
COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT No. 11 2012

I assent**E.T. WILLIAMS**
*President*21st January, 2013

AN ACT to provide for the general requirements in relation to public procurement, for exempt procurement, for the establishment of procurement authorities, for the procurement procedures and the award of contract, for the administration of contracts, for the suspension and debarment of suppliers and contractors, for the assessment of procurement, for the review process, and to provide for connected and incidental matters.

(Gazetted 31st January, 2013.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PART I**PRELIMINARY**

1. (1) This Act may be cited as the -

Short title and
commencement.

**PROCUREMENT AND CONTRACT
ADMINISTRATION ACT, 2012.**

(2) This Act shall come into force on such day as the Minister may, by Order published in the *Gazette*, appoint except that a later day may be appointed for sections 26, 27 and 28 to come into force than that appointed for the remainder of this Act.

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

Interpretation.

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

“accounting officer” has the meaning assigned to it under the Finance (Administration) Act;

“advantage” includes an offer of employment;

“attorney-at-law” includes a barrister and a solicitor;

“agreement” means an agreement between the Government and another person in a form prescribed by the Minister;

“bidder” includes a person who submits a proposal or quotation in response to a request for proposals or quotations;

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

“Board” means the Central Procurement Board established under section 7;

“Central Procurement Unit” means the Central Procurement Unit established under section 13;

“Chief Executive Officer” in relation to a statutory body, includes the Director-General and Managing Director of the statutory body;

No. 4 of 1994.

“Committee of Permanent Secretaries” means the Committee of Permanent Secretaries established under section 18 of the Public Service Act; Chap. 23:01

“confidential information” means any information that is—

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

“co-operative procurement agreement” has the meaning assigned to it in section 23;

“contract” includes an agreement evidenced by the issue of a purchase order;

“contract administrator” means the accounting officer or the delegate of the accounting officer referred to in section 64;

“corruption” includes, the giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“department” includes a non-ministerial department, a branch of a department and a Ministry;

“departmental procurement committee” means a departmental procurement committee established under section 16;

“disposal” means the divestiture of public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, auction or any combination however classified, other than those regulated by any other written law;

“donor” includes any organization which grants money to the Government;

“employee” includes a public officer;

“financial year” means the period of twelve months beginning the 1st day of July in any year;

“Financial Secretary” includes a public officer acting in the post of Financial Secretary;

“fraudulent practice” includes—

- (a) a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity; and
- (b) collusive practices amongst bidders, before or after bid submission, designed to establish bid prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;

“goods” includes—

- (a) tangible personal property and software, whether on a CD-ROM or other tangible medium or as a download from the internet or otherwise; and
- (b) services incidental to the supply of the goods if the value of those services based on a breakdown of the estimate of the amount of the contract award does not exceed the value of the goods;

“Government” means the Government of the Commonwealth of Dominica;

“invitation to pre-qualify” includes any document, whether attached to or incorporated by reference, in the invitation to pre-qualify;

“invitation to bid” includes any document, whether attached to or incorporated by reference, in the invitation to bid;

“list of pre-qualified small suppliers” means the list of pre-qualified small suppliers referred to in section 9(1)(c);

“Member State”, in relation to the OECS, means a state specified in the First Schedule;

First Schedule.

“Minister” means Minister responsible for Finance;

“misconduct”, in relation to a bidder, includes price fixing, breach of confidentiality, a pattern of under-pricing, an act of corruption and any misconduct relating to the responsibilities of the bidder;

“OECS” means the Organization of Eastern Caribbean States established by the Treaty signed on 18 June 1981 at Basseterre, St. Kitts;

“open competitive bidding” means the process by which a procuring entity, on the basis of previously defined criteria, effects public procurements by offering to every interested bidder equal simultaneous information and opportunity to offer the goods, services or works needed;

“Permanent Secretary” includes a public officer acting in the post of Permanent Secretary;

“person” includes the assigns and heirs, executors and administrators or other legal representatives of a person;

“prescribed” means prescribed by Regulations;

“procurement” includes a direct award, a lease, rental or any activity or process related to the purchase of goods, services or works;

“procurement authority”, in relation to source selection, bidding process and review process, means—

(a) the Board;

(b) the Chief Procurement Officer; or

(c) in the case of small procurements by a procuring entity, the accounting officer of the procuring entity;

“procurement officer”, in relation to the procurement of goods, services or works, includes any person authorized to act on behalf of the person designated under section 18;

“procuring entity” includes a Ministry, department of the Government, local authority and statutory body for which a procurement is made;

“public procurement” includes procurement made out of public funds by the public sector;

“purchase” includes rent, lease or otherwise acquire;

“qualified”, in relation to suppliers, contractors and service providers, means having the capability, reliability, legal capacity and integrity to perform the procurement contract and being in good standing with a procuring entity;

“request for proposals” includes any document, whether attached to or incorporated by reference, in the request for proposals;

“request for quotations” includes any document, whether attached

to or incorporated by reference, in request for quotations;

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

“restricted bidding” has the meaning assigned to it in section 33;

“Regulations” means regulations made under this Act;

“Review Commission” means a Procurement Review Commission appointed under section 90;

“Secretary” means the secretary to the Board appointed under section 10;

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

- (a) an object of procurement;
- (b) reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services if the value of those goods does not exceed the value of the services;
- (c) the supply of professional services or other labour, time or effort;
- (d) subject to section 21(1)(d), the supply of electricity, telecommunications, water and other similar services;
- (e) goods, products or other tangible property supplied in connection with electricity, telecommunications, water and other similar services;

(f) labour, time or effort, not involving furnishing a tangible end-product other than a report or goods or other tangible property produced or supplied incidental to the labour, time or effort; and

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

but does not include engaging an employee and any specified professional service or other service exempted by Regulations;

“small procurement” has the meaning assigned to it in section 40;

“specified professional services” means the professional services of—

(a) an accountant;

(b) an actuary;

(c) an attorney-at-law;

(d) a land surveyor;

(e) a physician;

(f) a dentist; or

(g) any other prescribed professional,

but does not include an architect or engineer;

“Supreme Court Civil Procedure Rules 2000” means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

“two-stage bidding process” means a competitive sealed bidding process in which, in the first stage, bidders are invited to

submit bids based on an invitation for bids with un-priced technical specifications on the understanding that, in the second stage, the qualified bidders who submitted bids in the first stage will be invited to submit priced bids;

“Treaty” means the Treaty establishing the Organization of Eastern Caribbean States;

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

“works” includes—

- (a) the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building and structure; and
- (b) services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection with the works if the value of the services based on a breakdown of the estimated value of the contract does not exceed the value of the works.

(2) References to “participating in procurement proceedings” shall be construed to include references to—

- (a) submitting a bid, proposal or quotation;
- (b) making an offer for the procurement for goods, services or works; and
- (c) executing a procurement contract.

(3) If a term is defined in this Act or the Regulations, other forms of the same term have corresponding meanings.

(4) This Act and the Regulations shall be so interpreted as not to affect the common law of contract.

(5) When under this Act or the Regulations a public officer delegates the performance of his duties or the exercise of his powers to another public officer, the delegate, in addition to the public officer making the delegation, is liable for the proper performance of the duty or the proper exercise of the power that is delegated.

Purposes of Act.

3. The purposes of this Act are—

- (a) to simplify, clarify and modernize public procurement;
- (b) to make public procurement proceedings transparent;
- (c) to require competition in the public procurement process except to the extent that the circumstance, value, complexity, nature or size of the procurement makes competition impracticable;
- (d) to foster and encourage broad participation in the procurement proceedings by persons in Dominica;
- (e) to provide for increased public confidence in the procurement procedures followed by the procuring entities;
- (f) to ensure fair and equitable treatment of all persons who deal with the public procurement system;
- (g) to provide increased economy in procurement activities;

(h) to ensure that the best value is obtained for the procurement dollar; and

(i) to provide safeguards for the maintenance of the quality, integrity and transparency of the public procurement system.

4. This Act applies to every department of the Government, local authority and statutory body. Application.

5. (1) Every procuring entity shall ensure that its procurement activities and decisions are based on the principles of fairness, competition, value for money, transparency, accountability and demand aggregation. Principles of public procurement.

(2) Without prejudice to the generality of subsection (1), every procuring entity—

(a) is accountable for the results of its procurement decisions and the appropriateness of the procurement process followed;

(b) shall ensure that—

(i) its procurements are managed consistent with the procurement policy and international obligations of the Government,

(ii) it receives the best value for money spent on procurement contracts,

(iii) procurement and disposal opportunities are competed, where practical, and

(iv) in relation to every procurement of goods, services or works, the cost of the procurement process is appropriate in relation to the value and complexity of that procurement; and

(c) shall ensure that its procurements are made—

- (i) in a manner which is transparent, timely, equitable for ensuring accountability and in conformity with this Act and the Regulations,
- (ii) with the aim of achieving value for money and fitness for purpose,
- (iii) in a manner which promotes competition, economy and efficiency,
- (iv) in accordance with the procedures and with time-line set out in this Act and the Regulations, and
- (v) in accordance with the Manual on Public Procurement Procedures and guidelines issued, from time to time, by the Board.

Conflicts with other enactments.

6. (1) If there is a conflict between this Act or the Regulations and any other enactment, in matters relating to public procurement and disposal, this Act or the Regulations shall prevail.

(2) For greater certainty, a provision of an enactment which provides for a person or body to approve any work or expenditure shall not be construed as giving that person or body any power with respect to procurement proceedings.

PART II

ADMINISTRATION OF THE PROCUREMENT SYSTEM

Division 1

Responsibilities of Minister

Responsibilities and powers of Minister.

7. (1) The Minister is responsible for—

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- (a) formulating policies relating to public procurement in Dominica; and
- (b) the overall administration of this Act.
- (2) The Minister shall exercise the powers conferred on him under this Act in a manner so as to ensure the effective execution of the public procurement policy of the Government.
- (3) The Minister may, in writing, delegate his powers to the Board.

Division 2

Central Procurement Board

8. (1) There is hereby established a Central Procurement Board comprising—

Establishment of Central Procurement Board.

- (a) the Financial Secretary or his nominee from the Ministry of Finance, *ex officio*;
- (b) the Director of Trade, *ex officio*;
- (c) a legal officer from the Ministry of Legal Affairs nominated by the Attorney General, *ex officio*;
- (d) a senior officer of the Ministry of Finance nominated by the Minister, *ex officio*;
- (e) the Chief Technical Officer of the Ministry of Works, *ex officio*; and
- (f) Dominica Association of Industry and Commerce.
- (2) A member may, in writing, designate—

(a) subject to paragraph (b), a public officer eligible for appointment to the Board; and

(b) in the case of a member referred to in subsection (1)(f), any other person eligible for appointment to the Board,

to represent the member at any meeting of the Board, but the designate of an *ex officio* member is not entitled to sit as chairperson or deputy chairperson of such meeting if any *ex officio* member is present.

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

(4) A person nominated under subsection (1)(f) shall hold office for 2 years and previous appointment under subsection (1)(f) does not affect the eligibility of the person to be reappointed as a member.

(5) The member referred to in subsection (1)(f) is entitled to be paid such remuneration and to be reimbursed for such reasonable expenses as the Minister may approve.

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

(a) a vacancy on the Board; or

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

(7) Where a matter respecting the procurement of goods, services or works by a procuring entity is before the Board for consideration, the Board may invite a representative of the procuring entity to address it on the matter as it considers fit.

(8) Subject to this Division, the Second Schedule has effect to the operation and procedures of the Board. Second Schedule.

9. (1) The Financial Secretary or his nominee is chairperson of the Board. Chairperson and deputy chairperson.

(2) The Board may designate an *ex officio* member other than the Financial Secretary to be deputy chairperson.

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

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

10. (1) The Board is responsible for—

Responsibilities,
functions and powers of
Board.

- (a) subject to section 7, the general administration of this Act;
- (b) subject to the approval of the Minister, issuing directives, procedures, instructions and technical notes for the implementation of this Act;
- (c) preparing and maintaining a list of pre-qualified small suppliers to whom requests for quotations may be issued for the procurement of goods, services or works or classes of goods, services or works;
- (d) preparing and maintaining, as it considers necessary, lists of pre-qualified suppliers or contractors or categories of pre-qualified suppliers or contractors to whom invitations to bid or

requests for proposals or quotations may be issued for the procurement of goods, services or works or classes of goods, services or works;

- (e) approving major or complex procurements in accordance with this Act and the Regulations;
- (f) ensuring that procurement contracts for goods, services and works are designed to provide the best value for the procuring entities;
- (g) the suspension and debarment of suppliers, contractors and service providers under this Act;
- (h) developing and issuing a Manual on Public Procurement Procedures with respect to the application of this Act and the Regulations; and
- (i) making rules governing the procedures of technical and bid evaluation committees appointed under this Act.

(2) The Board shall provide the Minister with support and advice respecting the public procurement policy.

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

- (a) call for such information and documents as it may require from any procuring entity;
- (b) examine such records or other documents and take copies or extracts from them;
- (c) commission any study relevant to the determination of the award of major contracts;

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- (d) request any professional or technical assistance from any appropriate person within or outside Dominica; or
- (e) do all such acts and things as it may consider incidental or conducive to the exercise of its powers.
- (4) For the purpose of ensuring that suppliers and contractors of specialised goods and services have and maintain the necessary technical and financial capability to provide such goods and services, the Board shall, subject to section 40(5), prepare and maintain the lists referred to in subsections (1)(b) and (c) in such manner as may be prescribed.
- (5) The Board shall, on or about the 31st day of March and on or about the 30th day of September in each year, publish the lists referred to in subsections (1)(c) and (d) in the *Gazette* and any newspaper in general circulation in Dominica.
- (6) The Board may co-opt other persons capable of assisting it with expert advice, but no such person shall have the right to vote on any matter considered by the Board.
- (7) The Board shall strive to achieve the highest standards of transparency and equity in the execution of its duties, taking into account—
- (a) the evaluation criteria and methodology disclosed in the bidding documents;
 - (b) the qualification criteria and methodology disclosed in the bidding documents;
 - (c) equality of opportunity to all bidders;
 - (d) fairness of treatment to all parties;

(e) the need to obtain the best value for money in terms of price, quality and delivery, having regard to published specifications; and

(f) transparency of processes and decision-making.

Second Schedule.

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

Secretary to the Board.

11. (1) The Secretary to the Board—

(a) shall be the Chief Procurement Officer; and

(b) is entitled to participate in the meetings of the Board, but does not have the right to vote.

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

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

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

(3) The Secretary shall make the lists referred to in sections 10(1)(c) and (d) available to procurement officers.

(4) Where the Secretary has notice that—

(a) a supplier, contractor or service provider fails to comply with this Act, the Regulations or any guidelines issued by the Financial Secretary; or

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

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

12. (1) The Board shall—

Annual report.

- (a) not later than six months after the close of each financial year, prepare an annual report of its activities for that financial year;
- (b) simultaneously submit a copy of the report to the Director of Audit and the Minister; and
- (c) immediately after the expiry of thirty days from the date of submission of the copy of the report to the Minister, cause the report to be published on the website of the Government; and
- (d) subject to subsection (2), publish in the print media a notice of the publication of the report on the website of the Government.

(2) The notice referred to in subsection (1)(d) shall specify the offices and the times at and during which any member of the public may view or purchase a copy of the report.

(3) The Minister shall lay the report before the House of Assembly immediately after his receipt of the report or, if the House of Assembly is not sitting, on the first day after his receipt of the report on which the House of Assembly is sitting.

(4) If the Minister fails to lay a report before the House of Assembly in accordance with subsection (3) the Director of Audit shall transmit copies of the report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.

Division 3*Central Procurement Unit*

Establishment of Central
Procurement Unit

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

Responsibilities, duties
and powers of Central
Procurement Unit.

14. The Central Procurement Unit is responsible for—

- (a) assisting the procurement authorities and procuring entities in relation to the procurement system of Dominica;
- (b) monitoring the operation of the public procurement process and compliance with this Act and the Regulations;
- (c) providing procurement information and managing statistical data bases;
- (d) developing and supporting implementation of initiatives for improvements of the public procurement system;
- (e) providing implementing tools and documents to support training and capacity development of procurement authorities, procuring entities and procurement officials;
- (f) enquiring and reporting on procurement and contract administration;
- (g) planning, managing and fully documenting the methods, procedures and processes used to procure goods, services and works in accordance with this Act and the Regulations;

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- (h) ensuring that all procurements by procurement authorities and entities are consistent with this Act, the Regulations and the procurement policy and international obligations of the Government;
 - (i) making procurements of goods, services and works as specified in this Act; and
 - (j) carrying out such other functions as specified in this Act.

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

Chief Procurement
Officer.

- (2) The Chief Procurement Officer is—
 - (a) subject to section 7 and the directions of the Board, responsible for the overall supervision of the Central Procurement Unit; and
 - (b) subject to section 9 and Division 1 of this Part, responsible for the effective operation of the Central Procurement Unit and general administration of this Act.
- (3) The Chief Procurement Officer—
 - (a) may, subject to the approval of the Board, issue guidelines with respect to the application of this Act and the Regulations;
 - (b) shall advise the Board whether he considers a proposed procurement one for large or complex works and therefore one requiring the establishment of a technical committee;
 - (c) shall, at all times, have access to all procuring

entities or places where procurement activities take place; and

(d) may require any procurement officer to furnish any information and provide access to any document which the Chief Procurement Officer considers necessary for the purposes of section 14(f).

(4) In the exercise of his duties and powers under this Act, the Chief Procurement Officer shall have regard to—

(a) any issue and problem—

(i) respecting procurement which has arisen or is likely to arise, or

(ii) identified in the report of the Director of Audit for the previous financial year, if any; and

(b) the cost and other measures necessary to address any issue or problem referred to in paragraph (a).

(5) Where a report is prepared under section 14(f), the Chief Procurement Officer shall submit to the Board a copy of the report.

Division 4

Departmental procurement authorities

Departmental
procurement authorities.

16. (1) Subject to this section, the Chief Procurement Officer may, at the request of the accounting officer of a department, establish a departmental procurement committee for the department comprising—

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- (a) two public officers nominated by the accounting officer; and
- (b) a representative of the Ministry of Finance who shall be a public officer.
- (2) Every departmental procurement committee—
- (a) shall be established by the signature of a Letter of Understanding by the chairperson of the Board; and
- (b) shall, not later than the 30th day of September in each year, prepare and submit to the Chief Procurement Officer a report of its activities in respect of the immediately preceding financial year.
- (3) The Letter of Understanding shall contain such terms and conditions, as the Board considers necessary, respecting the delegation of authority to the departmental procurement committee.
- (4) The Chief Procurement Officer shall —
- (a) after consulting with the relevant accounting officer, appoint a person as chairman of the departmental procurement committee; and
- (b) appoint a public officer approved by the accounting officer concerned as secretary to the departmental procurement committee.
- (5) The Board may give a departmental procurement committee such directions with regard to carrying out its responsibilities and the exercise of its powers as the Board considers appropriate.

(6) Subject to the directions referred to in subsection (5)—

- (a) the departmental procurement committee has, in relation to procurement delegated to it, all the responsibilities and powers of the Board; and
- (b) the secretary to the departmental procurement committee has, in relation to procurements delegated by the Board, the responsibilities of the Secretary under section 12.

Division 5

Accounting and Procurement Officers

Accounting officers.

17. (1) The accounting officer of a procuring entity shall be -

- (a) subject to paragraphs (b) and (c), the person charged with the immediate supervision of the conduct of all procurement processes for the procuring entity;
- (b) in the case of a Ministry, the Permanent Secretary; and
- (c) in the case of an extra-ministerial department or a statutory body, the Chief Executive Officer or an officer of co-ordinate responsibility.

(2) Subject to Divisions 3 and 4 of this Part, the accounting officer of a procuring entity shall, in relation to procurements by the procuring entity, be responsible for—

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

(b) the planning and organization of bids, the evaluation of bids and the execution of procurements; and

(c) ensuring that -

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

(ii) adequate appropriation is specifically provided in the annual budget for procurement by the procuring entity, and

(iii) the procuring entity does not evade an appropriate procurement procedure by the reduction of the value of procurements or by the splitting of procurements.

(3) Where -

(a) any variation in a contract price, subsequent to the conclusion of a procurement contract entered into by a procuring entity, causes the total contract amount to exceed the prescribed amount by more than twenty per cent; or

(b) the lowest evaluated bid submitted in response to an invitation or request made by a procuring entity exceeds the prescribed amount,

the accounting officer of the procuring entity shall refer the matter together with all the bidding documents and, where applicable, the contract documents to the Board for approval.

(4) The procuring entity shall -

(a) not later than the 30th day of September in each year, prepare an annual report respecting its

activities for the immediately preceding financial year; and

(b) submit to the Chief Procurement Officer a copy of the report.

(5) For the avoidance of doubt, the duties and powers specified in this Act in respect of the accounting officer in a department of the Government are in addition to the duties of the accounting officer under the Finance (Administration) Act.

Procurement officers.

18. (1) The Board shall, with the approval of the relevant accounting officers, designate public officers as procurement officers for procurements by procuring entities and departmental procurement committees.

(2) Every procurement officer shall maintain accurate and up-to-date procurement document files, that is to say, record of the information respecting the procurement of goods, services or works by the procuring entity or, as the case may be, the department.

(3) The records of every procurement of goods, services or works shall contain -

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

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

(c) the contract number;

(d) the name of the contractor;

-
- (e) the name of the officer or the contractor who signed the contract;
 - (f) the original amount of the contract;
 - (g) where applicable, the particulars of the performance security furnished by the contractor;
 - (h) the amount, if any, of the contract price which is retained as security and the period for which it is retained;
 - (i) the dates of commencement and completion of the contract; and
 - (j) particulars of any variation in the contract, progress payments, final payment, change orders, penalties deducted and other similar information.

Division 6

Technical and Bid Evaluation Committees

19. (1) Notwithstanding section 9(2)(d) and 10(5), the Board may appoint a technical committee as the Board considers necessary, either generally or with respect to a specific procurement to furnish advice to the Board, the Chief Procurement Officer or any procuring entity respecting -

Technical committees.

- (a) any bid, proposal or quotation submitted in response to an invitation to bid or request for proposals or quotations; or
- (b) the pre-qualification of suppliers, contractors and service providers.

(2) A technical committee may consist of members of the Board or individuals who are not members of the Board..

(3) The Board may make rules governing the procedure of the technical committee.

Bid evaluation committees.

20. (1) The Chief Procurement Officer shall, in order to evaluate bids, proposals or quotations, set up an *ad hoc* bid evaluation committee, selected from the list of qualified and independent evaluators kept and maintained by the Board.

(2) The bid evaluation committee shall prepare, and submit to the Chief Procurement Officer, an evaluation report -

(a) detailing the examination and evaluation of bids, proposals or quotations; and

(b) identifying the lowest evaluated bid, proposals or quotations that meet the evaluation or qualification criteria.

(3) In the exercise of its function, the bid evaluation committee -

(a) shall act without fear or favour; and

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

PART III

EXEMPTIONS

Procurements exempt under the Act.

21. (1) Subject to this Part, the following procurements are exempted from this Act -

-
- (a) any procurement involving national defence or security which is required to be kept confidential;
- (b) any procurement made under a co-operative procurement agreement;
- (c) any procurement funded by a donor on the condition or understanding that the Government uses or causes to be used -
- (i) the procurement procedures of the donor, or
 - (ii) procurement procedures approved, or agreed to, by the donor;
- (d) the supply of electricity, telecommunications, water or other similar services by a supplier which is regulated by another enactment; and
- (e) any procurement for casual hospitality or catering services.
- (2) The Board may on an application by a procuring entity, exempt any of the following procurements from this Act -
- (a) banking services;
 - (b) the procurement of fiscal agency or depository services;
 - (c) the procurement of services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
 - (d) the procurement of media and media-related services;

- (e) the purchase of television or radio time or production capacity;
- (f) travel services and hotel accommodation;
- (g) works of art, objects of historical or cultural interest or performances of cultural interest;
- (h) the procurement of specified professional services; and
- (i) any procurement not exceeding a prescribed amount exempted by the Regulations.

(3) A procurement contract in respect of the procurement of any service referred to in —

- (a) subsection (1)(d) may be negotiated and executed by the person empowered in that behalf under the relevant enactment; and
- (b) subsection (2) may be negotiated, be in the form required, be entered into, and be executed, on behalf of the procuring entity by the accounting officer of the relevant procuring entity.

(4) After the execution of a contract in respect of any procurement referred to in subsection (1)(a) or (b), the accounting officer of the procuring entity shall, without delay, give written notice of the contract to the Board specifying—

- (a) the name and address of the contractor;
- (b) particulars of the nature of the procurement and its terms and conditions;
- (c) the date and amount of the contract; and

(d) the basis on which the procurement is exempted.

(5) The requirements of subsection (4) may be satisfied by attaching a copy of the contract to the written notice.

22. (1) Where the Minister responsible for national security certifies, in writing, that the confidentiality of any procurement for the purpose of national defence or security is necessary to protect the security of the State, the Board shall make an order -

Contracts respecting national defence and security.

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

(b) requiring such procurement to be kept confidential.

(2) An order under subsection (1) shall -

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

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

(c) be sent, without delay, to the Secretary or, as the case may be, to the secretary of the relevant departmental procurement committee.

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

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

(b) to any person outside Government except when lawfully required to do so under any other enactment or when the Minister responsible for

national security so authorizes in writing.

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

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

Procurements under co-operative procurement agreements.

23. (1) The Minister may enter into a co-operative procurement agreement for the procurement of goods or services with any one or more of the following—

- (a) a government of any other state or territory;
- (b) a statutory body or public authority within or outside Dominica; or
- (c) the Eastern Caribbean Central Bank or any other regional organization within the OECS.

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

(3) The Minister may vary or cancel a co-operative procurement agreement.

(4) A copy of -

- (a) an agreement made under subsection (1); or
- (b) an agreement to vary or cancel a co-operative procurement agreement,

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

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

Donor-funded procurements.

(a) the procurement procedures of the donor; or

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

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

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

25. (1) The Secretary shall, for each financial year, keep and maintain a record of -

Record of exempted procurements.

(a) every procurement and order referred to in section 22; and

(b) every co-operative procurement agreement and any variations and cancellations referred to in section 23.

(2) The Secretary shall, not later than the 30th day of September in each year-

(a) submit to the Board, the Minister and the Director of Audit a report in respect of the procurement agreements, procurements and orders referred to in subsection (1); and

(b) immediately, after the submission of the report, cause a copy of the report to be published in the *Gazette* and on the website of the Government.

(3) The Minister shall lay the report before the House of Assembly immediately after his receipt of the report or, if the House of Assembly is not sitting, on the first day after his receipt of the report on which the House of Assembly is sitting.

(4) If the Minister fails to lay a report before the House of Assembly in accordance with subsection (3) the Director of Audit shall transmit copies of the report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.

PART IV

GENERAL PROCUREMENT REQUIREMENTS AND PROCUREMENT PLANNING

General procurement
requirements.

26. (1) Save and except as provided otherwise, every procuring entity shall procure goods, services and works in accordance with -

(a) this Act and the Regulations; and

(b) the Public Procurement Manual and directions issued by the Board.

(2) Subject to this Part, the Board shall ensure that procurement planning is undertaken as part of the public service planning process.

(3) Subject to the Regulations, a procuring entity shall plan its procurement by -

(a) preparing the needs assessment and evaluation of the procuring entity;

-
- (b) identifying the goods, services or works required;
 - (c) preparing analysis of the cost implications of the proposed procurement based on the results of appropriate market and statistical surveys;
 - (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
 - (e) integrating its procurement expenditure into its yearly budget; and
 - (f) prescribing any method for effecting the procurement, subject to the necessary approval under this Act.

27. (1) For the purposes of section 26(3)(a), every procuring entity shall devise a mechanism for planning for all proposed procurements in each year with the object of realistically determining the requirements of the procurement authority having regard to—

Requirement for
procurement planning

- (a) its available resources;
- (b) delivery time or completion date of the outputs of such procurements; and
- (c) the benefits which are likely to accrue to the procuring entity in the future.

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

- (a) ensure, to the extent that is practicable in the

circumstances, that the procurement is made in accordance with the annual acquisition plan prepared by the procuring entity; and

(b) commit the amount of the estimate in accordance with the Finance (Administration) Act and the Finance Regulations.

Estimate of amount of contract award and breakdown.

28. (1) Before commencing procurement proceedings in respect of any procurement of goods, services or works, the procuring entity shall ensure that—

(a) an accurate estimate of the costs of the proposed contract for the procurement including the cost of contingencies that might reasonably be expected to arise under the proposed contract for the procurement has been prepared; and

(b) a breakdown of the estimate is made—

(i) in the case of a proposed contract for works, in accordance with subsection (2), and

(ii) in the case of a proposed contract for goods, in accordance with subsection (3).

(2) Where the proposed contract is for works, the breakdown shall be between—

(a) the works, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works; and

(b) the services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection with the works specified in paragraph (a).

(3) Where the proposed contract is for goods, the breakdown shall be between—

- (a) tangible personal property; and
- (b) software and any service incidental to the supply of such goods.

29. (1) The procuring entity shall prepare clear and specific requirements relating to the goods, works or services being procured which— Specifications.

- (a) give a correct complete description of what is to be procured; and
- (b) allow for fair and open competition among those who may wish to participate in the procurement proceedings.

(2) The specific requirements shall include the technical requirements of the procuring entity with respect to the goods, works or services being procured.

(3) The technical requirements shall, where appropriate—

- (a) relate to performance rather than to design and descriptive characteristics; and
- (b) be based on national or international standards.

(4) A procuring entity shall ensure that the specifications set out in respect of goods, services and works to be procured under this Act—

- (a) subject to subsection (5), do not include references to brand names, model numbers, catalogue numbers or any other similar classifications;

- (b) do not favour any single contractor or supplier;
- (c) do not, in relation to a single contractor or supplier, put other contractors or suppliers at a disadvantage;
- (d) allow the highest possible degree of competition; and
- (e) are generic.

(5) Where a procuring entity has reasons to believe that the use of, or a reference to, a brand name, model number or catalogue number is essential to complete an otherwise incomplete specification, the procuring entity shall qualify such use or reference with the words “or equivalent”.

(6) For the purposes of this section, “specification” includes any description of—

- (a) the physical or functional characteristic;
- (b) the nature of works, goods or services; and
- (c) any requirement for inspecting, testing or preparing works, goods or services for delivery.

Approval mechanism.

30. Every procuring entity shall —

- (a) ensure that it possesses clear authorisation and, where applicable, delegation of powers for different categories of procurement; and
- (b) only initiate procurements once approval of the competent authority concerned is obtained.

Forms of agreements.

31. (1) This section applies only in relation to procurements

to the extent to which such procurements are not exempted under this Act.

(2) The Minister may, after consultation with the Board, make Regulations prescribing—

(a) the forms to be used in respect of agreements and purchase orders for—

(i) works,

(ii) the supply of goods and the rendering of services, or

(iii) any class of works, supply of goods or rendering of services; and

(b) the financial limits within which such forms shall or may be used.

(3) The Minister may approve different forms for agreements and purchase orders for—

(a) works;

(b) the supply of goods and the rendering of services; or

(c) for any class of works, supply of goods and rendering of services.

32. (1) A procurement contract shall be executed on behalf of a procuring entity by - Execution of agreements.

(a) the Chief Procurement Officer, if the procurement contract is awarded by the Central Procurement Unit;

(b) the Permanent Secretary in the relevant department, if the procurement contract is awarded by a department of Government; and

(c) the Chief Executive Officer of the relevant statutory body, if the procurement contract is awarded by the statutory body.

(2) Notwithstanding subsections (1)(a), (b) and (c), an agreement in relation to a procurement contract for small procurement may be executed by the accounting officer of the relevant procuring entity.

PART V

PROCUREMENT PROCEDURES

Choice of procurement procedure.

33. (1) A procuring entity shall procure goods, services or works by—

(a) the open competitive bidding procedure; or

(b) any restricted bidding procedure.

(2) Subject to this Act and the Regulations, a procuring entity may procure goods, services or works by means of the following restricted bidding procedures—

(a) competitive sealed proposals procedure;

(b) request for sealed quotations procedure;

(c) sole source procurement procedure;

(d) emergency procurement procedure;

(e) direct procurement procedure; or

(f) small procurement procedure.

(3) A procuring entity may use a restricted bidding procedure to procure goods, services or works where -

(a) the procuring entity has reason to believe that -

(i) the goods, services or works are only available from a limited number of suppliers, contractors or service providers, and

(ii) open competitive bidding is not, or is not likely to be, efficient or practical for the procurement in question;

(b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to the prescribed threshold;

(c) the procuring entity considers it necessary to limit participation in the particular procurement to the suppliers or contractors whose names appear on a list referred to in section 10(1); or

(d) the cost of the goods, service or works to be procured exceeds the prescribed threshold.

(4) Where a procuring entity uses a restricted bidding procedure -

(a) on the ground referred to in subsection (3)(a), every known supplier capable of supplying the goods, other services or works shall be directly solicited;

(b) on the ground referred to in subsection (3)(b), the procuring entity shall, as far as reasonably possible, directly solicit bids from not less than five suppliers; and

(c) the procuring entity shall note in the record of the procurement proceedings the ground and reasons for the choice of the restricted bidding procedure.

(5) Subject to the approval of the Minister, the Board may limit participation in the procurement of goods, services or works to domestic bidders in accordance with the procurement policy objectives of the Government where such limitation -

(a) is specified in the invitation to bid or in the bidding documents for pre-qualification; and

(b) is otherwise published or communicated in advance together with the prescribed criteria.

Open competitive bidding.

34. (1) Subject to this Act, a procuring entity shall use the open competitive bidding procedure as the principal method of procurement for the procurement of goods, services and works to which equal access shall be provided to every eligible and qualified supplier, contractor or service provider, without discrimination.

(2) Without limiting the generality of subsection (1), a procuring entity shall use the open competitive bidding procedure where -

(a) the estimated value of the procurement exceeds the prescribed threshold;

(b) the goods, services or works are not available under competitive price and other conditions from more than one supplier in Dominica or any other Member State of the OECS; or

(c) there is no response from domestic suppliers and contractors to open competitive bidding under subsection (3) and the goods, other services or works must be obtained from international suppliers and contractors.

(3) Where a procuring entity uses the open competitive bidding procedure, the procuring entity -

(a) may include pre-qualification procedures in the bidding proceedings before selection of the successful bidder;

(b) shall publish the invitation to bid or pre-qualify -

(i) subject to sub-paragraph (ii), in selected international media with wide circulation and in any newspaper with wide circulation in Dominica or any other Member State of the OECS, and

(ii) if the procurement is to be made under conditions referred to in section 33(5), in any newspaper with wide circulation in Dominica or any other Member State of the OECS; and

(c) shall select, as the successful bid, the lowest evaluated responsive bid which has been substantially responsive to the invitation to bid or pre-qualify, having regard to the work specifications and standard and other evaluation criteria.

(4) A procuring entity may, in accordance with the Regulations, procure research, experiment or development services by the open competitive bidding procedure, except where the contract or a subsequent contract in respect of the procurement

includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs.

(5) The contract or a subsequent contract in respect of the procurement referred to in subsection (4) may be—

(a) in the form required; and

(b) executed for and on behalf of the relevant procuring entity in accordance with section 33.

(6) Subject to this section, the Minister may, after consultation with the Board, make Regulations, not inconsistent with section 44, respecting the open competitive bidding procedure.

Competitive sealed proposals.

35. (1) Subject to the approval of the Board, a procuring entity may procure goods, consultancy services or works by requests for proposals in accordance with this section and the Regulations.

(2) Without prejudice to the generality of subsection (1), a procuring entity may procure goods, consultancy services or works by request for proposals on the basis of -

(a) quality alone;

(b) quality and cost;

(c) quality and fixed budget; or

(d) least cost and acceptable quality,

if the Board has reasons to believe that it is not practicable or advantageous to make the procurement by the open competitive bidding procedure.

(3) Subject to subsection (4), where a procuring entity intends to issue a request for proposals for the procurement of

consultancy services, the procuring entity shall, for the purpose of ensuring effective competition, prepare a short-list of consultants from among the consultants who have the capacity to perform the required services from a list prepared or approved by the Board.

(4) Where the estimated value of the consultancy services to be procured -

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

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

(i) seek expressions of interest from consultants by publishing a notice in any newspaper having wide circulation in Dominica or any other Member State of the OECS; and

(ii) include in the shortlist any consultant who has expressed interest in the proposed procurement.

(5) The procuring entity shall issue a request to every short-listed consultant requiring that consultant to—

(a) confirm his interest to participate in the procurement proceedings; and

(b) submit a proposal which contains the prescribed information and is responsive to the needs of the procuring entity.

(6) The procuring entity shall evaluate each technical proposal on the basis of criteria specified in the request for

proposals including -

- (a) the consultant's relevant experience for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualifications and expertise of the key staff proposed;
- (d) the quality of the technical proposal submitted within a pre-determined fixed budget;
- (e) the opportunities for the transfer of knowledge; and
- (f) where applicable, the extent of participation by citizens of Dominica and any other Member State of the OECS in the performance of the consultancy.

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

(8) Where the request for proposals is made on the basis of -

- (a) the criteria specified in subsection (2)(a), (b) or (c), the financial proposal of every consultant whose technical proposal attained the required minimum pass mark shall, in accordance with the prescribed procedure, be read out or otherwise publicly announced or disclosed to the bidders who attend or participate in the procurement

proceedings, whether by electronic means or otherwise; or

(b) the criteria specified in subsection (2)(d), only the financial proposal of the consultant whose technical proposal attained the highest ranking shall be evaluated.

(9) Notwithstanding subsection (7), where the consultancy services to be procured -

(a) are of an exceptionally complex nature;

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

(c) are likely to lead to the submission of proposals with prices which are not comparable,

the procuring entity shall base the selection of the successful proposal exclusively on the technical quality of that proposal.

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

(a) the terms of the request for proposals;

(b) the scope of the proposed services;

(c) deliverables and progress reports;

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

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

(11) Where price has been a factor, the fee for services

shall not be subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.

(12) Subject to satisfactory conclusion of negotiations, the procuring entity shall -

- (a) in accordance with the specified criteria and selection method, select the consultant with the lowest evaluated responsive proposal for the award of the contract;
- (b) simultaneously, notify the successful consultant and every other short-listed consultant of its decision; and
- (c) in the absence of a challenge by an unsuccessful consultant within fifteen days of service of the notice, award the contract to the successful consultant.

(13) Where the negotiations fail to result in an acceptable contract -

- (a) the procuring entity shall notify the unsuccessful consultants and select the next ranked bidder; and
- (b) subsections (10), (11) and (12) shall apply to the next ranked bidder, with such modifications, adaptations and qualifications as the circumstances require.

(14) Whether a competitive sealed proposal -

- (a) is practicable, relates to such factual circumstances as whether there is sufficient time or information to prepare a request for proposals; and

(b) is advantageous, relates to such matters as whether quality, availability or capability is overriding in relation to price.

(15) The procurement officer shall -

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

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

36. (1) A procuring entity may procure goods, consultancy services or works by requests for sealed quotations in accordance with this section and the Regulations.

Request for sealed quotations.

(2) A procuring entity may procure goods, services or works by a request for sealed quotations in respect of the procurement of—

(a) readily available commercially standard goods not specially manufactured to the particular specifications of the procuring entity; or

(b) small works or services,

if the estimated value of the procurement does not exceed the prescribed threshold.

(3) The procuring entity shall -

(a) request, in writing, sealed quotations from not less than three suppliers, unless the goods, service or works in question is not available from three suppliers; and

(b) specify, in the request, its requirements as to -

(i) quality and quantity,

(ii) the terms and time of delivery and other special requirements, and

(iii) such other information as may be prescribed.

(4) Each supplier may submit one sealed quotation, which may not be altered or negotiated.

Sole source procurements.

37. (1) Subject to the approval of the Board, a procuring entity may procure goods, services or works as a sole source procurement where -

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

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

(c) the procurement concerns national defence or security and the procuring entity determines that sole source procurement is the most appropriate procurement method;

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

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

(i) additional supplies are required to be procured

from the supplier or contractor by reason of standardization,

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

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

(iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.

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

(a) make a record of the procurement proceedings;

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

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

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

38. (1) Notwithstanding any other provision of this Act, a procuring entity may procure goods, services and works as an emergency procurement where -

Emergency
procurements.

(a) any emergency situation set out in subsection (2) exists;

-
- (a) engage in direct procurement of goods, services or works; or
 - (b) purchase, without competition, goods, services or works from a single supplier, contractor or service provider.
- (4) The procuring entity shall -
- (a) as far as possible, limit the scope of the emergency procurement to the period of emergency, so that appropriate competitive procurement methods may be utilised at the conclusion of the period of emergency;
 - (b) handle every procurement made under the emergency situation with expedition, but having regard to the principle of accountability; and
 - (c) give due consideration to the gravity of the emergency.
- (5) Where a procuring entity determines to make an emergency procurement, the procuring entity shall -
- (a) submit to the Board a written explanation or justification for such procurement;
 - (b) keep a copy of such explanation or justification in the procurement documents file; and
 - (c) immediately after the cessation of the emergency situation warranting the emergency procurement, file with the Board a detailed report of the procurement.

39. (1) The direct procurement procedure allows a procuring Direct procurements.

entity to procure goods, services or works directly or from a single source without competition.

(2) A procuring entity may directly procure goods, services or works -

(a) when an emergency situation exists within the meaning of section 38(2);

(b) where the value of the procurement does not exceed the prescribed value;

(c) where -

(i) only one supplier has the exclusive right to manufacture the goods, carry out the works or perform the services to be procured, and

(ii) no suitable alternative is available;

(d) within the prescribed limits -

(i) for additional delivery of goods, by a supplier, which are intended as partial replacement or extension for existing goods, services, or installations, and

(ii) where a change of the supplier is likely to compel the procuring entity to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services;

(e) within the prescribed limits, where -

(i) by reason of unforeseeable circumstances, additional works not included in an initial contract have become necessary, and

(ii) the separation of the additional works from the initial contract is likely to be difficult for technical or economic reasons; or

(f) where -

(i) the value of the procurement does not exceed the prescribed threshold,

(ii) the nature of a consultancy services requires the selection of a particular consultant due to unique qualifications of the consultant, or

(iii) the procuring entity determines that the continuity of consultancy services is essential to meet the objectives of the consultancy assignment.

40. (1) Subject to this section, a procuring entity may procure goods, services or works as a small procurement in accordance with prescribed procedures.

Small procurements.

(2) Every procuring entity shall, in making a small procurement, have regard to the principles of public procurement set out in section 5.

(3) The value of the small procurement shall not exceed the prescribed threshold.

(4) The accounting officer of the procuring entity making a small procurement -

(a) is the procurement authority for the small procurement; and

(b) shall designate a public officer employed in the entity as the procurement officer for the small procurement or a class of small procurements.

(5) Where the procuring entity determines to pre-qualify suppliers and contractors of small procurements -

- (a) the prescribed pre-qualification process outlined in section 45 applies, with such modifications as the circumstances require, to the placement and removal of the names of the pre-qualified suppliers on or from the list kept and maintained by the Board under section 9(1); and
- (b) the Board shall not place the names of a supplier on the list of pre-qualified small suppliers or allow the names of a supplier to remain on such a list unless the supplier is qualified in relation to such procurements.

PART VI

BIDDING PROCESSES

Division 1

General

Advertisement.

41. (1) Subject to this Act, a procuring entity -

- (a) shall advertise procurement opportunities -
 - (i) in the *Gazette* and on the website of the Government, and
 - (ii) in any other electronic media in the prescribed manner and format; and
- (b) may advertise procurement opportunities in any print media having wide circulation within or outside Dominica if the Board considers it necessary.

(2) Where a procuring entity advertises procurement opportunities in the electronic media, the procuring entity shall -

- (a) ensure that the information posted is complete for the purposes for which it has been posted; and
- (b) in the case of advertisement on the website of the Government, ensure that such information remains on that website until the closing date for the submission of bids.

(3) Subsections (1) and (2) do not apply to the extent that an advertisement or notice or publication of a procurement opportunity relates -

- (a) to national defence or security and is likely to adversely affect national security objectives; or
- (b) in any manner, to the disclosure of information which is proprietary in nature or falls within the definition of intellectual property which is available from a single source.

(4) Save and except as provided in this Act, the Regulations and the Manual on Public Procurement Procedures, no communication shall take place between procuring entities and any supplier or contractor in respect of a procurement opportunity after the publication of the procurement opportunity.

42. (1) The Board shall, in respect of any procurement of goods, services or works - Response time.

- (a) determine the response time for the submission of bids including applications for pre-qualification in accordance with the Regulations;
- (b) have regard to the complexity, availability and urgency of the procurement in determining the response time for the submission of bids;

(c) allow sufficient time reasonably required to complete and submit the bids by the closing date for the submission of bids; and

(d) specify, in the advertisement or notice of the procurement opportunity, detailed information respecting the proposed procurement and the collection and submission of bid documents.

(2) The response time for the submission of bids shall be calculated from the date of first publication of the advertisement of the procurement opportunity -

(a) subject to paragraph (b), in the *Gazette*; or

(b) in the electronic media, if the advertisement is limited to the electronic media.

(3) Notwithstanding subsections (1) and (2), no time limit shall apply to an emergency procurement.

Post-qualification
proceedings.

43. (1) Where there is no pre-qualification procedure for the procurement of goods, services or works, the procuring entity shall check the qualifications of the lowest evaluated substantially responsive bidder against the criteria specified in the bidding documents.

(2) Where the bid of the lowest evaluated substantially responsive bidder does not conform to the specified criteria, the procuring entity shall reject the bid and check the qualifications of the next ranked bidder against the specified criteria.

(3) Where the bid of the next ranked bidder is rejected, subsections (1) and (2) apply, with such modifications, adaptations and qualifications as the circumstances require, to the remaining evaluated substantially responsive bids in the order of their ranking until a successful bidder is determined, if any.

44. (1) For the purposes of the procurement of goods, services or works, a procuring entity may, in accordance with the Regulations, use - Bidding processes.

- (a) the single stage-one envelope bidding process;
- (b) single stage-two envelope bidding process;
- (c) two stage-two-envelope bidding process; or
- (d) the two stage bidding process.

(2) The Regulations shall specify the conditions and circumstances for the use of each bidding process.

Division 2

Pre-qualification, Qualification and Dis-qualification of Suppliers and Contractors

45. (1) Where a procuring entity intends to procure any large or complex works, the procuring entity shall, for the purpose of identifying suppliers, contractors or consultants which are qualified, engage in pre-qualification proceedings before publishing the invitation to bid for the procurement of such works. Pre-qualification proceedings.

(2) A procuring entity may engage in pre-qualification proceedings before publishing an invitation to bid for the procurement of goods, services or works other than large or complex works having a value which is not less than the prescribed threshold.

(3) Where a procuring entity decides to engage in pre-qualification proceedings, the procuring entity shall—

- (a) specify, in the pre-qualifying documents, the criteria

against which applications to pre-qualify are to be considered and determined;

- (b) supply a set of pre-qualification documents to every supplier, contractor or consultant requesting such documents; and
- (c) apply the criteria specified in the pre-qualification documents in considering and determining which suppliers, contractors or consultants are pre-qualified.

(4) The pre-qualification documents shall contain -

- (a) the instructions to prepare and submit the application to pre-qualify;
- (b) a summary of the main terms and conditions required for execution of the procurement contract;
- (c) any documentary evidence or other information required to be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
- (d) information respecting the manner and place for the submission of applications to pre-qualify;
- (e) information respecting the closing date and time for the submission of applications;
- (f) any other requirement, not inconsistent with this Act and the Regulations, which the procuring entity considers necessary for the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings; and
- (g) such other prescribed information.

(5) The procuring entity shall express the closing date and time for submission of applications as a specific date and time which allows sufficient time for suppliers, contractors and consultants to prepare and submit their applications, taking into account the needs of the procuring entity.

(6) A procuring entity -

- (a) may require a supplier, contractor or consultant to pay a fee for the supply of the pre-qualification documents, but such fee shall not exceed the costs of printing and providing the documents;
- (b) shall respond, without delay, to any request for clarification of the pre-qualification documents made by a supplier, contractor or consultant who has submitted an application before the specified closing date and time for submission of applications;
- (c) may require a supplier, contractor or consultant who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant;
- (d) shall, without delay, notify each supplier, contractor or consultant requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant satisfies that requirement; and
- (e) shall disqualify any supplier, contractor or consultant who fails to demonstrate its qualification again if requested to do so.

(7) After the completion of pre-qualification proceedings, the procuring entity shall, without delay and simultaneously,

furnish the Chief Procurement Officer and each applicant a list containing the names of the suppliers, contractors or consultants which have been pre-qualified.

Bidding documents.

46. A procuring entity shall provide the bidding documents -

- (a) subject to paragraph (b), to every supplier, contractor or service provider responding to the invitation to bid; or
- (b) if pre-qualification proceedings have taken place, to the suppliers, contractors or consultants which have been pre-qualified.

Bid security.

47. (1) Subject to the monetary and review thresholds as the Board determines, a bid in respect of any procurement valued in excess of such prescribed thresholds shall be accompanied by a bid security in an amount not more than 2 per cent of the bid price by way of a bank guarantee, manager's cheque, irrevocable letter of credit or bond issued by a reputable bank or other reputable financial institution acceptable to the procuring entity.

(2) Subject to this section -

(a) the Board shall, from time to time -

- (i) determine the principal terms and conditions of the required bid security in the bid documents, and
 - (ii) the conditions for forfeiture of the bid security; and
- (b) the procuring entity shall specify, in the bidding documents -
- (i) the requirements for the bid security,
 - (ii) the terms and conditions of the bid security, and

(iii) the information relating to the forfeiture of the bid security.

(3) The bid security is liable to be forfeited if the bidder -

(a) modifies or withdraws the bid after the closing date and time for submission of bids during the period of validity of the bid;

(b) refuses to accept a correction of an error in the bid; or

(c) being the successful bidder, fails -

(i) to sign a procurement contract in accordance with the terms and conditions specified in the bidding documents, or

(ii) to provide the required security for the performance of the procurement contract in accordance with the bidding documents.

48. (1) Every bidder responding to an invitation to bid shall submit a bid which -

Submission of bids, proposals and application to pre-qualify.

(a) is written in the English language;

(b) is in a sealed envelope bearing the address specified in the bidding documents;

(c) is signed by an official authorized to bind the bidder to a contract; and

(d) complies with any other format specified in the bid documents.

(2) Subject to this Act, the Board may -

(a) authorise the use of alternative methods respecting the submission of bids; or

(b) require invitations for pre-qualification to contain provisions allowing the submission of applications to pre-qualify for bids by hand, mail or by courier at the option of the bidder.

(3) The procuring entity shall -

(a) deposit every bid submitted within the time specified for submission of bids in a secured tamper-proof bid-box, room or other similar device; and

(b) issue to the bidder a receipt showing the date and time of submission of the bid.

Closing date and time for submission of bids.

49. (1) A procuring entity shall -

(a) ensure that a bidder responding to an invitation to bid submits the bid within the closing date and time for the submission of bids; and

(b) reject any bid received after the closing date and time for the submission of bids.

(2) Where the procuring entity rejects a bid under subsection (1), the procuring entity -

(a) shall not open the bid if the bid is received in a sealed envelope; and

(b) shall return the unopened bid to the relevant bidder.

Withdrawal and modification of bids.

50. A bidder may modify, substitute or withdraw its bid after submission if, before the closing date and time for the submission

of bids, the bidder submits to the relevant procuring entity a written notice of the modification, substitution or withdrawal, as the case may be.

51. (1) Every bid shall remain valid for the period of time, indicated in the bidding documents, which shall not be more than one hundred and eighty days.

Bid validity period.

(2) The validity period of a bid may be extended only with the agreement of the bidder concerned.

(3) A bidder who agrees to an extension of the validity period of its bid shall, where security was required for the original bid submission, furnish a corresponding extension of the bid security.

52. (1) A person who -

Disqualification of
contractors and
suppliers.

(a) fails to meet the standards or satisfy the requirement to participate in the procurement proceedings respecting a procurement of goods, services or works under this Act and the Regulations is disqualified from participating in the procurement proceedings; or

(b) is suspended or debarred under Part X is disqualified from participating in procurement proceedings for the period of the suspension or debarment.

(2) Every procuring entity shall ensure that a person who is disqualified under this Act is not permitted to receive any procurement contract or otherwise participate in procurement proceedings.

(3) The Minister may, after consultation with the Board, make Regulations, not inconsistent with this Act, respecting the disqualification standards and procedures in relation to suppliers, contractors and service providers.

Division 3*Opening, Evaluation and Rejection of Bids*

Opening bids, proposals and applications to pre-qualify.

53. (1) Every bidder or his representative shall be authorised to attend the bid opening.

(2) Subject to sections 48 and 49, a procuring entity shall in public open every bid submitted—

(a) at the time and place specified in the bidding documents; and

(b) in such a manner which allows the procuring entity to communicate by any means, including electronic means, effectively and simultaneously with every authorised person attending or participating in the bid opening.

(3) The time of bid opening shall -

(a) coincide with the closing date and time for the submission of bids; or

(b) follow immediately after such closing date and time if this is necessary for logistic reasons.

(4) During the opening of bids, the procuring entity shall -

(a) ensure that it communicates with the authorised persons in such a manner that they are able to hear, see, observe or read the following information -

(i) the name of the bidder,

(ii) the total amount of each bid,

- (i)* the bidding documents are properly signed,
 - (ii)* the documents required to establish the legal validity of the bidding documents have been furnished, and
 - (iii)* where applicable, the required bid security has been furnished;
 - (c)* shall ensure that the evaluated cost of each bid is compared with the evaluated cost of the other bids to determine the lowest evaluated bid;
 - (d)* may seek clarification from any bidder to facilitate the evaluation of bids, but a bidder shall not be asked, required or permitted to change the price or substance of its bid;
 - (e)* shall ensure that every bid is evaluated in accordance with the criteria and methodology set out in the bidding documents; and
 - (f)* where a pre-qualification procedure is applicable, shall verify anew the qualifications of the lowest evaluated bidder to take account of any change since the original pre-qualification.
- (2) Where -
- (a)* a pre-qualification procedure is applicable, the procuring entity shall reject any bid received from a person other than a pre-qualified bidder;
 - (b)* a bid discloses an arithmetical error, the procuring entity shall correct the error and notify the bidder, in writing;
 - (c)* there is a discrepancy between figures and words -

-
- (i) the amount in words shall prevail, and
 - (ii) the procuring entity shall correct the discrepancy and notify the bidder, in writing;
 - (d) a bidder refuses to accept a correction made under paragraph (b) or (c) or section 59(1)(c) -
 - (i) the procuring entity shall reject the bid,
 - (ii) the bid security is liable to be forfeited; and
 - (e) there is a minor deviation in any bid that did not warrant rejection of the bid at an earlier stage, the bid evaluation committee shall quantify such minor variation in monetary terms, as far as possible.

55. Every procuring entity shall specify, in detail, in the bidding documents - Evaluation criteria.

- (a) the criteria to be considered for the purposes of bid evaluation;
- (b) the weighting assigned to each criterion; and
- (c) the manner in which each criterion shall be applied.

56. (1) The procuring entity may require a bidder to clarify its bid if - Clarification of bids.

- (a) the bid submitted by the bidder contains a minor variation; and
- (b) the procuring entity is of the opinion that the bidder is likely to provide clarification to assist in the examination and evaluation of the bid.

(2) Subject to any other provision to the contrary, the following shall be considered as minor deviations in a bid -

- (a) the use of codes;
- (b) the difference in standards or materials;
- (c) alternative design or workmanship;
- (d) modified liquidated damages;
- (e) omission in minor items;
- (f) discovery of arithmetical errors;
- (g) sub-contracting that is unclear and questionable;
and
- (h) different methods of construction.

(3) During the evaluation of bids, a procuring entity shall not allow, invite or permit any bidder to make any change -

- (a) to the price or substance of its bid; or
- (b) to an unresponsive bid so as to make the bid responsive.

Rejection of bids.

57. (1) The procuring entity shall reject—

- (a) every bid received after the closing date and time for the submission of bids;
- (b) any bid showing a major deviation with respect to the factors set out in subsection (2);
- (c) the bid of any supplier or contractor who does not accept the correction of a minor deviation in that bid;

-
- (d) a bid which is not accompanied by the bid security required by section 47(1).
- (2) The following shall be considered as major deviations in a bid -
- (a) with respect to the clauses in an offer -
- (i) unacceptable sub-contracting, alternative design and price adjustment, and
- (ii) where time is of essence, unacceptable time line;
- (b) with respect to the status of the bidder, a bidder who is ineligible, uninvited or not pre-qualified;
- (c) with respect to bid documents, an unsigned bid; and
- (d) with respect to time, date and location for submission of bids -
- (i) a bid received after the date and time for submission of bids as stipulated in the bidding documents, and
- (ii) a bid submitted at the wrong location.
- (3) Where a procuring entity receives a bid which shows a major deviation, the procuring entity -
- (a) shall not consider the bid any further, if the bid has been opened; and
- (b) shall return the bid unopened, if the bid is received unopened.

(4) Where the procuring entity rejects a bid, the procuring entity shall -

- (a) in writing, notify the bidder of the rejection and the reasons for rejection; and
- (b) not permit the bidder to amend the rejected bid so as to become compliant.

Cancellation of
procurement
proceedings.

58. (1) A procuring entity may, at any time before the selection of a successful bidder, reject all bids or cancel the procurement proceedings where -

- (a) all the bids are non-responsive;
- (b) the value of the lowest evaluated bid is substantially above the applicable updated cost estimate;
- (c) the goods, services or works are no longer required by the procuring entity; or
- (d) it has been established that there has been collusion among the bidders.

(2) The procuring entity shall give to every bidder participating in the procurement proceedings written notice of the rejection of the bids or, as the case may be, the cancellation of the procurement proceedings.

(3) Save and except where the rejection of all bids or cancellation of procurement proceeding is made on the ground specified in subsection (1)(a) or (b), there shall be no invitation to re-bid for the procurement of the goods, services or works on the same specifications and contract conditions.

(4) Where the procuring entity intends to publish anew the invitation to bid for the procurement of goods, services or works -

-
- (a) the Chief Procurement Officer shall examine the reason for the rejection of the bids or the cancellation of the procurement proceedings; and
 - (b) the procuring entity shall modify the technical specifications or contract conditions as required.

(5) Where a procuring entity -

- (a) rejects all bids at any time before the acceptance of a bid; or
- (b) cancel the procurement proceedings in the public interest,

the procuring entity shall not incur any liability to the bidders.

(6) Notwithstanding subsection (5), where the procuring entity -

- (a) cancels any procurement proceedings, the Board may order a refund of the cost incurred by any bidder or offeror respecting the preparation and submission of the bid or offer; or
- (b) by reason of a cancellation of any procurement proceedings, publishes anew an invitation for bids or request for proposals, the Board may direct that a bidder or offeror affected by the cancellation is furnished with the new bidding documents or request for proposals without charge,

if the Board is of the opinion that the refund or, as the case may be, the receipt of such documents or request without charge is in the public interest.

(7) The decision of the Board under subsection (6) and the reason for the decision shall be published in the *Gazette*.

Division 4*Award of Contract and Debriefing of Unsuccessful Bidders*

Award of procurement contract.

59. (1) Subject to this section and section 60, a procuring entity shall award the procurement contract to the bidder who submits the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents.

(2) Save and except as provided otherwise, after the selection of the successful bidder there shall be no negotiation between a procuring entity and the successful bidder or any other bidder.

(3) The procuring entity shall -

(a) at least ten days before the award of the procurement contract, announce the results of the bid evaluation in the form of a report giving justification for the acceptance or rejection of bids;

(b) in writing or in such manner as may be prescribed, simultaneously notify the successful bidder and unsuccessful bidders of the selection of the bid for the award of the procurement contract; and

(c) specify, in the notice, the name and address of the successful bidder and the price of the procurement contract.

(4) In the absence of a challenge by any unsuccessful bidder -

(a) subject to paragraph (b), within fifteen days of the date of service of the notice; and

- (b) within seven days of the date of service of the notice, if participation in the procurement proceedings was limited to domestic suppliers, contractors and service providers,

the procuring entity shall award the contract to the successful bidder.

(5) The procuring entity may require the successful bidder to submit a performance security and sign the procurement contract within the period specified in the bidding documents.

(6) Where the successful bidder fails -

(a) to sign the performance contract; or

(b) to provide the required security within the prescribed time limit, if required to do so,

the procuring entity shall select another bidder from among the remaining unsuccessful bidders having valid bids, and the provisions of this section shall apply, with such necessary modifications, adaptations and qualifications as the circumstances require, to the award of the procurement contract to that other bidder.

(7) The procuring entity shall without delay publish, in such manner as may be prescribed, a notice of the award of every procurement contract.

60. (1) A person is qualified to be awarded a contract for any procurement only if the person satisfies the following criteria -

Qualifications to be awarded contract.

- (a) the person has the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured;

- (b) the person has the legal capacity to enter into a contract for the procurement;
- (c) the person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing;
- (d) the procuring entity is not precluded from entering into the contract with the person under section 52; and
- (e) the person is not suspended, debarred or otherwise disqualified from participating in procurement proceedings under this Act.

(2) The procuring entity may require a person to provide evidence or information to establish that the criteria under subsection (1) are satisfied.

(3) The criteria under subsection (1) and any requirements under subsection (2) shall be set out in the bid documents or the request for proposals or quotations or, if a procedure is used to pre-qualify persons, in the documents used in that procedure.

(4) The procuring entity shall determine whether a person is qualified and that determination shall be done using the criteria and requirements set out in the documents or requests described in subsection (3).

(5) The procuring entity may disqualify a person for submitting false, inaccurate or incomplete information about his qualifications.

(6) No person shall be excluded from submitting a bid, proposal or quotation in procurement proceedings except under this section and under section 37.

(7) Procuring entities shall use creative approaches, such as design and build in order to enhance efficiency of the procurement process and project implementation.

61. Where, within thirty days of the publication of the notice referred to in section 59(4), an unsuccessful bidder who participated in a procurement proceeding submits to a procuring entity a request for debriefing in respect of the procurement proceedings, the procuring entity shall, promptly, inform the bidder of the reasons for which its bid or, as the case may be, its application for pre-qualification was unsuccessful.

Debriefing of
unsuccessful bidders.

Division 5

Maintenance of Records and Freedom of Information

62. (1) Every procuring entity shall -

Record of procurement
proceedings.

- (a) keep and maintain a record of the comprehensive procurement proceedings, that is to say, adequate contract documentation for all phases of the procurement process including planning, bidding, award, contract management, modifications, schedules of payment, progress reports and contract evaluations;
- (b) upon request, make available for inspection by the Board, the Review Commission or the Director of Audit the records and documents respecting procurements maintained by the procuring entity; and
- (c) retain the record of the comprehensive procurement proceedings and the related documents for the prescribed period.

(2) Where donor funds have been used for the procurement of goods, services or works, the officials of the donor shall, upon request, have access to the procurement files for the purpose of audit and review.

(3) A procuring entity is not liable to suppliers, contractors or service providers for damages by reason only of the failure of the procuring entity to maintain and retain a record of the procurement proceedings in accordance with this section.

Public access and
transparency.

63. (1) Subject to this Act, where a procuring entity awards a procurement contract, the procuring entity shall, as soon as practicable after the award of the procurement contract, make available to members of the public the documents related to the evaluation of the bid and the award of the procurement contract.

(2) Where—

(a) the disclosure of any information related to the award of procurement contract is of a propriety nature; or

(b) the procuring entity has reasons to believe that the disclosure of such information—

(i) is not in the public interest,

(ii) is contrary to law,

(iii) is likely to impede law enforcement, or

(iv) is likely to prejudice the legitimate commercial interests of the parties to the contract,

the procuring entity shall, subject to the approval of the Board, withhold only such information from public disclosure.

(3) Where -

(a) a bid, a proposal, an offer or a quotation is accepted; or

(b) procurement proceedings are terminated without resulting in the award of procurement contract,

the procuring entity shall, on request, make available to any authorised bidder such portion of the record referred to in this section which may not be withheld from public disclosure.

(4) Notwithstanding subsections (2) and (3), a procuring entity shall disclose records of the procurement proceedings, whether before or after the award of procurement contract if a court of competent jurisdiction makes an order directing the disclosure.

(5) For the purposes of subsection (3), the reference to “authorised bidder” shall be construed to include a reference to any supplier, contractor or service provider who submitted a bid, a proposal, an offer or a quotation or application for pre-qualification.

PART VII

CONTRACT ADMINISTRATION

64. (1) The accounting officer of a procuring entity is the contract administrator for the procuring entity. Contract administrator.

(2) The accounting officer may, in writing, delegate to a senior officer any responsibilities under this Part.

65. (1) The contract administrator is - Duties of contract administrator.

(a) responsible for -

- (i) the administration of every contract exceeding the prescribed threshold;
 - (ii) documenting, in the relevant procurement document file, the justification or circumstances which support the use of the direct, sole source or emergency procurement method;
 - (b) shall keep an accurate record of all dealings with the contractor including minutes of every meeting with the contractor and the details of any matter discussed or decision made;
 - (c) shall not later than the 30th day of September in each year, prepare an annual report respecting his activities for the immediately preceding financial year;
 - (d) shall submit a copy of the annual report to the Chief Procurement Officer; and
 - (e) shall represent the interests of the State and procuring entity under every procurement contract.
- (2) The contract administrator -
- (a) shall not agree to any change in the contract price or the material terms of a procurement contract without the prior approval, in writing, of the procuring entity; and
 - (b) shall place the record referred to in subsection (1)(c) and any change to the contract price approved by the procuring entity in the relevant procurement document file.

66. (1) Subject to this section, a procurement contract may be modified to extend the terms of the contract for a reasonable period of time allowable if an unforeseen event delays the delivery of the specific contract outputs, but such a modification shall not be used to substantially change the nature and intent of the contract.

Modification of contract.

(2) Every modification of a procurement contract shall be in writing and signed by the procuring entity and the contractor.

(3) Where a proposed change or aggregate of changes to a procurement contract is likely to increase the contract value by more than twenty-five percent, a procuring entity—

(a) shall not permit such a modification of the contract;
and

(b) subject to the approval of the Board, shall initiate fresh procurement proceedings if such a modification is required to complete the procurement.

(4) Notwithstanding subsection (2), a modification of the procurement contract is not required where the procuring entity wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract.

(5) Where a procurement contract is modified, the procuring entity shall cause a record of the written justification for the modification to be maintained in the procurement document file.

67. (1) For the purpose of certifying and confirming that the goods ordered are received in the correct quantity and are of the suitable quality, the Board shall ensure that every procuring entity -

Receipt of goods.

(a) institutes adequate receiving procedures to confirm and certify the receipt of the goods as ordered;

(b) maintains adequate receipt records or other documentation to support account verification and payment; and

(c) reports, without delay, to the Chief Procurement Officer discrepancies between goods received and goods ordered.

(2) A procuring entity shall not, without the written approval of the Chief Procurement Officer, accept any product substitution by any supplier or contractor.

Payments.

68. Subject to the specific terms of a procurement contract, the contract administrator shall ensure that -

(a) a supplier, contractor or service provider is paid—

(i) on the basis of the submission of a proper invoice, and

(ii) subject to paragraph (b), in accordance with the closing date and time set out in the procurement contract; and

(b) where payment is late, the supplier or contractor is compensated for late payment by payment of interest in accordance with the rate specified in the contract or, if no such rate is specified, at the legal rate.

Work not to commence until agreement executed.

69. The contract administrator shall not permit any work to commence under a works contract before an agreement has been executed, except when the procurement is made as an emergency procurement.

70. (1) The contract administrator shall report any breach of the contract to the Board and the relevant procuring entity in accordance with the prescribed procedures.

Deficient performance,
breach and termination.

(2) When a contractor defaults in the performance of a procurement contract, the Board may, subject to the rights of the person who provided the performance security, take any action respecting the default as it considers appropriate including issuing an invitation to bid or a request for proposal or negotiating a new procurement contract.

(3) Notwithstanding any other law, where a procuring entity -

(a) determines that, by reason of changed circumstances, the continuation of a procurement contract is not in the public interest; and

(b) with the approval of the Board, terminates the procurement contract,

the contractor is entitled, upon such a termination, to reimbursement of expenses incurred in the performance of the contract, but the contractor is not entitled to recover profits which would have been realised if the contract had been completed, but for its termination.

71. For the purposes of ensuring timely and effective performance of a procurement contract and assisting a procuring entity in future contracting activity, the contract administrator shall -

Monitoring, evaluation
and reporting.

(a) throughout the duration of the procurement contract, monitor -

(i) the performance of the contractor, and

(ii) the quality and quantity of the outputs and outcomes of the contract;

(b) in the case of a contract having a value equal to or exceeding a prescribed threshold, prepare a post-completion evaluation report respecting the performance of the contractor; and

(c) submit to the Board a copy of the post-completion evaluation report.

Disputes resolution.

72. The contract administrator shall ensure that any dispute which arises out of a procurement contract is dealt with in a just, prompt and cost-effective manner.

PART VIII

SURPLUS AND UNSERVICEABLE ASSETS

Disposal of surplus assets.

73. (1) Where a transaction involves the disposal of an asset belonging to the State, the principles of honesty, accountability, transparency, fairness and equity apply to the same extent as these principles apply to the procurement of the asset.

(2) Where a procuring entity intends to dispose of assets belonging to the State, the accounting officer of the procuring entity shall, for the purpose of ensuring that there are no risks or liability issues that are likely to arise from a disposal of the assets, notify, in writing, the Chief Procurement Officer of the intended disposal not less than thirty days before initiating the disposal.

(3) A person involved in the disposal of any asset belonging to the State shall not -

(a) in any manner, be interested in buying, directly or indirectly, such asset; and

(b) for a period of three years after the disposal, have or obtain any type of advantage or revenue from the disposal of the asset.

(4) The Chief Procurement Officer shall -

- (a) determine the appropriate method for disposal of assets which are unserviceable or in surplus to the needs of the State; and
- (b) prepare and submit to the Board an annual report respecting the disposal of assets belonging to the State.

(5) Subject to subsection (6), a procuring entity shall dispose of assets which are surplus to the needs of a procuring entity at fair market value.

(6) Subject to subsection (7) and the approval of the Financial Secretary, a department of the Government may grant, without charge, any stores not required for the purposes of the Government to any institution or organization in the Commonwealth of Dominica established solely or principally for educational, scientific, cultural or charitable purposes.

(7) Where the value of the stores being granted exceeds five thousand dollars or such other amount as the Board may direct, the Financial Secretary shall first obtain the written approval of the Board.

PART IX

ETHICAL STANDARDS AND PROCUREMENT INTEGRITY

74. (1) In this Part -

“anti-competitive practices” includes bid-rigging, collusion and making cover bids;

Definitions respecting
Part IX.

“business entity” includes a trust;

“common-law partner” means a person who is cohabiting with a procurement official in a conjugal relationship;

“conflict of interest” includes any circumstance in which a person -

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

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

“financial interest” includes a financial liability;

“procurement official” means a public official with public procurement functions;

“public procurement functions” means involvement in relation to a procurement through—

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

(b) a decision, approval, determination or recommendation or other similar thing, whether as a member of the Board;

(c) the preparation of any document;

(d) the exercise of influence;

(e) giving any advice; or

(f) making an investigation or audit;

“public official” means -

- (a) a member of the Board or the Review Commission;
or
- (b) a public officer or other person employed by a
procuring entity;

“spouse” does not include a person from whom a procurement official is separated if all support obligations and family property have been dealt with by a separation agreement or a court order.

(2) For the purposes of this Part, references to “member of the family of a procurement official” shall be construed to include references to -

- (a) the spouse or common-law partner of the official;
- (b) the children of the official;
- (c) the children of the spouse or common-law partner
of the official;
- (d) the parents of the official;
- (e) the brothers or sisters of the official.

(3) A person has a financial interest in a business entity if that person functions in any of the following capacities—

- (a) as a director, officer or employee of the business
entity;
- (b) as a partner in the business entity;
- (c) as a shareholder of the business entity;
- (d) as a trustee of the business entity: or

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

(4) A person has a substantial financial interest in a business entity if the person -

(a) owns or has under his control -

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

(ii) real property if the interest is an equitable or legal ownership with a fair market value of two thousand five hundred dollars or more used for the business entity;

(b) owns more than 10 per cent of the fair market value of the business entity;

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

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

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

Effect of breach of ethical standard.

75. Without prejudice to any proceedings which may be instituted under this Act or any other enactment, a person who is found to be in breach of an ethical standard set out in this Part is liable -

(a) in the case of a procurement officer, to disciplinary action under the applicable law; and

(b) in the case of a contractor, supplier or service provider, to suspension or debarment in accordance with Part X.

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

General duty.

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

Duties of procuring entities.

(a) in the case of the Public Service, by the Board after consultation with the Committee of Permanent Secretaries;

(b) in the case of local authorities, by the Board after consultation with the Permanent Secretary in the Ministry of Community Development and the chairperson of the relevant local authority; and

(c) in the case of a statutory body, by the Board after consultation with the relevant Permanent Secretary and the chairperson of the relevant statutory body.

(2) Every procuring entity shall -

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

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

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

(3) The reference to “chairperson of the relevant local authority” in subsection (1)(b) shall be construed to include a reference to -

(a) the Mayor of the City of Roseau;

(b) the Mayor of the Town of Portsmouth; and

(c) the Carib Chief.

Conduct of procurement officials.

78. (1) A procurement official shall -

(a) exercise his public procurement functions diligently, impartially, conscientiously and fairly -

(i) in accordance with the procedures set out in this Act and the Regulations, and

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

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

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

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

-
- (e) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;
 - (f) subject to this Act, not disclose any information that comes into his possession relating to procurement proceedings and to bids, including bidders' proprietary information; and
 - (g) where applicable, declare his assets in accordance with the Integrity in Public Office Act, 2003.

No. 3 of 2003.

(2) In the discharge of his public procurement functions, a procurement official shall -

- (a) keep up-to-date with advances and changes in his area of expertise;
- (b) comply with the legislative or administrative requirements related and relevant to the proper exercise of his functions;
- (c) treat members of the public and other staff members with courtesy and sensitivity to their rights;
- (d) provide all necessary and appropriate assistance to members of the public;
- (e) make decisions objectively on the basis of the relevant criteria and information;
- (f) maintain adequate documentation to support any decision which he makes;
- (g) at all times in the discharge of his procurement functions, behave in such a way so as not -

- (i)* to discredit his position, and
 - (ii)* to reflect adversely on the Public Service or, as the case may be, the relevant procuring entity.
 - (h)* strive to obtain value for public money spent;
 - (i)* strive to avoid waste and extravagance in the use of public resources;
 - (j)* not take or seek to take improper advantage of any official information gained in the course of employment;
 - (k)* not wilfully supply incorrect or misleading information to bidders, suppliers, contractors, service providers or other members of the public and to staff; and
 - (l)* not indulge in favouritism or nepotism.
- (3) It is expected that every procurement official shall -
- (a)* be efficient and economical in the use and management of public resources;
 - (b)* be scrupulous in the use of public property and services; and
 - (c)* not permit abuse of such property and services by other persons.

Conduct of bidders and suppliers, etc.

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

-
- (a) to influence any procurement proceedings or the execution of any procurement contract; or
- (b) to interfere in the ability of any other person to participate in procurement proceedings.
- (2) A bidder or a supplier, contractor or service provider shall not engage in -
- (a) any coercive practice threatening to harm, directly or indirectly, any other person or the property of any other person so as to -
- (i) influence the participation of the other person in procurement proceedings, or
- (ii) affect the execution of a contract; or
- (b) collusion, before or after a bid submission, designed to -
- (i) allocate procurement contracts among bidders,
- (ii) establish bid prices at artificial non-competitive levels, or
- (iii) otherwise deprive a procuring entity of the benefit of free and open competition.
- (3) A procuring entity shall -
- (a) reject a bid of a bidder if the bidder offers, gives or agrees to give an inducement referred to in subsection (1); and
- (b) promptly, notify the bidder concerned and the Board of the rejection of the bid.

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

- (a) preparing the specifications or bidding documents for the bidder or supplier, contractor or service provider;
- (b) supervising the execution of a procurement contract for the bidder or supplier, contractor or service provider; or
- (c) supervising a related company of the bidder or supplier, contractor or service provider.

Conflicts of interest.

80. (1) A conflict of interest, in relation to a procurement official includes, but is not limited to, any circumstance where the procurement official -

- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of the Government or the relevant procuring entity;
- (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the ability of the procurement official to influence dealings;
- (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the business judgments of the procurement official;

-
- (d) places, by acts or omissions, the Government or the procuring entity in an equivocal, embarrassing or ethically questionable position;
- (e) entertains relationships compromising the reputation or integrity of the Government or the procuring entity;
- (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the Government or the procuring entity;
- (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise;
or
- (h) discloses to any unauthorized person confidential information being the property of -
- (i) the Government or the procuring entity, or
 - (ii) a bidder, supplier, contractor or service provider.
- (2) A procurement official shall avoid any financial or other interest or undertaking that is likely, directly or indirectly, to compromise the performance of his duties.
- (3) A procurement official who is exposed to an actual, perceived or potential conflict of interest, in relation to an actual or proposed procurement, shall disclose the matter to his accounting officer or, as the case may be, the contract administrator.
- (4) The disclosure referred to in subsection (3) includes the notification of all relevant personal, financial, business or other interests of the procurement official, in particular -

- (a) any directorship, partnership, agency or any shareholding in any business entity;
- (b) any interest in any activity or business in which or with which the business entity is engaged; or
- (c) any interest in goods, services or works recommended or supplied by the business entity under this Act.

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

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

- (a) immediately cease to exercise his public procurement functions in relation to the procurement;
- (b) without delay, give notice of disqualification from public procurement functions to any person specified by the Regulations; and
- (c) refrain from exercising any public procurement function in relation to the procurement.

(7) The Minister may by regulations make provision respecting the scope or applicability of this section where a procuring entity engage -

- (a) any member of the permanent staff of a consulting firm; or
- (b) any associate of a consulting firm,

as an individual consultant.

81. (1) A gift can be interpreted as an inducement or a reward simply because of its intrinsic value.

Gifts and other advantages.

(2) A person participating in public procurement shall not, directly or indirectly, offer, give or agree to give any gift or other advantage to a procurement official or a member of the family of the procurement official which might reasonably be seen to have been given to influence the procurement official in the exercise of his procurement functions.

(3) A procurement official or a member of his family shall, not directly or indirectly, solicit, demand, accept or agree to accept any gift or advantage in relation to the procurement of goods, services or works under this Act which -

(a) may reasonably be seen to have been given to influence the procurement official in the exercise of his procurement functions; or

(b) may be treated as creating an obligation, real or imagined.

(4) Notwithstanding subsections (2) and (3) -

(a) a person participating in public procurement may offer a gift to a procurement official that is a normal expression of hospitality or courtesy in accordance with the Regulations; and

(b) a procurement official may accept a gift that is given or offered as a normal expression of hospitality or courtesy in accordance with the Regulations.

82. (1) A subcontractor or prospective subcontractor shall not, as an inducement for award of a subcontract in relation to the procurement of goods, services or works under this Act, directly or indirectly—

Kickbacks.

(a) make a payment or cause a payment to be made;
or

(b) offer a gift or advantage,

to the prime contractor or a higher tier subcontractor or prospective prime contractor or prospective higher tier subcontractor or any person associated with the procurement.

(2) A prime contractor or higher tier subcontractor or prospective prime contractor or prospective higher tier subcontractor shall not accept a gift or advantage from a subcontractor given as an inducement for award of a subcontract under this Act.

Limitation on splitting
or regrouping of
proposed procurements.

83. A procuring entity shall ensure that -

(a) the procurement of goods, services or works is not artificially divided or regrouped so as -

(i) to be solicited as an exempt procurement under section 21(2)(g) or (h), or

(ii) to avoid, by any means, the effect of a prescribed threshold; and

(b) standard goods, services and works with known market prices are procured at the prevailing real market price.

Disqualification from
exercising functions.

84. Where a business entity submits a bid for the procurement of goods, services or works under this Act, a procurement official shall not exercise any public procurement functions in relation to such procurement if a member of his family has -

(a) a financial interest in the procurement; or

(b) a substantial financial interest in the business entity.

85. (1) A procurement official shall not, in the exercise of his public procurement functions -

Improperly furthering private interest.

(a) knowingly further or attempt to further his private interests or the interests of his family; or

(b) improperly further or attempt to further the private interests of any other person.

(2) A procurement official shall not use information obtained in the exercise of his procurement functions and which is not available to members of the public -

(a) to further or seek to further the private interests of the procurement official or his family; or

(b) to improperly further or to seek to improperly further the private interests of any other person.

PART X

SUSPENSION AND DEBARMENT

86. (1) Subject to this Part, the Board may, on an application by the Chief Procurement Officer, suspend or debar a person from participating in procurement proceedings on one or more of the following grounds -

Suspension and debarment.

(a) furnishing false information in the process of submitting a bid or pre-qualification application;

(b) collusion with another bidder or a procurement official concerning the formulation of any part of

the bidding documents;

- (c) unlawful interference, directly or indirectly, with the participation of competing bidders in procurement proceedings under this Act;
- (d) misconduct relating to the submission of bids;
- (e) conviction for an offence involving obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract;
- (f) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity in a professional activity;
- (g) conviction for an offence involving corruption in a professional activity;
- (h) engaging in anti-competitive practices;
- (i) deliberate neglect or failure to perform a contract;
- (j) breach of an ethical standard set out in Part IX.

(2) A person who is liable to be suspended or debarred under subsection (1) may be -

- (a) suspended for a period not exceeding six months;
or
- (b) debarred for a period not exceeding three years.

(3) A suspension or debarment of a person under this section shall not be effected unless the Board -

-
- (a) gives to the person concerned -
- (i) a notice in accordance with subsection (4), and
 - (ii) a reasonable opportunity to respond to the notice and its contents; and
- (b) reviews, considers and investigates the complaint which forms the basis for the application for suspension or debarment.
- (4) The Board shall specify in the notice -
- (a) the intention of the Board to suspend or, as the case may be, to debar the person for the period specified in subsection (2);
 - (b) the grounds for the intended suspension or debarment;
 - (c) the effect of the suspension or debarment;
 - (d) the period, not being less than seven days, within which and the place at which the person may make any representation in writing or in person respecting the intention of the Board;
 - (e) the effect of the failure to make the necessary representation;
 - (f) the power of the Board to enlarge, upon request, the time under paragraph (d); and
 - (g) the right of the person to seek a review under section 89.

(5) The Board may extend the period given under subsection (4)(d), but the total period given for making the representation shall not exceed twenty-one working days from the date of service of the notice.

(6) Where the Board -

(a) on the balance of probabilities, is satisfied that the grounds for suspension or debarment are proven, the Board shall suspend or, as the case may be, debar the person; or

(b) is not satisfied that the grounds for suspension or debarment are proven, the Board shall dismiss the application.

(7) The Board shall -

(a) give its decision and the reasons for the decision, in writing;

(b) submit to the person concerned a copy of the reasoned decision; and

(c) inform that person of the right of the person to seek a review under section 89.

(8) Where a person is suspended or debarred under this section, the person is not eligible to participate in public procurement proceedings or be awarded any procurement contract during the period of the suspension or debarment.

(9) A decision of the Board has effect from the time it is served unless review proceedings are instituted under section 89.

PART XI**CHALLENGES AND REVIEW**

87. (1) The following orders, decisions and determinations are not subject to challenge or review under section 88(1) or 89(1)—

Limitations on rights to challenge and review.

- (a) an order issued by the Board under section 22(1);
- (b) the selection of a procurement method under Part V; and
- (c) a decision of a procuring entity -
 - (i) under section 57 to reject all bids, proposals, offers or quotations, or
 - (ii) under section 58 to cancel procurement proceedings.

(2) Where a person submits a challenge or applies for a review in respect of any order, decision or termination referred to in subsection (1)—

- (a) the Chief Procurement Officer shall, in the case of the challenge, dismiss the challenge; and
- (b) the Review Commission shall, in the case of the application, dismiss the application.

88. (1) Subject to sections 87 and 104, a bidder who claims to have suffered, or is likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity or the Board by this Act may challenge the procurement proceedings at any time before the entry into force of the procurement contract.

Right to challenge.

(2) The aggrieved bidder shall, in writing, file the notice of the challenge accompanied by the necessary supporting documents with the Central Procurement Unit.

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

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

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

(6) The Chief Procurement Officer may, upon the examination of a challenge, dismiss the challenge -

(a) if the challenge -

(i) does not pertain to a matter which the Chief Procurement Officer is empowered to deal with under this Act or the Regulations,

(ii) subject to sub-paragraph (iii), is not submitted within the prescribed time, or

(iii) in the case of a challenge under section 35(12), is not submitted within the time specified in that subsection; or

(b) if the Chief Procurement Officer is of the opinion that the challenge -

-
- (i)* is frivolous,
 - (ii)* was not made in good faith,
 - (iii)* is devoid of sufficient grounds for a hearing,
or
 - (iv)* is not supported by evidence of probative value.
 - (7) The Chief Procurement Officer shall -
 - (a)* subject to subsection (6), unless the challenge is resolved, suspend the procurement proceedings;
or
 - (b)* where the challenge is upheld, indicate in its decision, the corrective measures to be taken.
 - (8) Within seven days after the making of a decision, the Chief Procurement Officer shall, in writing, notify -
 - (a)* the challenger, the procuring entity, the Board and any other supplier or contractor or governmental authority which participated in the challenge proceedings of the decision of Chief Procurement Officer and the reason for the decision; and
 - (b)* the challenger of the right to seek a review of the decision under section 89 or 105.
 - (9) After the service of the notice under subsection (8), the Chief Procurement Officer shall, promptly, make the decision and the reasons for the decision available for inspection by members of the public, but no information shall be disclosed if such disclosure—

(a) is contrary to law or is not in the public interest;

(b) is likely to impede law enforcement or inhibit fair competition; or

(c) is likely to prejudice the legitimate commercial interests of the parties.

(10) The decision of the Chief Procurement Officer shall form part of the record of the procurement proceedings.

Right to review.

89. (1) Subject to sections 87, 91, 93 and 104, any supplier or contractor who claims to have suffered or is likely to suffer loss or injury due to a breach of a duty imposed on the procuring entity by this Act or the Regulations may seek a review of the procurement proceedings.

(2) Without prejudice to subsection (1), an aggrieved bidder may seek a review where -

(a) the Chief Procurement Officer does not issue a decision within the time specified in section 88(8);
or

(b) the bidder is not satisfied with the decision of the Chief Procurement Officer under section 88.

(3) The aggrieved bidder shall -

(a) submit the application for review in writing and in English language;

(b) file the application with the Secretary within the prescribed time; and

(c) specify the reasons for making the application.

(4) Where payment of a deposit is required in respect of the application, the aggrieved bidder shall make the payment.

(5) The application shall be accompanied by -

(a) the prescribed documents in support of the application; and

(b) where applicable, such document evidencing payment of the deposit.

(6) The deposit made under this section is liable to be forfeited if the Review Commission determines that the application is frivolous or was not made in good faith.

90. (1) Where an application for review is filed -

Procurement Review
Commission.

(a) the Secretary shall, without delay, simultaneously inform the Board and the Minister; and

(b) the Minister shall, without delay, appoint an *ad hoc* Procurement Review Commission for the purpose of hearing the application for review.

(2) The Review Commission shall consist of a chairperson and two other members appointed by the Minister in accordance with subsection (3).

(3) The Minister shall, in accordance with prescribed selection procedures, appoint -

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

(b) the other members of the Review Commission

from among persons who have wide experience and qualifications in legal, administrative, economic, financial, public procurement, engineering or scientific and technical matters.

(4) The Secretary shall -

(a) keep and maintain in a register the names of the persons qualified to be appointed to a Review Commission; and

(b) not later than the 31st day of January in every year, cause the names of such qualified persons to be published in the *Gazette*.

(5) The members of the Review Commission are entitled to be paid such remuneration and to be reimbursed for such reasonable expenses as the Minister may approve.

(6) Subject to this section and sections 89, 91 and 92, the Review Commission shall determine its own procedure, but the Commission shall give full opportunity to the parties to present evidence and make representations.

Review proceedings.

91. (1) Where -

(a) an application for review is filed under section 89, the Chief Procurement Officer shall, promptly notify the relevant suppliers, contractors or service providers of the nature and substance of the application; and

(b) a Review Commission is appointed under section 90(1), the Chief Procurement Officer shall, promptly, submit to the Review Commission copies of the application for review and the documents filed in support of the application.

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

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

(4) The Review Commission may by a notice, in writing, require any person -

(a) to attend before the Review Commission to give evidence under oath or on affirmation with respect to any matter related to the review; and

(b) to produce any records respecting the matter referred to in paragraph (a).

(5) If a person fails or refuses to comply with a notice under subsection (4), the High Court, on the application of the Review Commission, may issue an order requiring the person to attend before the Review Commission in compliance with the notice.

(6) Where a witness wilfully fails or refuses -

(a) to comply with an order issued under subsection (5);

(b) to answer any questions before the Review Commission under the notice; or

(c) to produce any records referred to in the notice,

the High Court may, on an application by the Review Committee, commit the witness for contempt in accordance with the Supreme Court Civil Procedure Rules or any other law.

(7) The Review Commission, after making or causing to be made such investigation as it thinks necessary, may grant one or more of the following remedies, unless it dismisses the application under subsection (8) -

- (a) declare the legal rules or principles which govern the subject-matter of the application for review;
- (b) recommend a re-evaluation of the bids or a review of the decision for the award of a procurement contract, specifying the grounds for such recommendation;
- (c) prohibit the procurement authority or accounting officer concerned from acting or deciding unlawfully or from following an unlawful or incorrect procedure;
- (d) direct the procurement authority or accounting officer concerned to act or to proceed in a lawful manner or to reach a lawful decision;
- (e) annul, wholly or in part, an unlawful act or decision of the procurement authority or accounting officer concerned, except an act or a decision bringing the procurement contract into force;
- (f) revise an unlawful decision by the procurement authority or substitute its own decision for such a decision, except a decision bringing the procurement contract into force;
- (g) require the payment of compensation in accordance with section 94; or

(h) issue an order to terminate the procurement proceedings.

(8) The Review Commission may dismiss the application if the Review Commission is of the opinion that the application -

(a) is frivolous;

(b) was not made in good faith;

(c) is devoid of sufficient grounds for a hearing;

(d) is not supported by evidence of probative value;
or

(e) does not pertain to a matter which the Review Commission is empowered to deal with under this Act or the Regulations.

(9) The Review Commission shall -

(a) within thirty days of the date of submission of an application for review, issue a written decision concerning the application, stating the reasons for the decision and the remedies granted, if any;

(b) not later than seven days from the date of the decision, notify, in writing -

(i) the applicant and the relevant procurement authority of the decision of the Review Commission and the reasons for the decision;
and

(ii) the applicant of the right of the applicant to seek a review of the decision under section 104, and

(iii) any other supplier or contractor or governmental authority which participated in the review proceedings of the decision of the Review Commission and the reasons for the decision.

(10) After the service of the notice under subsection (9), the Review Commission shall, promptly, make the decision and the reasons for the decision available for inspection by members of the public, but no information shall be disclosed if such disclosure -

(a) is contrary to law or is not in the public interest;

(b) is likely to impede law enforcement or inhibit fair competition; or

(c) is likely to prejudice the legitimate commercial interests of the parties.

(11) The decision of the Review Commission shall form part of the record of the procurement proceedings.

(12) Unless proceedings are instituted under section 104, the decision of the Review Commission is final and binding.

(13) For the purposes of this section, “relevant”, in relation to procuring entities, suppliers, contractors and service providers, means having the right to participate in the procurement proceedings to which the application relates.

Suspension of
procurement
proceedings.

92. (1) Subject to subsection (5), the timely filing of a challenge or an application under section 88 or 89 suspends the procurement proceedings for a period of seven days if the challenge or, as the case may be, application is not frivolous, is made in good faith and contains a declaration made in accordance with subsection (2).

(2) The contents of the declaration mentioned in subsection (1) shall, if proven, demonstrate that -

- (a) the aggrieved bidder is likely to suffer irreparable injury in the absence of the suspension of the procurement proceedings;
- (b) it is probable that the challenge or, as the case may be, the application for review is more likely than not to succeed; and
- (c) the suspension of the procurement proceedings would not cause disproportionate harm to the procurement authority or other suppliers, contractors or service providers.

(3) Subject to subsection (5), where -

- (a) the procurement contract has entered into force; and
- (b) an application for review meets the requirements set out in subsections (1) and (2),

the timely filing of the application under section 89 suspends performance of the procurement contract for a period of seven days.

(4) The period of suspension may be enlarged -

- (a) in the case of a suspension under subsection (1), by the Chief Procurement Officer or, as the case may be, the Review Commission; and
- (b) in the case of a suspension under subsection (3), by the Review Commission,

for the purposes of preserving the rights of the aggrieved bidder, but the total period of suspension shall not exceed thirty days.

(5) Save and except where an application for leave to seek judicial review is successful, the suspension under subsection (1) or (3) shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement proceedings or, as the case may be, the procurement to proceed.

(6) A certificate issued by the procuring entity under subsection (5) -

- (a) shall contain the particulars respecting the urgent public interest considerations and the grounds for the finding that such urgent considerations exist;
- (b) shall be made a part of the record of the public procurement proceedings; and
- (c) is conclusive with respect to its contents and is binding on the Chief Procurement Officer and the Review Commission.

Compensation.

93. Where an application for review is determined in the favour of the applicant, the Review Commission -

- (a) subject to paragraph (b), shall award the successful applicant compensation limited to the recovery of the costs of bid preparation and participation in the bidding proceedings if a procurement contract has not been awarded; or
- (b) may recommend payment of reasonable costs incurred by the successful applicant in participating in the bidding process if a legally binding contract has been awarded which, in its opinion, should have been awarded to the successful applicant.

PART XII**CIVIL LIABILITY AND OFFENCES**

94. (1) A person who -

Civil liability.

- (a) contravenes any provision of this Act or the Regulations;
- (b) aids, abets, counsels or procures the contravention of any such provision;
- (c) is knowingly involved in or is a party to any such contravention;
- (d) conspires with any other person to contravene any such provision,

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

(2) For greater certainty, any public official involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall, in addition to any other sanctions prescribed in this Act or the Regulations, be required to pay the procuring entity for the loss resulting from his actions.

95. (1) Any person who -

General offences.

- (a) directly or indirectly, unlawfully influences or attempts to influence any procurement officer or official or any member of the Board or the Review Commission, to take a particular action which favours or tends to favour a particular bidder;

- (b) knowingly deceives or misleads a person exercising or carrying out a power, duty or function under this Act or the Regulations;
- (c) delays, without justifiable cause, the opening or evaluation of bids or the awarding of contract beyond the prescribed period; or
- (d) opens any sealed bid, including such bids as may be submitted through the electronic system and any document required to be sealed, or divulges their contents before the appointed time for the public opening of the bid or documents;
- (e) subject to subsection (2), otherwise contravenes this Act or the Regulations; or
- (f) aids, abets or otherwise knowingly facilitates or is an accessory to the commission of an offence under this subsection,

commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of three years or to both such fine and imprisonment.

(2) A person who contravenes section 22(3) or 78(1)(f) commits an offence and is liable -

- (a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of three years; or
- (b) on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment.

(3) It is a defence to any charge under subsection (2) if the person charged proves that the disclosure of the information or related document—

-
- (a) was required for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act and the Regulations;
 - (b) was made by reason of an order or the direction of a court of competent jurisdiction within or outside Dominica; or
 - (c) is permitted under the provisions of any law of Dominica.

96. (1) No person, agent or employee of a person shall be involved in any corrupt practice in any procurement proceeding. Corrupt practice.

(2) Where a person or an employee or agent of a person contravenes subsection (1) -

- (a) subject to paragraph (b), the person shall be disqualified from entering into a contract for the procurement; or
- (b) if a contract has already been entered into with the person, the contract shall be voidable at the option of the procuring entity.

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

(4) A person or an employee or agent of a person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of three years; or

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

Fraudulent practice.

97. (1) No person shall be involved in a fraudulent practice in any procurement proceeding.

(2) Where a person contravenes subsection (1) -

(a) subject to paragraph (b), the person shall be disqualified from entering into a contract for the procurement; or

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

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

(4) A person who contravenes subsection (1) commits an offence and is liable -

(a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of three years; or

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

Collusion.

98. (1) No person shall collude or attempt to collude with any other person -

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

-
- (b) to have that other person -
- (i) refrain from submitting a bid, proposal or quotation, or
 - (ii) withdraw or change a bid, proposal or quotation; or
- (c) to submit a bid, proposal or quotation with any specified price or with any specified inclusions or exclusions.
- (2) If a person contravenes subsection (1) -
- (a) both persons referred to in subsection (1) shall be disqualified from entering into a contract for the procurement; or
 - (b) if a contract has already been entered into with either person referred to in subsection (1), the contract is voidable at the option of the procuring entity.
- (3) The voiding of a contract by the procuring entity under subsection (2)(b) does not limit any other remedy the procuring entity may have.
- (4) A person who contravenes subsection (1) commits an offence and is liable -
- (a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of three years; or
 - (b) on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment.

Immunity.

99. (1) No action for damages may be commenced against -

(a) a procurement officer or official; or

(b) a member of the Board,

for anything done or not done by that person in good faith while performing that person's functions under this Act.

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

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

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

(c) is permitted under the provisions of any law of Dominica.

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(3) Subsection (1) does not, by reason of section 4(5) and (6) of the State Proceedings Act, relieve the State of liability in respect of a tort committed by any person referred to in subsection (1) to which the State would otherwise be subject and the State is liable under that Act for any such tort in a like manner as if subsection (1) were not enacted.

PART XIII
MISCELLANEOUS

100. (1) Subject to this section, where the cost of the procurement of goods, services or works is not paid out of donor funds, the Board may, subject to the approval of the Minister, allow for a price preference to domestic suppliers, contractors or service providers in accordance with the Regulations and the procurement policy of the Government.

Domestic preferences,
etc.

(2) Subject to subsection (4), the price preference shall not exceed twenty percent of the value of the proposed procurement contract.

(3) A procuring entity may grant a margin of preference in the evaluation of bids when -

(a) comparing bids from domestic bidders with bids from international bidders; or

(b) comparing bids from domestic suppliers offering goods manufactured locally with bids from bidders offering goods manufactured outside Dominica or the territory of any other Member State of the OECS.

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

(a) the margin of preference intended to be granted to domestic bidders; and

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

(5) The Board shall, in allowing any price preference, have regard to economic and social development factors.

(6) The price preferences shall -

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

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

(c) be monitored and evaluated.

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

Electronic procurement.

101. (1) The Minister may, after consultation with the Board, make Regulations respecting the procurements of goods, services and works by means of an electronic procurement system.

(2) Without limiting the generality of subsection (1), the Regulations respecting the electronic procurement system shall provide for -

(a) the use of standard forms for—

(i) the publication of invitations to bid,

(ii) the transmission of bidding documents,

(iii) the submission of bids,

(iv) the conclusion of contracts, and

(v) processing of payments; and

(b) such other matters respecting public procurement as the Minister considers necessary for the effective operation of the electronic procurement system.

(3) Every procuring entity shall, in the use of the electronic procurement system, ensure that -

(a) a record of the content of every communication is preserved;

(b) the bidders' access to the records of the procurement proceedings is preserved;

(c) an adequate level of security and confidentiality is provided having regard to the provisions of this Act; and

(d) the persons concerned comply with the other requirements of this Act.

102. The following shall apply in relation to every procurement contract -

Inspections and audits relating to contracts.

(a) the Chief Procurement Officer, or anyone authorised by the Board, may inspect, at any reasonable time, the records and accounts of the procuring entity and contractor relating to contract and the procuring entity and contractor shall cooperate with and assist whoever carries out such an inspection; and

(b) the Director of Audit, or auditor authorized by the Director of Audit, may audit the accounts of the procuring entity and contractor relating to the procurement contract and the procuring entity and contractor shall co-operate with and assist whoever conducts such an audit.

Exchange of information.

103. Nothing in any enactment respecting confidentiality of information shall prevent the Comptroller of Inland Revenue or the Director of the Dominica Social Security from disclosing to a procuring authority information in relation to income tax, value added tax or social security contributions in his possession which in the view of the Comptroller or, as the case may be, the Director would assist in the due administration, control and enforcement of this Act.

Judicial review.

104. For the avoidance of doubt, the High Court has jurisdiction to review anything done or omitted to be done by a public body or authority under this Act.

Review of procurement system.

105. (1) Every five years or as soon as practicable after the expiration of that period the Cabinet, on the recommendation of the Minister, shall appoint a Public Procurement Review Panel to review and report on the public procurement system of Dominica in accordance with this section.

(2) The Public Procurement Review Panel shall comprise five members appointed as follows -

- (a) a member having relevant knowledge or expertise in public procurement who shall be chairperson;
- (b) one member nominated by the Dominica Bar Association;
- (c) one member nominated jointly by the Dominica Association of Industry and Commerce and the Dominica Employers' Federation;
- (d) one member nominated jointly by the Dominica Association of Professional Engineers and the Board of Architecture; and
- (e) one member nominated jointly by organizations

concerned with community development and transparency.

(3) The Public Procurement Review Panel shall review and report on—

- (a) the Public Procurement Act and the Regulations and their implementation;
- (b) the Manual on Public Procurement Procedures, its application by the procuring entities and its relevance to public procurement in Dominica;
- (c) the organization of the Central Procurement Unit and its delivery of procurement services;
- (d) the number, qualification and performance of procurement officers; and
- (e) any other matter which in the opinion of the Public Procurement Review Panel would enhance the administration of procurement in Dominica.

(4) The chairperson of the Public Procurement Review Panel shall submit the report to the Minister.

(5) The Minister shall—

- (a) promptly, cause the report to be laid before the House of Assembly; and
- (b) within twenty-one days from the date of receipt of the report or as soon as practicable after that date, cause the report to be published on the website of the Government.

106. The expenses required for the purposes of this Act shall be paid out of such sums allocated by Parliament. Expenses.

Regulations.

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

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

- (a) prescribing anything required to be prescribed under this Act;
- (b) respecting procurements by competitive sealed bidding, by competitive sealed proposals, as sole source, as emergency procurement, and by competitive quotations;
- (c) respecting the disposal of assets belonging to the State;
- (d) establishing a domestic preference policy for the award of contracts for good, services or works or classes of goods services or works;
- (e) establishing a policy for setting aside contracts of procurement or classes of procurement for local businesses as an incentive to the development of local business;
- (f) respecting the award and execution of contracts;
- (g) respecting the confidentiality of solicitations, awards of contract and contract performance;
- (h) respecting the course of action to be taken when no contract can be awarded after a solicitation, including a further solicitation or the waiver of those solicitation procedures and the negotiation of a contract;

- (i) prescribing the fee for a copy of biddings documents, applications to pre-qualify or other similar documents;
- (j) respecting deposits payable for applications for review;
- (k) respecting the selection procedures for members of the Review Commission.

108. The Finance Regulations shall apply to the procurement of goods, services and works under this Act with such modification, adaptations and qualifications as the circumstances require.

Finance Regulations to apply.

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

Transitional provision.

- (a) commenced before the coming into operation of this Act; and
- (b) which have not been determined, terminated or completed,

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

(2) Where -

- (a) a procurement contract is executed before the commencement of this Act; and
- (b) the procurement contract is still subsisting,

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

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

Transitional provisions.
No. 4 of 1994.

110. The Finance (Administration) Act is amended as follows—

(a) in section 3(3) -

(i) by repealing paragraph (d),

(ii) by inserting the word “and” at the end of paragraph (e),

(iii) by deleting the words “, and” which occur at the end of paragraph (f), and

(iv) by repealing paragraph (g);

(b) by repealing section 43;

(c) in section 45(i), by deleting the words “or Procurement and Stores Regulations”; and

(d) in section 56, by deleting the words “and the Procurement and Stores Regulations”.

FIRST SCHEDULE*(Section 1(1))*

MEMBER STATES OF THE OECS

Anguilla
Antigua and Barbuda
British Virgin Island
Dominica
Grenada
Monsterrat
St. Kitts and Nevis
St. Lucia
St. Vincent and The Grenadines

SECOND SCHEDULE*(Section 8(4))*OPERATION AND PROCEDURES OF THE
PROCUREMENT BOARD

1. Any four members present at a meeting of the Board shall constitute a quorum of the Board. Quorum
2. (1) Decisions of the Board shall be by a majority of the members or delegates present and voting, and in the event of an equality of votes, the chairperson has a second or casting vote. Decision of the Board.

(2) A decision of the majority of the members or designates present and able to vote is a decision of the Board.
3. (1) The Board shall meet as often as may be necessary to perform its duties and exercise its powers in an expeditious manner. Frequency, place, day and time of Board meetings

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

Notice of Board meeting

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

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

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

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

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

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

Waiver of notice

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

Decision of chairperson

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

(a) the agenda for a meeting;

(b) the conduct of the meeting;

(c) the procedure for handling motions.

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

Board may hold meeting
by signing resolution

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

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

Meetings by other
methods

9. The Minister, on the recommendation of the Board, may terminate the appointment of the person appointed under section 8(1)(f) of the Act as a member of the Board only if the person -

Termination of
appointment

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

(b) is convicted of an offence under the Integrity in Public Office Act or this Act;

Act No. 6 of 2003.

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

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

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

Disclosure of personal
interest

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

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

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

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

Committees.

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

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

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

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

Passed in the House of Assembly this 28th day of November, 2012.

VERNANDA RAYMOND (MRS.)
Clerk of the House of Assembly (Ag.)