends to conduct a public procurement opportunity in multiple parts with contracts to be awarded at the same time or over a given period to one or more suppliers, the basis for calculating the estimated total maximum value shall be –

- (a) where no similar recurring contracts were concluded during the previous 12 months, the estimated total value of similar contracts to be concluded during the 12 months subsequent to the initial contract;
- (b) the actual value of similar recurring contracts concluded over the previous 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
- (c) the estimated value of recurring contracts in the 12 months subsequent to the initial contract.

(4) Where –

- (a) a procuring entity intends to conduct a public procurement in a single lot;
- (b) the total price of the public procurement is unknown; and
- (c) the contract is a fixed-term for a term not exceeding 12 months duration,

the basis for calculating the estimated contract value is the total estimated contract value for the duration of the contract.

(5) Where –

- (a) a procuring entity intends to conduct a public procurement in a single lot;
- (b) the total price of the public procurement is unknown; and
- (c) the contract is for a fixed term of more than 12 months duration,

the basis for calculating the estimated contract value is the total estimated value for the duration of the contract, including the estimated residual value, where applicable.

(6) Where –

- (a) a procuring entity intends to conduct a public procurement in a single lot;
- (b) the total price of the public procurement is unknown; and
- (c) the contract is for an undetermined duration,

the basis for calculating the estimated contract value is the estimated monthly instalment multiplied by 36.

(7) A procuring entity shall not –

divide a public procurement opportunity;

or

- (a) use a particular valuation method for estimating the value of a contract,

so as to limit competition among suppliers or to otherwise circumvent the provisions of this Act.

(8) Where, in relation to a public procurement opportunity, a procuring entity determines that option clauses are required, the basis for calculating the estimated contract value shall be the total value inclusive of optional purchases.

(9) The estimated value shall be valid at the moment at which the procuring entity sends the invitation to tender.

(10) In relation to a contract for works in which specific goods or services are required, in addition to the methods for valuation set out in this section, a procuring entity shall include in the estimated value –

- (a) the cost of the works; and
- (b) the total estimated value of any goods or services that are made available to the supplier by the procuring entity.

(11) Subject to subsection (12), where a proposed public procurement opportunity may result in contracts being awarded in the form of separate lots, the procuring entity shall take account of the total estimated value of all the lots.

(12) Where the aggregate value of the lots is equal to or exceeds the value of the relevant threshold, this Act shall apply to the awarding of contracts in relation to each lot.

### **PART III. *Expansion and Protection of Public***

## **Procurement Market**

### *Principles of Public Procurement*

#### **General principles of public procurement.**

8. (1) Every procuring entity shall treat suppliers–
- (a) equally and no less favourably than the procuring entity treats suppliers who are nationals of or registered in [*name of Contracting Party*]; and
  - (b) without discrimination.
- (2) Procuring entities shall conduct themselves in a transparent and proportionate manner in their dealings with suppliers.
- (3) Every procuring entity shall treat the goods, services and works supplied by suppliers who are nationals of another Contracting Party no less favourably than the procuring entity treats –
- (a) the domestic goods, services and works supplied in [*name of Contracting Party*]; or
  - (b) the goods, services and works supplied by suppliers who are nationals of or whose office is registered in a third State.
- (4) Procuring entities shall not treat a supplier “A” who is –
- (a) a national of [*name of Contracting Party*]; and
  - (b) in some way affiliated with or is to some degree owned by a person who is a national of another Contracting Party,
- less favourably than another supplier who is also a national of or whose offices are also registered in [*name of*

*Contracting Party*] solely on the basis of the affiliations of “A” or the ownership of “A”.

(5) A procuring entity shall not design a public procurement opportunity with the intention of excluding the procurement from the scope of this Act or of artificially narrowing competition.

(6) Competition shall be considered to be artificially narrowed where the design of the public procurement is made with intent to unduly favour or disadvantage certain suppliers.

(7) Technically, financially and legally qualified suppliers who are interested in participating in a public procurement shall not be prevented from participating due to discriminatory restrictions or barriers to entry into [name of Contracting party].

**Joint bidding.**

9. (1) Groups of suppliers, including temporary associations, may participate in procurement procedures by means of joint bidding.

(2) Where necessary, procuring entities shall clarify in the bidding documents how groups of suppliers are to meet the requirements as to economic and financial standing or technical and professional ability, provided that such clarification is justified by objective reasons and is proportionate.

(3) Procuring entities shall justify, by objective and proportionate reasons, any conditions for the performance of a contract by groups of suppliers, where such conditions are different from the conditions imposed on individual suppliers.

(4) Procuring entities may require groups of suppliers to assume a specific legal form before or after they have been awarded the contract to the extent that such legal

form is necessary for the satisfactory performance of the contract.

**Confidentiality.**

10. (1) No person who has an official duty under this Act or is employed in or in connection with the administration of this Act shall disclose any information obtained during the performance of his duties under this Act if –

- (a) non-disclosure of such information is necessary for the protection of essential security interests of [*name of Contracting Party*]; or
- (b) disclosure of the information is –
  - (i) is likely to prejudice the legitimate commercial interests of suppliers; or
  - (ii) is likely to impede fair competition,

unless disclosure of that information is ordered by the [*name of the court*] or the [*name of organ designated by the Contracting Party*], subject to the conditions of such an order.

(2) Where the official duty or employment of a person to whom subsection (1) applies is terminated, the person shall not, after such termination, disclose any information obtained during the performance of his duties under this Act.

(3) Without prejudice to the generality of subsection (1), a procuring entity shall not disclose information forwarded to it by a supplier which the supplier has designated as confidential, including technical or trade secrets and the confidential aspects of bids.

- (4) Subsection (3) is without prejudice to –
  - (a) any information given to candidates and bidders in relation to contract awards; and

- (b) any other requirement or permission for the disclosure of information that is applicable under the law of [*name of Contracting Party*].

(5) Subject to subsection (6), procuring entities shall treat applications for registration in the Suppliers Register and submissions in relation to public procurement opportunities in such a manner as to avoid the disclosure of their contents to competing suppliers or to any other person not authorised to have access that type of information.

(6) Procuring entities may –

- (a) impose on suppliers requirements aimed at protecting the confidential nature of information which the procuring entities make available throughout the procurement procedure; and
- (b) demand that suppliers ensure that their subcontractors comply with the requirements aimed at protecting confidential information.

(7) A person who contravenes subsection (1), (2), (3) or (5) by disclosing or attempting to disclose anything referred to in this section otherwise than –

- (a) pursuant to this Act or necessary in the discharge of his official duties under this Act;
- (b) pursuant to any other enactment;
- (c) pursuant to an order of the Court; or
- (d) in satisfaction of [*name of Contracting Party's*] obligations under any treaty to which [*name of Contracting Party*] is a party,

commits an offence and is liable upon summary conviction to a fine not exceeding [ ] dollars or to imprisonment for term not exceeding [ ] years or to both.

**Transparency.**

11. Procuring entities shall ensure that every public procurement opportunity to which this Act applies is published on the Community Public Procurement Notice Board.

**Communications in public procurement.**

12. (1) Any document, notification, decision or other information –

- (a) generated in the course of a public procurement; and communicated –
  - (i) in connection with challenge proceedings under Part VI;
  - (ii) in the course of a meeting; or
  - (iii) as otherwise required under this Act;
- or
- (b) forming part of the record of procurement proceedings prepared pursuant to section 43,

shall be in a form that provides a record of the content of the information and that is accessible so as to be useable for subsequent reference.

(2) Communication of information between suppliers and the procuring entity may be conducted by means that do not provide a record of the content of the information, on the condition that immediately thereafter confirmation of the communication is given to the recipient of the communication in a form that provides a record of the content of the information and that is accessible for subsequent reference.

(3) Subject to subsection (4), where a procuring entity first issues to suppliers an invitation to participate in a public procurement opportunity, the procuring entity shall specify –

- (a) any requirement as to form;
- (b) the means to be used to communicate information –
  - (i) by or on behalf of the procuring entity to a supplier or to any other person;
  - (ii) by a supplier to the procuring entity;
- (c) the means to be used to satisfy all requirements under this Act for information to be in writing or for a signature; and
- (d) the means to be used to hold any meeting of suppliers.

(4) Where public procurement involves classified information, in addition to the requirements or means referred to in subsection (3), the procuring entity shall specify the measures and requirements needed to ensure the protection of the information.

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

(6) Where a procuring entity conducts a meeting with suppliers, the procuring entity shall ensure that the only means of communication used are means that allow suppliers to fully and contemporaneously participate in the meeting.

(7) Each procuring entity shall put in place appropriate measures to secure the authenticity, integrity and

confidentiality of every document, notification, decision or other information generated in the course of procurement proceedings.

**Language of documents.**

13. Procuring entities shall ensure that the bidding documents are formulated in [*enacting Contracting Party to insert its official language or languages*].

**Fair treatment.**

14. (1) Procuring entities shall treat suppliers fairly.

(2) In relation to the fair treatment of suppliers, Part VI shall apply.

**Conflicts of interest.**

15. (1) Procuring entities shall take all measures necessary to effectively prevent, identify and remedy conflicts of interest arising in the conduct of public procurement activities so as to avoid any distortion of competition and to ensure equal treatment of all suppliers.

(2) A member, an employee or an officer of a procuring entity or a person with direct influence on the decisions of a procuring entity shall –

- (a) declare any interest that he may have in a bid submitted by a supplier; and
- (b) so far as possible, recuse himself from the procurement proceedings.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ] or both.

*Offsets and Restrictions*

- Prohibition of offsets.** 16. Procuring entities shall not impose, seek to impose or consider offsets in relation to –
- (a) the qualification and selection of –
    - (i) suppliers; or
    - (ii) the goods, services or works offered by suppliers;
  - (b) the evaluation of bids; or
  - (c) the award of contracts.

*Preliminaries to Finalising Public Procurement Opportunities*

- Publication of annual procurement plan.** 17. (1) In each fiscal year, every procuring entity that intends to conduct public procurements to which this Act applies shall, not later than [*name of month*] of the given year, publish its Annual Procurement Plan on the Notice Board.
- (2) An Annual Procurement Plan –
- (a) shall set out the procuring entity’s procurement plans for the year including the types of goods, services or works that the procuring entity shall require, inclusive of volumes and values and, where available, the proposed dates or range of dates for publication of the relevant invitations to bid; and
  - (b) is valid for a period of not more than 12 months from the date on which it is published on the Notice Board.
- (3) An Annual Procurement Plan is not binding on the procuring entity that submits it for publication on the Notice Board.

(4) Where a procuring entity does not conduct a public procurement in accordance with the Annual Procurement Plan, supplier challenge and review and dispute resolution procedures shall not apply.

(5) Notwithstanding subsections (3) and (4), a procuring entity shall make every effort to conduct public procurements in accordance with its Annual Procurement Plan.

**Procuring entity's responsibilities regarding publication of the annual procurement plan.**

18. (1) Where, in addition to publishing its Annual Procurement Plan on the Notice Board, a procuring entity intends to publish or publishes its Annual Procurement Plan by other means, the procuring entity shall ensure that—

- (a) the information contained in the Annual Procurement Plan is published on the Notice Board before it is published on any other medium; and
- (b) the Annual Procurement Plan, as published on any other medium, does not contain information other than the information contained in the Annual Procurement Plan, as published on the Notice Board.

(2) Subject to subsection (3), a procuring entity may, subsequent to the publication of its Annual Procurement Plan on the Notice Board, modify the Annual Procurement Plan.

(3) Where a procuring entity modifies its Annual Procurement Plan, it shall publish the modified plan on the Notice Board and section 17 and subsection (1) shall apply *mutatis mutandis*.

**Subject matter of public procurement.**

19. (1) A procuring entity shall set out in bidding documents a detailed description of the subject matter of the public procurement.

(2) A description of the subject matter referred to in subsection (1) shall include information regarding –

- (a) the minimum requirements to be met by a response to an invitation to tender in order to be considered responsive;
- (b) where relevant, the nature, quantity and place of delivery of the goods to be supplied;
- (c) where relevant, the nature of and the location where the services are to be provided; and
- (d) where relevant, the nature of and location where the works are to be effected.

(3) A description of the subject matter referred to in subsection (1) may include –

- (a) specifications;
- (b) plans;
- (c) drawings;
- (d) designs;
- (e) tests and test methods;
- (f) packaging requirements;
- (g) marking, labelling or conformity certification;
- (h) symbols; and
- (i) terminology.

(4) To the extent practicable, the description of the subject matter shall –

- (a) be –
  - (i) objective;
  - (ii) functional; and

(iii) generic; and

(b) set out the relevant technical, quality and performance characteristics of the subject matter.

(5) Subject to subsection (6), the description of subject matter of a public procurement opportunity shall not include any requirement for or reference to a particular –

- (a) trademark;
- (b) trade name;
- (c) patent;
- (d) design;
- (e) type; or
- (f) origin of producer.

(6) A procuring entity may include requirements or references referred to in subsection (5) in a description of the subject matter of a procurement where –

- (a) there is no sufficiently precise or intelligible way of describing the subject matter of the public procurement; and
- (b) the procuring entity ensures that where requirements or references referred to in subsection (5) are used the words “equivalent to” precede such requirements or references.

(7) Procuring entities shall have due regard for the use of standardized trade terms and conditions, where available, when formulating tender documents.

(8) Subject to the provisions of this Act, the subject matter of a procurement shall not have the effect of restricting the participation of suppliers who are nationals of a Contracting

Party in their access to the procurement proceedings on the basis of their nationality.

**Technical specifications.**

20. (1) Where, in relation to a public procurement opportunity, a procuring entity requires that the supplier to whom the contract is awarded abide by technical specifications, the procuring entity shall ensure that -

- (a) the technical specifications are included in the bidding documents;
- (b) the technical specifications are, where possible, worded in terms of performance, conformance and functional requirements;
- (c) the technical specifications are based on –
  - (i) regional standards; or
  - (ii) national standards or internationally recognised standards and codes, if regional standards do not exist; and
- (d) subject to subsection (2), the technical specifications do not refer to a particular trademark, trade name, patent, copyright, design or type, specific origin, producer or supplier.

(2) Where a procuring entity decides that there is no other sufficiently precise or intelligible way of describing the technical specifications than to refer to the trademarks, or types of descriptions referred to in subsection (1) (d), the procuring entity shall ensure that the words “equivalent to” or “similar to”, or words to that effect, are used as modifiers of such marks, features or descriptions.

(3) Procuring entities shall ensure that requirements for compliance with technical specifications are not intended to and do not have the effect of –

- (a) unfairly limiting competition; or
- (b) directing the award of the contract toward a particular supplier.

**Qualification requirements.**

21. (1) Where, in relation to a public procurement opportunity, a procuring entity requires the supplier to whom the contract is awarded to satisfy qualification requirements, the procuring entity shall ensure that -

- (a) the qualification requirements are set out in the bidding documents;
- (b) qualification requirements referred to in the bidding documents are limited to qualifications that are essential to ensuring that the supplier possesses the necessary capabilities to perform the procurement contract;
- (c) qualification requirements are not used to or have the effect of discriminating against suppliers who are not nationals of [*name of Contracting Party*]; and
- (d) decisions regarding qualifications of a supplier are based only on the qualification requirements that are set out in the bidding documents.

(2) Procuring entities shall not include as a qualification requirement a requirement that –

- (a) the procuring entity issued the supplier a previous award of contract;

- (b) the supplier has previous work experience in [name of Contracting Party]; or
- (c) constitutes an artificial constraint that serves to limit the opportunity to participate to suppliers who are nationals of or are registered in [name of Contracting Party].

(3) Where a supplier is rejected based on his qualifications, the procuring entity shall, upon receipt of a request for reasons for its decision from the supplier, inform the supplier of the reasons for its decision within a reasonable time.

(4) Nothing in this section shall prevent a procuring entity from disqualifying a supplier from participating in a public procurement opportunity on grounds of bankruptcy, false declarations or conviction for criminal offences.

**PART IV. Public Procurement Methods**

**Procurement methods: open bidding, etc.**

22. (1) Subject to sections 23 and 24, a procuring entity shall conduct public procurement by means of open bidding.

(2) Where a procuring entity employs a method of procurement referred to in this part, the procuring entity shall –

- (a) issue bidding documents and instructions in the prescribed form and manner; and
- (b) conduct procurement procedures in accordance with the prescribed standard operating procedures.

(3) Where a procuring entity uses restricted bidding or single-source procurement, the procuring entity shall –

- (a) seek to maximise competition to the extent practicable;

- (b) select bidders in a fair and non-discriminatory manner; and
- (c) include in the record of procurement proceedings, prepared under section 43, a statement of the reasons and circumstances upon which it relies to justify the use of the chosen procurement method.

**Restricted bidding.**

23. A procuring entity may use the restricted bidding method of procurement where –

- (a) no suitable bids were received in response to an earlier invitation to suppliers to participate in an open bid;
- (b) the procuring entity reasonably decides that only a limited number of suppliers can perform the contract for technical or artistic reasons or reasons connected with the protection of exclusive rights and no reasonable alternative or substitute exists;
- (c) there is an extremely urgent need for the subject matter of the procurement and an open and competitive method of procurement is impractical because of the time involved in using such a method; or
- (d) the contract is for the purchase of goods or services available on commodity markets or made available under exceptionally advantageous circumstances which only arise in the very short term.

**Single-source procurement.**

24. A procuring entity may use the single-source method of procurement only in the following circumstances, where –

- (a) the contract is awarded to the winner of a design or artistic contest;
- (b) due to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other method of procurement would be impractical because of the time involved in using those methods;
- (c) the procuring entity has –
  - (i) procured from a particular supplier goods, services or works which are, to the procuring entity's satisfaction, effective in meeting the needs of the procuring entity; and
  - (ii) determined the need for additional supplies to be procured from the supplier for reasons of standardisation or compatibility with existing goods, service or works;
- (d) additional goods, services, or works which were not included in the initial procurement contract, but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to satisfactorily complete the procurement, provided that the total value of the contract awarded for additional goods, services or works does not exceed fifty per cent (50%) of the total value of the initial contract;
- (e) in relation to a specific public procurement opportunity, the procuring entity reasonably decides that only one specified supplier can perform the contract for technical or artistic reasons or reasons connected with the

- protection of exclusive rights and no reasonable alternative or substitute exists; or
- (f) the public procurement is between procuring entities of [*name of Contracting Party*].

## **PART V. Conduct of Public Procurement Proceedings**

### *Publication of Public Procurement Opportunities*

- Purpose of Community Public Procurement Notice Board.**
25. The Community Public Procurement Notice Board shall be used by –
- (a) procuring entities to –
    - (i) publish advertisements of public procurement opportunities;
    - (ii) access the Community Suppliers Register;
    - (iii) access the Community Standard Bidding Documents; and
    - (iv) access and contribute to the electronic database for Regional Public Procurement statistics;
  - (b) suppliers -
    - (i) to access advertisements about public procurement opportunities;
    - (ii) where eligible, to participate in procurement proceedings;
    - (iii) to access the Community Suppliers Register; and
  - (c) the general public.
- Publication of invitation to tender.**
26. Where a procuring entity intends to engage in public procurement by means of open bidding, the procuring entity

shall cause an invitation to tender to be published on the Notice Board.

**Procuring entity may forgo publication of public procurement opportunity.**

27. Where a procuring entity intends to engage in public procurement by means of restricted bidding or single-source procurement, the procuring entity may forgo submitting a notice of invitation to participate in the procurement for publication on the Notice Board.<sup>2</sup>

**Cancellation of public procurement opportunity.**

28. (1) A procuring entity may, at any stage prior to an award of contract, cancel a public procurement opportunity thereby rejecting all bids without incurring liability.

(2) Where a procuring entity cancels a public procurement opportunity under subsection (1), the procuring entity shall –

- (a) promptly publish a notice of the cancellation of the procurement on Notice Board in the same manner in which the invitation to tender was published;
- (b) promptly notify the suppliers who submitted bids of the cancellation and provide a written statement of reason to suppliers who request a statement of reasons for the cancellation;
- (c) return any bids that remain unopened at the time at which the decision to cancel the public procurement opportunity was made to the suppliers that submitted them; and
- (d) include in the record of the procurement proceedings the decision to cancel the public

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<sup>2</sup> This is an optional clause. Contracting Parties may incorporate this clause in their legislation depending on their current legal practice in the context of restricted bidding and single-source.

procurement opportunity and the reasons for the decision.

*Bidding Documents*

**Community Standard bidding documents to be used by procuring entities.**

29. (1) Procuring entities shall –
- (a) use the prescribed Community Standard Bidding Documents to prepare bidding documents for public procurements to which this Act applies; and
  - (b) access the Community Standard Bidding Documents from the Notice Board.

(2) The Minister, [on the advice of] [after consultation with] [ ] may submit a request for modifications or amendments to Community Standard Bidding Documents to the Permanent Joint Council for consideration, and where appropriate, implementation.

**Bidding documents to contain necessary information.**

30. (1) Procuring entities shall provide bidding documents to each supplier who responds to the invitation to tender.

(2) Procuring entities shall ensure that the bidding documents provided to suppliers contain all the information necessary to allow suppliers to submit responsive bids.

(3) Procuring entities shall respond promptly to any reasonable requests for information set out in the bidding documents, including requests for clarification, on condition that that information is not intended to give and does not give any supplier an unfair advantage over its competitors.

(4) Where a procuring entity decides to respond to a request, the response shall be –

- (a) provided to all suppliers who received bidding documents; and

- (b) accompanied by a copy of the request for information excluding the identity of the source of the request.

**Modification of bidding documents.**

31. (1) At any time prior to the deadline for bid submission, a procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification submitted by a supplier, modify the bidding documents by promptly issuing an addendum to all suppliers who received bidding documents.

(2) An addendum issued pursuant to subsection (1) shall be binding on all bidders.

(3) Where a procuring entity issues an addendum pursuant to subsection (1), the procuring entity shall afford suppliers reasonable time, consistent with the nature and complexity of the modification and the date on which the addendum was issued, to take modifications into account in the preparations of original or amended bid submissions.

*Procurement Methods and Procedures*

**Prescribed procedure for open bidding.**

32. Where a procuring entity employs the open bidding method of procurement, the procuring entity shall use the prescribed procedures for open bidding for awarding public procurement contracts.

**Prescribed procedure for restricted bidding.**

33. Where a procuring entity employs the restricted bidding method of procurement, the procuring entity shall use the prescribed procedures for restricted bidding for awarding public procurement contracts.

**Prescribed procedure for single-source procurement.**

34. Where a procuring entity employs the single-source method of procurement, the procuring entity shall use the

prescribed procedures for single source procurement for awarding public procurement contracts.

*Contract Award*

**Notice of Successful Bid.**

35. (1) Where in relation to a public procurement opportunity that was advertised on the Notice Board, a procuring entity selects a successful bidder, the procuring entity shall –

- (a) issue a Notice of Successful Bid, in the prescribed form, to all bidders; and
- (b) publish the Notice of Successful Bid on the Notice Board.

(2) Where a procuring entity issues a Notice of Successful Bid, the notice shall –

- (a) identify the successful bid but shall not be automatically construed as an award of contract to a particular supplier; and
- (b) where relevant, indicate the commencement of the standstill period.

**Statement of reasons, unsuccessful bids.**

36. (1) Upon receipt of a Notice of Successful Bid and during the standstill period, an unsuccessful bidder who wishes to –

- (a) know the reason for the procuring entity's decision not to award him the contract shall submit a request to the procuring entity requesting a statement of reasons for its decision not to award the contract to the bidder who submitted the request; or

(b) challenge the procuring entity's decision shall submit an application, in accordance with Part VI, for reconsideration of the decision.

(2) Where a procuring entity receives a request under and in accordance with subsection (1) (a) the procuring entity shall respond to the request not more than [ten] working days from the date on which the procuring entity received the request.

(3) Where a procuring entity receives an application under and in accordance with subsection (1) (b), Part VI shall apply.

**Acceptance of successful bid.**

37. (1) Subject to the provisions of this section, where a procuring entity identifies a successful bid it shall, upon the expiry of the standstill period, accept the successful bid in the manner referred to in section 39.

(2) Notwithstanding subsection (1), the procuring entity shall not accept a successful bid or execute or perform a procurement contract if –

- (a) the supplier who submitted the successful bid is disqualified on the prescribed grounds;
- (b) the procuring entity cancelled the public procurement opportunity; or
- (c) the public procurement opportunity, the bid, or the supplier contravenes or otherwise is not compliant with the provisions of this Act.

**Procuring entity may forgo standstill period.**

38. Where the procuring entity determines that it is in the urgent public interest to proceed without a standstill period –

- (a) section 37 (1) shall not apply;
- (b) the procuring entity shall proceed to issue a Notice of Acceptance of Successful bid under section 39; and

- (c) the procuring entity shall include in the record of procurement proceedings –
  - (i) a statement to the effect that there is an urgent public interest in proceeding without a standstill period; and
  - (ii) a statement of reasons for its decision to proceed without a standstill period.

**Notice of acceptance of successful bid.**

39. Subject to Part VI, the procuring entity shall –
- (a) upon the expiry of the standstill period; or
  - (b) where there is no standstill period, promptly after identifying the successful bid,

in the prescribed form and manner, dispatch a notice of acceptance of the successful bid to the supplier who submitted the successful bid.

**Entry into force of procurement contract.**

40. (1) Subject to subsection (2), where the bidding documents require the successful bidder to sign a written contract which accords with the terms and conditions of the bid before the contract may come into force, the procuring entity and the supplier shall sign the procurement contract within a reasonable time after the notice is dispatched to the supplier.

- (2) Subsection (1) shall not apply if –
  - (a) the bid's validity period expires before the contract is dispatched; or
  - (b) the approval of an authority is required before the procurement contract may enter into force.
- (3) Where –
  - (a) subsection (1) applies; and

- (b) the bidding documents do not require the approval of another authority before the procurement contract enters into force,

the procurement contract shall enter into force upon the signing of the contract by the supplier and the procuring entity.

(4) Where the bidding documents stipulate that the procurement contract is subject to the approval of another authority, the procurement contract shall not enter into force before the approval is given.

(5) During the period that commences on the day on which the procuring entity dispatches the notice of acceptance to the successful bidder and ends on the day on which the procurement contract is signed, neither the procuring entity nor the supplier who submitted the successful bid shall intentionally take any action that –

- (a) interferes with the formation of a binding contract; or
- (b) impedes or frustrates the performance of the procurement contract.

(6) For the purposes of this Part, a notice is dispatched when it is properly addressed or otherwise directed and promptly and properly transmitted to the intended recipient by means of the communication specified in the bidding documents.

(7) The procuring entity shall, prior to the expiration of –

- (a) the bid validity period, as specified in the bidding documents; and
- (b) the period of effectiveness of any bid security which may be required,

take the necessary measures to ensure that the procuring entity obtains any approvals that are required before the procurement contract may enter into force.

**Failure of supplier to sign procurement contract.**

41. (1) If a bidder receives a notice of acceptance of successful bid from a procuring entity pursuant to section 39 and he fails to –

- (a) sign the procurement contract; or
- (b) provide security for the performance of the contract, where required,

the procuring entity may cancel the public procurement opportunity or decide to select the next successful bid from among the bids which remain in effect.

(2) Where a procuring entity selects the next successful bid the provisions of this Part shall apply *mutatis mutandis*.

**Notice of contract award.**

42. (1) Upon the entry into force of a procurement contract and, if required, the provision by the supplier of a security for the performance of the contract, the procuring entity shall promptly –

- (a) publish on the Notice Board; and
- (b) issue to the unsuccessful bidders,

a notice of contract award which shall be in the prescribed form and shall specify the name and address of the bidder with whom the procuring entity entered into the procurement contract and the contract price.

(2) On or before [ month ] in each year, every procuring entity shall publish a notice on the Notice Board setting out the awards that were made in the preceding financial year.

**Record of  
procurement  
proceedings.**

43. (1) In relation to each public procurement opportunity in which a procuring entity is involved, the procuring entity shall establish and maintain a record of the procurement proceedings.

(2) The procuring entity shall ensure that the record of procurement proceedings –

- (a) contains a brief description of the subject matter of the procurement;
- (b) contains the name and address of the supplier or suppliers, as the case may be, who submitted bids;
- (c) identifies the method of procurement used;
- (d) contains the name and address of the supplier who submitted the successful bid;
- (e) specifies the date on which the procuring entity accepted the successful bid;
- (f) specifies the date of contract award;
- (g) sets out the contract price;
- (h) sets out the actual completion cost;
- (i) specifies the duration of the contract;
- (j) contains information regarding the qualifications of the suppliers who submitted bids;
- (k) contains a summary of the evaluation and comparison of bids;
- (l) specifies the reasons for the rejection of any or all of the bids, as the case may be;
- (m) contains a summary of any requests for clarification of bidding documents and any modifications to bidding documents;
- (n) contains information regarding the performance of the supplier who

submitted the successful bid during the course of the contract; and

- (o) contains information regarding complaints, resolution of complaints, decisions and appeals.

(3) In addition to the information set out in subsection (2), where a challenge or appeal is lodged pursuant to the provisions of Part VI, the record shall contain—

- (a) a copy of the application for reconsideration or review and the appeal, where applicable;
- (b) a copy of all the decisions taken in relation to the challenge or appeal; and
- (c) a statement of the reasons for the decisions to which paragraph (b) refers.

(4) A procuring entity shall retain a record of procurement proceedings for each public procurement opportunity for a period of not less than five years commencing on the date on which the relevant contract was executed or discontinued or the procurement was cancelled, as the case may be.

#### **PART VI. *Supplier Challenge and Review***

**Supplier's right to challenge action or decision of procuring entity.**

44. (1) Subject to subsection (2), where a supplier –
- (a) claims to have suffered or to be likely to suffer loss or injury due to an alleged action or decision of a -
    - (i) procuring entity in procurement proceedings in which the supplier has or had a legal interest; or

(ii) the [Registrar] [Board] responsible for establishing and maintaining the national register of suppliers<sup>3</sup>; and

(b) alleges that the action or decision referred to in paragraph (a) does not comply with the provisions of this Act,

the supplier may challenge the action or decision by applying to the procuring entity or [Registrar] [Board], as the case may be, for reconsideration of the action or decision, or by applying to the [*name of independent body*] or [*name of court*] for a review of the action or decision.

(2) Notwithstanding subsection (1), a supplier shall not challenge the decision of a procuring entity regarding<sup>4</sup> the rejection of a supplier's bid where the bid was rejected on the grounds that –

- (a) the supplier that submitted the bid is not qualified;
- (b) the supplier that submitted the bid did not accept the procuring entity's correction of an arithmetical error;
- (c) the supplier's bid was not responsive;

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<sup>3</sup> Here, insert reference to the person or entity responsible for registration of suppliers at the Contracting Party level.

<sup>4</sup> The following words, which previously constituted paragraph (a), have been removed from the draft –

“(a) the method of procurement chosen in relation to a particular public procurement opportunity; or”.

The basis of the deletion is that the policy underpinning the model Bill makes no express statement supporting the paragraph and the presence of the paragraph in the model Bill is based on an equivalent provision in an older version of the UNCITRAL Model Law on Public Procurement which was deleted from the current version of the UNCITRAL Model because it no longer reflects international best practice. The provision has therefore been deleted from this draft in accordance with the current international best practice. The thinking behind the deletion and the current international best practice is that suppliers should be in a position to challenge the procurement method used if it was intended to deprive them of an opportunity to participate in the procurement proceedings.

- (d) the supplier, directly or indirectly, gave or agreed to give an employee of the procuring entity or other governmental authority a gratuity, an offer of employment or anything of service or value so as to influence an act or decision of or procedure followed by the procuring entity;
- (e) the supplier has an unfair competitive advantage; or
- (f) there is a conflict of interest contrary to the provisions of this Act.

(3) Where a supplier challenges an alleged action or decision of a procuring entity in procurement proceedings in which the supplier has or had a legal interest, that challenge shall not prejudice the supplier's participation in ongoing or future public procurement opportunities.

**Rights of participants in challenge proceedings.**

45. (1) A -

- (a) supplier participating in procurement proceedings to which an application made under section 44 (1) relates; and
- (b) governmental authority whose interests are or may be affected by the application,

have the right to participate in challenge proceedings initiated by that application.

(2) If a supplier is notified of challenge proceedings and fails to participate in the proceedings, the supplier is barred from subsequently submitting a challenge which is based on the subject matter of the proceedings in which he did not participate.

(3) Participants in challenge proceedings have the right to –

- (a) be present and represented at all hearings during the proceedings;
- (b) be heard;
- (c) present evidence;
- (d) call witnesses;
- (e) request that a hearing take place in public, subject to section 46; and
- (f) seek access to the record of the challenge proceedings, subject to section 46.

**Confidentiality in challenge proceedings.**

46. No information shall be disclosed in or after challenge proceedings and no public hearing shall take place under this Part if the disclosure of such information or the conduct of a public hearing is likely to –

- (a) impair the protection of essential security interests of [name of Contracting Party];
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of the suppliers; or
- (e) impede fair competition.

*Reconsideration of Decisions and Actions*

**Application for reconsideration.**

47. (1) An application for reconsideration shall –

- (a) be made in writing and addressed -
  - (i) in the case of an application to reconsider the decision or action of the [Registrar] [Board], to the [Registrar] [Board];
  - (ii) in the case of an application to reconsider the decision or action of an

employee or member of the procuring entity, the head of the procuring entity;

- (b) clearly identify the loss or injury suffered or likely to be suffered and the alleged non-compliant action or decision; and
  - (c) in the case of a decision or action of an employee or member of a procuring entity, be submitted within the time specified in subsection (2).
- (2) Where the application is for the reconsideration of –
- (a) the invitation to tender, the application shall be submitted prior to the deadline for submitting bids; or
  - (b) decisions made or actions taken by the procuring entity during the procurement proceedings to which paragraph (a) does not apply, the application shall be submitted –
    - (i) within the standstill period set out in the bidding documents; or
    - (ii) where there is no standstill period, prior to the entry into force of the procurement contract.

**Procedure after  
procuring entity's  
receipt of application.**

48. (1) A procuring entity or the [Registrar] [Board], as the case may be, shall, upon receipt of an application for reconsideration, promptly publish the application on the Notice Board.

(2) Within [ten] working days of its receipt of an application, a procuring entity or the [Registrar] [Board], as the case may be, shall –

- (a) in accordance with section 49, decide whether to consider or dismiss the application;
- (b) where it has decided to consider the application, decide whether to suspend the procurement proceedings to which the application relates;
- (c) where it has decided to suspend the procurement proceedings, decide the duration of the suspension;
- (d) notify all the suppliers who submitted bids, proposals or quotations in the procurement proceedings to which the application relates –
  - (i) about the submission of the application;
  - (ii) about the substance of the application;
  - and
  - (iii) of the procuring entity's decision to consider or dismiss the application;
- (e) where the application is being considered, notify the suppliers referred to in paragraph (d) of whether the procurement proceedings are suspended and the duration of the suspension, where applicable; and
- (f) where the application is dismissed or the procurement proceedings are suspended, notify the suppliers referred to in paragraph (d) of the reasons for the dismissal of the application or the decision to suspend the proceedings.

(3) Subject to section 51 (4), where a procuring entity receives an application submitted in accordance with this section, the procuring entity shall not do anything that is likely to bring the procurement contract to which the application relates into force.

**Grounds for dismissal of application.**

49. A procuring entity or the Registrar, as the case may be, shall dismiss an application for reconsideration of its alleged action or decisions if it is satisfied that –

- (a) the application is manifestly without merit;
- (b) the application was not made in accordance with section 47; or
- (c) the applicant does not have sufficient interest to properly bring the application.

**Failure to notify the applicant.**

50. (1) If, within [ten] working days of its receipt of an application under section 44 (1), the procuring entity or the [Registrar] [Board], as the case may be, fails to notify the applicant in accordance with section 48 (2) (d) (iii), (e) and (f), the applicant may [immediately] commence proceedings in the [*name of independent body*] or in the [*name of court*].

(2) Where proceedings are commenced in [*name of independent body*] or in the [*name of the court*], the competence of the procuring entity or the [Registrar] [Board], as the case may be, to consider the application ceases.

**Outcome of application for reconsideration.**

51. (1) In relation to an application made under section 44 (1), a procuring entity or the [Registrar] [Board], as the case may be, may vary, reverse or uphold any action or decision taken by the procuring entity during the procurement proceedings to which the application relates or during the course of registering the supplier, respectively.

(2) Where a procuring entity or the [Registrar] [Board], as the case may be, makes a decision referred to in subsection (1), the procuring entity or the [Registrar] [Board] shall issue

the decision not more than [ ] working days after receiving the application.

(3) The procuring entity or the [Registrar] [Board], as the case may be, shall ensure that all decisions and notifications made subsequent to the applicant's submission of the application –

- (a) are in writing;
- (b) are part of the record of procurement proceedings;
- (c) contain the reasons for the decision or notification; and
- (d) are communicated to the applicant, the other participants in the challenge proceedings and all other participants in the procurement proceedings to which the application relates.

(4) Notwithstanding section 48 (3), a procuring entity may enforce the procurement contract not less than [ ] working days after the procuring entity has notified the applicant and other participants in the challenge proceedings of its decision.

**Dissatisfaction with decision regarding reconsideration.**

52. (1) Where –

- (a) an applicant is dissatisfied with the decision of the procuring entity or the [Registrar] [Board] as the case may be, issued in response to the application for reconsideration; or
- (b) the procuring entity or the [Registrar] [Board], as the case may be, fails to issue a decision not more than [ ] working days after receiving an application made under section 44 (1),

the applicant may commence proceedings before the [*name of independent body*] or [*name of court*].

(2) Where proceedings are commenced in [*name of independent body*] or in the [*name of the court*], the competence of the procuring entity or the [Registrar] [Board], as the case may be, to consider the application ceases.

*Review by [name of independent body]*

**Establishment of  
[*name of  
independent body*].**

53. (1) There is hereby established, for the purposes of this Act, the [*name of independent body*].

**Third Schedule.**

(2) The provisions of the Third Schedule shall have effect as to the constitution of the [*name of independent body*] and otherwise in relation thereto.

**Application to [*name  
of independent body*]  
for review.**

54. (1) A supplier may apply to the [*name of independent body*] for a review of –

- (a) a decision or action taken by the procuring entity in relation to procurement proceedings or a decision taken by the procuring entity in response to an application for the reconsideration of its decision or action;
- (b) a decision of the [Registrar] [Board] to revoke the registration of the applicant as a registered supplier;
- (c) the decision of the [Registrar] [Board] in respect of the classification of the applicant, under section 62, for the purposes of registration as a supplier; or

- (d) the procuring entity's or [Registrar's] [Board's] failure or refusal to issue a decision under section 51 within the time frame specified in that section.

(2) Applications to the [*name of independent body*] shall be in writing.

(3) Applications to [*name of independent body*] shall, in the case of applications for the review of –

- (a) decisions or actions taken by the procuring entity prior to the selection of a successful bid, be submitted prior to the deadline for presenting submissions;

- (b) decisions or actions to which paragraph (a) does not apply and which are taken by the procuring entity during the procurement proceedings –

- (i) be submitted within the standstill period, subject to subsection (4);  
or

- (ii) where there is no standstill period, be submitted within [ ] working days after the time at which the applicant became aware of the circumstances giving rise to the application or the time at which the applicant ought reasonably to have become aware of the circumstances giving rise to the application, whichever is earlier, but no later than [ ] working days after the entry into force of the procurement contract or a

decision to cancel the  
procurement; or

- (c) a procuring entity's or the [Registrar's]  
[Board's], as the case may be, –
- (i) failure to issue a decision under  
section 51 in accordance with the  
time frame specified in that section;  
or
- (ii) issuing of a decision with which the  
applicant is dissatisfied,

be submitted within [ ] work days after  
the decision of the procuring entity or  
[Registrar] [Board], as the case may be,  
ought to have been or was communicated  
to the applicant, as the case may be.

(4) Where a supplier submits an application under this  
section, the submission of an application shall not preclude  
the supplier from applying to the [*name of Court*] for judicial  
review.

**Suspension of  
procurement  
proceedings.**

55. (1) Upon receipt of an application made under section 54,  
the [*name of independent body*] may, subject to subsection  
(2), order the suspension of the procurement proceedings or  
the performance of the procurement contract, as the case  
may be, if it finds that a suspension is necessary to protect the  
interests of the applicant.

(2) Notwithstanding subsection (1), where the [*name of  
independent body*] decides that urgent public interest  
considerations require the procurement proceedings or the  
performance of the procurement contract to continue, the  
[*name of independent body*] shall not order the suspension of

the procurement proceedings or the performance of the procurement contract.

(3) The [*name of independent body*] shall –

- (a) subject to subsection (2), promptly upon receipt of an application made under section 54 decide whether to suspend the procurement proceedings or the performance of the procurement contract, as the case may be; and
- (b) no later than three working days after its receipt of the application, notify all participants in the procurement proceedings of whether procurement proceedings or the performance of the procurement contract, as the case may be, shall be suspended.

(4) Where the [*name of independent body*] decides to suspend the procurement proceedings or the performance of the procurement contract, as the case may be, the [*name of independent body*] shall order the suspension of the procurement proceedings or the performance of the procurement contract, as the case may be, for a period of [ten] working days.

(5) The [*name of independent body*] may order that any suspension applied pursuant to subsection (4) be extended if it finds that, under the circumstances, an extension is necessary to protect the interests of the applicant.

(6) Where the [*name of independent body*] decides not to suspend the procurement proceedings or the performance of the procurement contract, as the case may be, the [*name of independent body*] shall provide the applicant and

procuring entity reasons for its decision on whether to issue a suspension.

**Decisions of [*name of independent body*].** 56. (1) Subject to the provisions of this section and the Third Schedule, the [*name of independent body*] shall consider applications for review in the prescribed manner.

**Third Schedule.**

(2) [*Name of independent body*], in response to an application made under section 54, shall, as appropriate, do one or more of the following –

- (a) order the procuring entity or the [Registrar] [Board]<sup>5</sup>, as the case may be, to cease–
  - (i) acting in a manner;
  - (ii) taking a decision; or
  - (iii) following a procedure,that is not in compliance with the provisions of this Act;
- (b) require the procuring entity or the [Registrar] [Board], as the case may be, having acted or proceeded in a manner that is not in compliance with the provisions of this Act, to -
  - (i) act;
  - (ii) take a decision; or
  - (iii) proceed,in a manner that is in compliance with provisions of this Act;
- (c) overturn, in whole or in part, an act or a decision of the procuring entity or

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<sup>5</sup> Here, insert post of entity at Contracting Party level who is responsible for registering suppliers as registered suppliers.

[Registrar] [Board], as the case may be, that is not in compliance with the provisions of this Act [other than any act or decision bringing a procurement contract into force];

- (d) overturn the award of a procurement contract which has entered into force in a manner that is not in compliance with the provisions of this Act and if the notice of the award of the procurement contract has been published, order the publication of a notice that the award has been overturned;
- (e) revise a decision of the procuring entity or the [Registrar] [Board], as the case may be, that is not in compliance with the provisions of this Act, other than any act or decision bringing a procurement contract into force;
- (f) confirm a decision of the procuring entity or [Registrar] [Board], as the case may be;
- (g) order that procurement proceedings be terminated;
- (h) dismiss the application and lift any suspension on the grounds that –
  - (i) the application is manifestly without merit;
  - (ii) the application was not presented in compliance with the relevant deadline set out in section 54 (3); or
  - (iii) the applicant is without standing;
- (i) require the payment of compensation for any –

- (i) reasonable costs incurred by the applicant as a result of an act or decision of or procedure followed by the procuring entity in the procurement proceedings or the [Registrar] [Board], as the case may be, that is not in compliance with the provisions of this Act; and
  - (ii) loss or damage suffered by the supplier, which shall be limited to the costs of the preparation of the bid or the costs relating the application, or both; or
- (j) take such other action or decision as it considers to be appropriate in the circumstances.

(3) The [*name of independent body*] shall no more than [ten working days] after its receipt of the application for review –

- (a) issue a notice, in writing, of its decision regarding the application to the applicant, the relevant procuring entity, and all other participants in the review proceedings and to all other participants in the procurement proceedings;
- (b) state the reasons for the decision;
- (c) notify the applicant, the procuring entity and all other participants in the procurement proceedings that any suspension in force during its deliberations is lifted; and

- (d) notify the procuring entity that the decision, the reasons for the decision and the application for review are to be included in the record of procurement proceedings.

**Appeals.**

57. (1) Subject to subsection (2), where –

- (a) an applicant is dissatisfied with the decision of [*name of independent body*] issued in response to an application for review; or
- (b) the [*name of independent body*] fails to issue a decision in accordance with section 56 (3) (a), (b) or (c),

the applicant may appeal to [*name of court*] within such time and in such manner as may be prescribed.

(2) An applicant may only appeal a decision of the [*name of independent body*] on grounds on which an application for review may be made pursuant to section 54 (1).

(3) At the hearing of an appeal the court may –

- (a) dismiss the appeal and confirm the [*name of independent body*]'s decision;
- (b) allow the appeal, set aside the decision of the [*name of independent body*] and direct that the [*name of independent body*] re-conduct its review of the matter in relation to which the application was made; or
- (c) allow the appeal and impose a substitution for the decision of [*name of independent body*].

(4) Upon arriving at a decision, the court shall notify the procuring entity of its decision for publication on the Notice Board.

#### **PART VII. *Suppliers Register***

**Appointment of [Registrar] [Board] and assistants.**

58. The Minister shall appoint a [Registrar] [Board] and such other public servants as the Minister may think fit to assist the [Registrar] [Board] at such remuneration as shall conform with the guidelines approved by the Minister responsible for the public service.

**Establishment and maintenance of Suppliers Register.**

59. The [Registrar] [Board] shall establish and maintain a register (to be known as the “Suppliers Register”) in which is set out the name, contact information and such other particulars as may be prescribed of all suppliers who –

- (a) have satisfied the prescribed minimum requirement to be considered capable of performing public procurement contracts for the provision of goods, services or works; and
- (b) are registered, under this Act, as suppliers of goods, services or works.

**Purpose of the Suppliers Register.**

60. (1) The purpose of the Suppliers Register is to –

- (a) enable procuring entities to identify suppliers who–
  - (i) are registered as suppliers of goods, suppliers of services or suppliers of works; and
  - (ii) have satisfied the prescribed minimum requirements to be considered capable of performing

contracts of the type for which they are registered; and

- (b) provide contact and other information about registered suppliers.

(2) The entry of a supplier's name on the Suppliers Register shall not be construed as an indicator that the supplier is suitable to participate in any particular public procurement opportunity.

**Application for registration on Suppliers Register.**

61. (1) A supplier who wishes to be entered on the Suppliers Register shall submit an application to the [Registrar] [Board] in the prescribed form and manner.

(2) Upon receipt of an application submitted pursuant to subsection (1), the [Registrar] [Board] shall consider the application and, thereafter, shall either register the applicant or refuse to register the applicant on grounds set out in section 63.

**Registration of suppliers.**

62. (1) In respect of every supplier whose application is successful, the following information shall be entered in the register upon the supplier's payment of the prescribed registration fee –

- (a) the name and contact address (including the electronic address, if available) of the supplier;
- (b) a statement of whether the supplier is registered as a supplier of goods, services or works or any combination of the three;
- (c) the date on which the supplier was registered; and
- (d) any other particulars that the Registrar considers are required under this Part or

under regulations made under a provision of this Part.

(2) The Registrar shall issue a unique registration number to each supplier who is registered under this Part.

**Grounds for refusal of application for registration.**

63. (1) The [Registrar] [Board] shall refuse to register a supplier as a registered supplier if the –

- (a) supplier fails to meet the prescribed minimum requirements;
- (b) [Registrar] [Board] reasonably believes that the supplier is not financially responsible in the performance of contracts having regard to the financial history of the –
  - (i) supplier or persons with a legal interest in the supplier; or
  - (ii) officers, directors or partners of the supplier, where the supplier is a corporation or partnership; or
- (c) [Registrar] [Board] reasonably believes that the supplier will not perform contracts to which this Act applies in accordance with the provisions of this Act or in the public interest having regard to the past conduct of the –
  - (i) supplier or persons with a legal interest in the supplier; or
  - (ii) officers, directors or partners of the supplier, where the supplier is a corporation or partnership.

(2) Where the [Registrar] [Board] decides to refuse an application for registration, [he] [it] shall, in writing, advise the supplier of the refusal and state the reasons for the refusal.

(3) A supplier whose application for registration has been refused shall not apply to the [Registrar] [Board] to be registered until at least [two years] have passed after the application was previously refused.

**Revocation of registration of a supplier.**

64. (1) Subject to the provisions of this section, the [Registrar] [Board] shall revoke the registration of a registered supplier where the [Registrar] [Board] is satisfied that the registered supplier –

- (a) was convicted of an offence contrary to the provisions of this Act; or
- (b) when making the application for registration, submitted information that is false, constitutes a misrepresentation or is materially inaccurate or incomplete; or
- (c) its employee or agent has directly or indirectly given to a current or former employee an offer of employment or any other thing of service or value, so as to influence an act or decision of the [Registrar] [Board] in connection with registration of the supplier as a registered supplier.

(2) Subject to subsection (3), where the information submitted by a supplier is inaccurate or incomplete in a non-material particular, the [Registrar] [Board] –

- (a) shall not revoke the registration of the registered supplier; and

(b) shall request that the supplier correct the information.

(3) Notwithstanding subsection (2), where the –

(a) [Registrar] [Board] requests that a registered supplier remedy a non-material particular that is inaccurate or incomplete; and

(b) registered supplier fails to promptly comply with the request,

the [Registrar] [Board] shall revoke the registration.

(4) Prior to exercising his power under subsection (1), the [Registrar] [Board] shall –

(a) serve, on the registered supplier, a notice –

(i) informing him of the [Registrar's] [Board's] intention to revoke the registered supplier's registration; and

(ii) setting out the reasons for the intention; and

(b) notify the registered supplier that if his registration is revoked he is entitled to challenge the decision in accordance with the provisions of Part VI.

(5) Where a registered supplier who has been notified under subsection (2) and wishes to challenge the decision to revoke his registration Part VI shall apply *mutates mutandis*.

(6) Where no request is made within the prescribed deadline the –

- (a) registered supplier shall be deemed to have no objection to the revocation; and
- (b) [Registrar] [Board] shall –
  - (i) revoke the registration; and
  - (ii) notify the relevant supplier, in writing, that he is no longer a registered supplier under this Act.

**Submission of Suppliers Register for publication on Community Notice Board.**

65. (1) The Registrar shall no later than [*name of month*] of each year publish an electronic copy of the Suppliers Register on the Notice Board.

(2) Where a registered supplier’s registration is revoked, the revocation shall be published on the Notice Board.

**PART VIII. *Civil Liability and Offences***

*Civil Liability*

**Civil liability.**

66. (1) A person who -

- (a) contravenes a provision of this Act;
- (b) aids, abets, counsels or procures the contravention of a provision of this Act; or
- (c) conspires with any person to contravene a provision of this Act,

is liable in damages for any reasonably foreseeable loss caused to any other person by such conduct.

(2) No action shall be brought under subsection (1) after the expiration of [ ] years from the date on which the cause of action arose.

**Compensation order on conviction.**

67. (1) Where a person is convicted of an offence under this Act, the court may, in addition to any penalty imposed, order the convicted person to pay a fixed sum as compensation to

any person who has suffered loss as a result of the commission of the offence.

(2) An order under subsection (1) shall be without prejudice to any other remedy available under any law to the person who has suffered loss.

(3) Subject to subsection (4), the court may make an order under subsection (1) of its own motion or upon the application of any person who has suffered loss.

(4) A person who suffered loss as a result of the commission of an offence under this Act may apply to a court for an order under subsection (1) at any time before the sentence is passed on the person against whom the order is sought.

### *Offences*

**Offence involving collusion.**

68. (1) A person who -

- (a) is involved in or participates in bid rigging;  
or
- (b) directly or indirectly influences or attempts to influence procurement proceedings in order to obtain an unfair advantage in the award of a public procurement contract,

commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

(2) A person who alters a document with intent to influence the outcome of procurement proceedings commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

**Unlawfully influencing a public officer.**

69. (1) A person who, with intent to gain an advantage or a concession for himself or another person, offers a gift of money or other valuable thing to -

- (a) a member, an employee or an officer of a procuring entity or an associate of a member, an employee or an officer;
- (b) a consultant who provides a service to a procuring entity or an associate thereof; or
- (c) a person who provides a service to a procuring entity or an associate thereof,

commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

(2) A person who, with intent to gain an advantage or a concession for himself or another person, approaches -

- (a) a member, an employee or an officer of a procuring entity or an associate of a member, an employee or an officer;
- (b) a consultant who provides a service to a procuring entity or an associate thereof; or
- (c) a person who provides a service to a procuring entity or an associate thereof,

with respect to a matter that is before the procuring entity or that is expected to come before the procuring entity commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

(3) A member, an employee or an officer of a procuring entity who accepts -

- (a) a gratuity, in any form;
- (b) an offer of employment;
- (c) service; or
- (d) anything of value,

as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with any procurement commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

(4) Where a member, an employee or an officer of a procuring entity is convicted of an offence under subsection (3), the procuring entity shall promptly -

- (a) reject the bid of a supplier who gave, agreed to give, or offered directly or indirectly an inducement referred to in subsection (3); and
- (b) recommend that supplier's registration be revoked, if the supplier is registered on the Suppliers Register.

(5) In this section "associate" when used to indicate a relationship means –

- (a) an entity of which a member, an employee, an officer, a consultant or other person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares, carrying more than [ ] per cent of the voting rights;
- (b) a partner of a member, an employee, an officer, a consultant or other person acting on behalf of the partnership of which they are both partners;
- (c) a trust or estate in which a member, an employee, an officer, a consultant or other person has substantial beneficial interest or in respect of which he serves as a trustee, a legal representative or in a similar capacity;

- (d) a spouse or child of a member, an employee, an officer, a consultant or other person; or
- (e) a relative of a member, an employee, an officer, a consultant or other person, if the relative has the same residential address as the member, employee, officer, consultant or other person.

**Tampering with records or other documents.**

70. A person who –

- (a) falsifies, destroys, injures, defaces, removes or conceals any record, register or other document required to be kept under this Act, or any duly authorised or certified extract or copy thereof; or
- (b) certifies any document to be a copy or extract of any record, register or other document referred to in paragraph (a), knowing such document to be false in a material particular,

commits an offence and is liable to a fine of [ ] dollars or to imprisonment for [ ] years or both.

**Commission of offence by body corporate.**

71. (1) Subject to subsection (2), where a body corporate commits an offence against this Act, every director, manager, secretary or other similar officer concerned with the management of the body corporate is a party to the offence and is liable for the offence and the penalty provided in relation thereto whether or not the body corporate is convicted of the offence.

(2) A director, manager, secretary or similar officer concerned with the management of a body corporate is liable for an offence only if the court is satisfied that –

- (a) the offence was committed with his connivance; or
- (b) he had not exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his functions and to all the circumstances of the case.

**Protection of acts  
done in good faith.**

72. (1) No suit, prosecution or other legal proceedings shall lie against the Government, any officer of the Government or any other person exercising any power or performing any duty under this Act in respect of anything which, in good faith, is done, intended to be done or omitted in pursuance of this Act or any rules or orders made thereunder, or in respect of any publication by or under the authority of the Government, such officer or such other person of any report, paper or proceedings.

(2) No suit or their legal proceedings shall lie against a person referred to in subsection (1) or the Government for any damage, loss or injury caused or likely to be caused by anything which, in good faith, is done, intended to be done or omitted in pursuance of this Act or any rule or order made thereunder.

**PART IX. *Miscellaneous***

**Regulations.**

73. (1) The Minister may, on the recommendation of [ ], make regulations to give full effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, regulations may prescribe –

- (a) the form and manner in which bidding documents and instructions for participating in public procurement opportunities are issued;

- (b) procurement standard operating procedures;
- (c) the Community Standard Bidding Documents;
- (d) the grounds upon which a procuring entity shall not accept a bid;
- (e) the form and manner in which a supplier may apply to become a registered supplier;
- (f) the minimum requirements that a supplier who wishes to be registered as a supplier shall satisfy;
- (g) the particulars to be included in relation to each supplier who is registered as a supplier on the Suppliers Register;
- (h) the process for the revocation of a registered supplier's registration;
- (i) the manner in which a [*name of independent body*] shall consider applications for review;
- (j) the time and manner in which an applicant may appeal to the [*name of court*] regarding a decision of the [*name of independent body*]; and
- (k) any other thing required to be prescribed under this Act.

(3) Regulations made under this section shall be subject to affirmative resolution.

**Savings and Transitional.**

74. (1) Any powers and duties conferred or imposed by this Act are in addition to, and not in derogation of any other

powers and duties conferred or imposed by any other law and, subject to any express provisions of this Act, all such other powers and duties may be exercised and performed in the same manner as if this Act had not been enacted.

(2) Any procurement proceedings that are –

(a) commenced under an existing law before the appointed day; and

(b) not concluded before the appointed day,

shall continue after the appointed day and shall be concluded as if this Act had not been enacted.

(3) To the extent to which a transaction that is taking place during the course of a procurement proceeding referred to in subsection (2) would have been valid prior to the commencement of this Act, the transaction shall be valid for the purposes of this Act.

(4) If, on the appointed day, a matter relating to public procurement is pending before any court or tribunal, the matter shall continue to be dealt with and brought to a conclusion as if this Act had not been enacted.

(5) Nothing in this Act shall be construed to affect any civil or criminal liability incurred by any person under any law existing before the appointed day.

**Conflict of laws.**

75. To the extent that there is a conflict between this Act and any other enactment which restricts or has the effect of restricting the categories of suppliers eligible to qualify to submit bids or to be awarded contracts to suppliers who are either nationals of or registered in [*name of Contracting Party*], this Act shall prevail.

**Act binds the [Crown]  
[State].**

76. This Act binds the [Crown] [State].

FIRST SCHEDULE (Section 4 (1))

The threshold values at and above which public procurement contracts are governed by this Act are as follows -

Thresholds

Goods: USD \$150,000.00

Services: USD \$150,000.00

Works: USD [\$3,000,000.00] [\$4,000,000.00]<sup>6</sup>

A combination of goods and works or services and works USD [\$3,000,000.00] [\$4,000,000.00].

A combination of goods and services USD\$150,000.00

SECOND SCHEDULE

EXCLUDED TYPES OF PUBLIC PROCUREMENT (Section 4 (2) (d))

The table, below, indicates the types public procurement contracts for the procurement of goods, services and works that are excluded from the scope of this Act.

| <b>Goods Contracts</b>  | <b>Services Contracts</b>   | <b>Works Contracts</b> |
|---|---|------------------------|
| Works of art, cultural performances, products associated with creative expression for cultural performances | Works of art, cultural performances, products associated with creative expression for cultural performances |                        |

<sup>6</sup> USD \$3,000,000.00 is the threshold for Contracting Parties that are Member States referred to as more developed countries in Article 4 of the Revised Treaty. USD \$4,000,000.00 is the threshold for Contracting Parties that are Member States referred to as less developed countries in Article 4 of the Revised Treaty.

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

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

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

THIRD SCHEDULE (Section 53 (2))

*Constitution and Procedure of the*

*[name of independent body]*

**Appointment of members.**

1. (1) The Minister, on the advice of [ ], shall appoint the members of the *[name of independent body]*.

(2) The *[name of independent body]* shall consist of *[number]* members including –

(a) an attorney –at-law who has practiced for a period of not less than [ ] years or a retired Judge, who shall be the chairman; and

(b) persons who have among them qualifications and wide experience in matters involving procurement, public administration, law, economics, finance or engineering.

(3) A person who has been convicted of an offence involving fraud, dishonesty or moral turpitude is disqualified from being appointed as a member of *[name of independent body]*.

(4) The appointment of each member of [*name of independent body*] shall be evidenced by instrument in writing.

**Tenure of office.**

2. (1) Subject to the provisions of this Schedule –

(a) the Chairman shall hold office for a period not exceeding [ ] years; and

(b) the other members shall hold office for a period not exceeding [ ] years.

(2) The Chairman and other members of [*name of independent body*] shall be eligible for reappointment, but any such re-appointment shall be for no more than [*number*] further terms.

**Acting appointments.**

3. Where the Chairman or any other member of [*name of independent body*] is absent or otherwise unable to perform his functions under this Act, the Minister may appoint any person to act in the place of the Chairman or other member.

**Resignations.**

4. (1) Any member of [*name of independent body*], other than the Chairman, may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman.

(2) On the date of the Chairman's receipt of the instrument referred to in subsection (1), the member shall cease to be a member of [*name of independent body*].

(3) The Chairman may, at any time, resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect from the date of the Minister's receipt of the instrument of resignation.

**Revocation of appointment.**

5. (1) The Minister may, at any time, revoke the appointment of the Chairman or any other member of [*name of*

*independent body*] on any of the grounds set out in paragraph (2).

(2) The Minister may revoke the appointment of a person referred to in subparagraph (1) if the person –

- (a) is unable to perform the functions of the office by reason of infirmity of mind or body;
- (b) is adjudged a bankrupt or deemed to be insolvent;
- (c) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (d) has engaged or is engaging in such activities that are reasonably considered prejudicial to the interest of the [*name of independent body*];
- (e) fails to attend five consecutive meetings of [*name of independent body*] without the express permission of the Chairman; or
- (f) fails to carry out the functions of his office as specified under this Act.

**Filling of vacancy.**

6. If a vacancy occurs in the membership of the [*name of independent body*] the vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

**Publication of membership.**

7. The names of the members of [*name of independent body*], as first constituted and in relation to every change of membership thereof, shall be published in the *Gazette*.

**Authentication of documents.**

8. All documents made by [*name of independent body*] and all decisions thereof may be signified under the hand of the Chairman or any member of [*name of independent body*] authorised to act in that behalf.

**Procedure.**

9. (1) The [*name of independent body*] shall meet at such times as shall be necessary and expedient for the transaction of business.

(2) Meetings shall be held on such days and such times and places as the [*name of independent body*] shall determine.

(3) The [*name of independent body*] may meet in panels of not less than three members to hear and determine applications made under section 54.

(4) Where a panel does not include the Chairman, the members of the panel shall elect one of their number to be the chairman of the panel and the chairman of the panel shall have an original and a casting vote in any case in which the voting is equal.

(5) Except in the case of a panel which does not include the Chairman, the Chairman or, in his absence any other person appointed to act temporarily as the Chairman, shall –

(a) preside at the meetings of the [*name of independent body*]; and

(b) have a casting vote in any case in which the voting is equal.

(6) The quorum at any meeting of [*name of independent body*] shall be three.

(7) Decisions of [*name of independent body*] or any panel thereof shall be by a majority of votes.

(8) A full record of all proceedings of [*name of independent body*] shall be kept and, at the request of any participant in proceedings held under section 56, such record or any part thereof shall be made available to the participant.

(9) Subject to the provisions of this Act, the [*name of independent body*] may regulate its own proceedings.

**Remuneration of members.**

10. The Chairman and other members of [*name of independent body*] shall be paid such remuneration (whether by honoraria or allowances) as shall conform with the guidelines approved by the Minister responsible for the public service.

**Protection of members.**

11. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of [*name of independent body*] in respect of any act done in good faith in pursuance or execution or intended execution of the provisions of this Act.

**Disclosure of interest.**

12. (1) Any member of [*name of independent body*] who has an interest, directly or indirectly, in a matter in respect of which an application for review is made to [*name of independent body*] –

(a) shall disclose the nature of his interest to [*name of independent body*]; and

(b) shall not participate in any deliberations or decisions of [*name of independent body*] with respect to the review.

(2) Subject to subsection (3), it is sufficient, for the purposes of disclosure of an interest in a matter under review, for a member to notify a meeting of [*name of independent body*], whether orally or in writing, of his interest.

(3) Where a member notifies the other members of [*name of independent body*], in writing, of his interest in a matter, the written notice shall be read at a meeting of [*name of independent body*] and taken into consideration.