

ACT

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THE PUBLIC PROCUREMENT ACT, 2004

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SCHEDULE

SIGNED this 7th day of December, 2004

ALHAJI AHMAD TEJAN KABBAH,
President.



Sierra Leone

No. 14

2004



The Public Procurement Act, 2004.

Short title.

Being an Act to establish the National Public Procurement Authority, to regulate and harmonise public procurement processes in the public service, to decentralise public procurement to procuring entities, to promote economic development, including capacity building in the field of public procurement by ensuring value for money in public expenditures and the participation in public procurement by qualified suppliers, contractors, consultants and other qualified providers of goods, works and services and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Application.

1. (1) This Act shall apply to the procurement of goods, works and services, including any procurement financed in whole or in part from public or donor funds by the following bodies or organizations:—

- (a) central Government Ministries, departments, commissions and agencies;
- (b) local councils;
- (c) subvented agencies;
- (d) state-owned enterprises which utilise public funds;
- (e) public universities, colleges, hospitals and all companies which are wholly owned by the State or in which the State has majority interest; and
- (f) any entity in the private sector which is given the responsibility for carrying out activities using public funds.

(2) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory pursuant to or under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, the procurement shall be governed by this Act.

(3) Where the Minister responsible for defence, with the approval of the Defence Council, determines that a procurement related to national defence or national security requires the application of special measures, the application of the rules and procedures set out in this Act may be modified by the National Public Procurement Authority, but the modification shall be governed only with defence considerations.

(4) For the purposes of subsection (3), procurement of items such as general stores, uniforms, stationery, office equipment and standard vehicles shall not be classified as national defence or national security procurement.

(5) In implementing this Act, including the composition of boards, committees and other organs provided therein, regard shall be had to compliance with the Government's policy of promoting the appointment and full participation of women.

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

Interpretation.

“**Authority**” means the National Public Procurement Authority established by section 3;

“**bid**” means, according to the type of procurement method being used, a proposal or quotation submitted by a bidder in response to an invitation by a procuring entity;

“**bid security**” means the bank guarantee or other form of security submitted by a bidder together with a bid to secure the obligations of the bidder participating in a bidding proceeding, including the obligation to sign a procurement contract if the bid is accepted, in accordance with the requirements of this Act and the bidding documents;

“**Board**” means the Board of the Authority;

“**collusive practices**” means a scheme or arrangement between two or more consultants with or without the knowledge of the procuring entity, designed to establish prices at artificial, noncompetitive levels;

“**consultant**” means the provider of intellectual services, including consultants' services;

“**contract**” means an agreement between a procuring entity and a supplier, contractor or consultant resulting from procurement proceedings;

- “**contractor**” means a physical or juridical person under contract with a procuring entity to be a provider of civil works;
- “**corrupt practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the selection process or in contract execution;
- “**employer**” means the contracting party benefiting from a works contract (usually the procuring entity);
- “**force account**” means the conduct of procurement proceedings by any procuring entity with self-supervision, utilising the entity’s own resources;
- “**fraudulent practice**” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;
- “**goods**” means objects of every kind and description, including commodities, raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods, if the value of those incidental services does not exceed that of the goods themselves;
- “**head of procuring entity**” means the chief executive officer of the entity such as the Minister of a Ministry or the overall head of an organization;
- “**intellectual services**” means any activity of an intellectual nature that does not lead to a measurable physical output;
- “**performance security**” means the bank guarantee or other form of security submitted by the supplier, contractor or consultant to secure their obligations under the procurement contract, in accordance with the requirements in the bidding documents;
- “**member**” means a member of the Board;
- “**Minister**” means the Minister responsible for finance;

- “**procurement**” means the acquisition by any contractual means of goods, works, intellectual services or other services;
- “**procurement committee**” means the group within the procuring entity, comprising officials within and outside of the entity, referred to in section 18;
- “**procuring entity**” means any organ of the State or regional and local authorities as well as statutory bodies, public sector corporations which are majority owned by the Government, public utilities using revenue collected by the sale of public services, as well as any other physical or juridical person to whom public funds have been allocated for use in public procurement;
- “**procurement unit**” means the department formally established within the procuring entity to carry out the procurement activities of that entity in accordance with the functions set out in section 19;
- “**public funds**” means any monetary resources of the State budget, or aid and credits under agreement with foreign donors, or extra-budgetary resources of procuring entities, used in public procurement;
- “**public office**” means an office of emolument in the public service;
- “**public officer**” means a person holding or acting in a public office, and includes the members and office-holders in a local council;
- “**regulations**” means the regulations issued by the National Public Procurement Authority to fulfill the objectives and to carry out the provisions of this Act;
- “**services**” means any services other than intellectual services;

“**supplier**” means a physical or juridical person under contract with a procuring entity to supply goods, construct works or provide intellectual and other services;

“**vote controller**” means Permanent Secretary of a Government Ministry, Chief Administrator of a local council, Managing Director or a General Manager, Executive Director or other head of a State-owned enterprise, or head of a Government department, agency or commission;

“**works**” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the construction itself.

PART II – ESTABLISHMENT AND FUNCTIONS OF NATIONAL PUBLIC PROCUREMENT AUTHORITY

Establishment of National Procurement Authority.

3. (1) There is hereby established a body to be known as the National Public Procurement Authority.

(2) The Authority shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Authority shall have a common seal, the use of which shall be authenticated by the signature of–

- (a) the Chairman or other member of the Board authorised either generally or specially by the Board in that behalf; and

- (b) the Chief Executive or some other person authorised by the Board in that behalf.

4. (1) The governing body of the Authority shall be a Board consisting of – Board of Authority.

- (a) a Chairman, who shall be a person competent and knowledgeable in public procurement and the public service;
- (b) a representative of the Attorney-General and Minister of Justice;
- (c) five persons appointed for their knowledge and experience in public procurement and the public service, of whom two shall represent public sector interests and three shall represent the broad cross section of the private business community and professional associations; and
- (d) the Chief Executive.

(2) The members of the Board shall be persons of high personal probity, appointed by the President and subject to the approval of Parliament.

5. (1) The Chairman and other members of the Board who are not *ex-officio* members shall hold office for three years and shall be eligible for re-appointment for not more than two terms. Tenure of members of Board.

(2) A person shall cease to be a member of the Board on any of the following grounds–

- (a) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if he becomes bankrupt or insolvent;

- (d) if he is convicted of an offence involving fraud or dishonesty;
- (e) if he fails to attend three consecutive meetings of the Board without reasonable cause;
- (f) if he resigns his office by written notice to the Minister.

Functions of Board.

6. (1) Subject to this Act, the Board shall have the control and supervision of the Authority.

(2) It shall also be the responsibility of the Board to provide such policy guidance and advice as will secure the efficient implementation of the functions of the Authority and enhance the overall performance of the Authority.

Remuneration of members.

7. The Chairman and the other members of the Board and any person co-opted by the Board under subsection (5) of section 9 shall be paid such remuneration, fees and allowances and shall be reimbursed by the Authority for expenses incurred in connection with the discharge of their functions as the Board may determine, with the approval of the Minister of Finance.

Filling of vacancies.

8. (1) Where the Chairman or a member of the Board dies, resigns, is removed from office or is absent from Sierra Leone for a continuous period exceeding three months or is by reason of illness unable to perform the functions of his office—

- (a) the members of the Board shall, as the case may be, elect one of their number to act as Chairman until such time as the Chairman resumes his office or another is appointed in his stead; and
- (b) in the case of the member, the Chairman shall arrange, subject to this Act, to have another person appointed to the Board.

(2) Where a person is elected as Chairman or appointed as a member to fill a vacancy, he shall hold office for the remainder of the term of the previous Chairman or member, as the case may be and shall, subject to this Act, be eligible for re-appointment.

9. (1) The Board shall hold its first meeting on such date and at such place as the Minister, after consultation with the Board, may determine; and thereafter, the Board shall meet for the dispatch of business at such time and place as the Chairman may decide but shall meet at least once every month. Meetings of Board.

(2) At any meeting of the Board where he is present, the Chairman shall preside and, in his absence, the members present may elect one of their number to preside.

(3) The quorum at a meeting of the Board shall be four, including the Chief Executive.

(4) Each member including the Chief Executive, shall have one vote but in the case of an equality of votes, the Chairman shall have a casting vote.

(5) The Board may at any time co-opt any person to provide special or additional technical knowledge or advise or otherwise assist the Board at any of its meetings but the person co-opted shall not vote on any matter for decision by the Board.

(6) All acts, matters or things authorised or required to be done by the Board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of at least four members, including the Chairman.

(7) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

(8) The Board shall cause minutes of all its meetings to be taken by the Secretary to the Board and signed by the Chairman and kept in the proper form as a public document.

(9) Subject to this Act, the Board shall regulate its meetings and procedure as it thinks fit.

Disclosure of interest.

10. A member of the Board who has any interest, direct or indirect, in any matter to be considered by the Board, shall disclose the nature of his interest to the Board and such disclosure shall be recorded in the minutes of the Board and such member shall not take part in any deliberation or decision of the Board relating to that matter; and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the Board.

Powers of Board.

11. In the discharge of its functions under this Act, the Board may –

- (a) direct the Chief Executive to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
- (b) give instructions to the Chief Executive in connection with the management and performance of the functions of the Authority.
- (c) on the recommendation of the Chief Executive, approve such organisational structures as the Chief Executive may consider necessary for the efficient discharge of the functions of the Authority.

Secretariat of Authority.

12. (1) The Authority shall have a secretariat which shall provide administrative, secretarial and other support for the Authority and the Independent Procurement Review Panel.

(2) The secretariat shall be headed by the Chief Executive who shall be appointed by the President subject to such terms and

conditions as the President may determine; and shall have such structures and organisation as the Authority may determine are necessary for the efficient performance of its functions.

(3) In addition to the Chief Executive, the secretariat shall have such other staff as are required for the efficient performance of the functions of the Authority.

(4) As head of the secretariat, the Chief Executive shall be responsible to the Authority for–

- (a) the day-to-day management of the affairs of the Authority and the Independent Procurement Review Panel;
- (b) the administration, organization and control of the other staff of the Authority;
- (c) the management of the funds and other property of the Authority;
- (d) the performance of such other functions as the Authority may determine.

(5) The other staff of the Authority, shall be appointed by the Board upon such terms and conditions as shall be determined by the Board.

(6) The activities of the Authority shall be financed by a fund consisting of–

- (a) moneys appropriated for the purposes of the Authority by Parliament;
- (b) grants made to the Authority by any agency or authority.

(7) The Authority shall keep proper books of accounts and proper records in relation thereto and such accounts, books and records shall be in the form approved by the Auditor-General.

(8) The financial year of the Authority shall be the same as the financial year of the Government.

(9) The books and accounts of the Authority shall each year be audited by the Auditor-General or by an auditor appointed or authorized by the Auditor-General, who shall submit a report on each audit to the Authority.

Annual report
of Authority.

13. (1) The Chief Executive shall, within three months after the end of each financial year, submit for the approval of the Board an annual report of the activities, operations, undertakings, property and finances of the Authority for that year.

(2) Subject to subsection (1), an annual report shall include a copy of the audited accounts of the Authority with the audit report thereon.

(3) A copy of the annual report approved by the Board shall be sent to the Minister not later than six months after the end of the year to which the report relates and the Minister shall, as soon as possible, but not later than one month of the receipt thereof lay the report before Parliament.

Functions of
Authority.

14. (1) The object for which the Authority is established is to regulate and monitor public procurement in Sierra Leone and to advise the Government on issues relating to public procurement.

(2) Without prejudice to the generality of subsection (1), it shall be the responsibility of the Authority to—

- (a) formulate policies and standards on public procurement and to ensure compliance therewith by all parties to procurement contracts;
- (b) assess the operations of the public procurement processes and submit proposals for the improvement of the processes, including the introduction of information and communications technology, and the development of modalities for appropriate collaboration among procuring entities;

(c) ensure capacity building and human resource development for public procurement, including development, promoting and supporting training and professional development of persons engaged in public procurement;

(d) develop and recommend to heads of procuring entities a career development and management programme, and a system for selection, appointment and termination of appointment of procurement officers;

(e) disseminate information about, and promote awareness of the public procurement system;

(f) issue standard forms of contract and standard bidding documents for mandatory use by all procuring entities;

(g) provide interpretation of this Act and other instruments governing the procurement process;

(h) plan and coordinate technical assistance in the field of public procurement;

(i) publish a quarterly Public Procurement Bulletin which shall contain information on public procurement, including approved procurement plans, proposed procurement notices, and notices of invitation to bid and contract award information;

(j) publish in the Public Procurement Bulletin or in the *Gazette* or newspaper with wide national circulation or the electronic media, a database of suppliers, contractors and consultants, and records of prices to assist in the work of procuring entities;

- (k) on its own motion or based on reports by procuring entities or the Independent Procurement Review Panel, investigate and suspend from procurement proceedings under this Act, suppliers, contractors and consultants who have neglected their obligations under a procurement contract, or provided false information about their qualifications, contravened tax regulations, or offered inducements referred to in this Act;
- (l) maintain and issue on a regular basis to all procuring entities a list of suspended suppliers, contractors and consultants;
- (m) prepare an annual report on the overall functioning of the public procurement system, including a profile of procurement activities, to be presented to Cabinet and tabled before Parliament through the Minister;
- (n) share information and cooperate with other arms of Government to facilitate the implementation of Government policies aimed at improved governance;
- (o) conduct, at least annually, a procurement forum bringing together public sector, private sector, civil society and development partners to address issues related to public procurement;
- (p) perform such other functions as are incidental or conducive to the attainment of the object stated in subsection (1).

(3) Nothing in the functions of the Authority under subsections (1) and (2) shall be construed to include the power to participate in the award of any specific procurement contract.

(4) In the performance of its functions under this Act the Authority shall not be subject to the direction or control of any person or authority.

15. (1) The Authority shall have power, in performing its functions under this Act—

Power to obtain information.

- (a) by notice in writing, to require any party to a procurement contract to furnish in such form and manner and within such time as may be specified in the notice, periodical or other information, estimates or returns concerning such contract or such other matters as may be specified in that notice;
- (b) to interview any party to a procurement contract and require him to furnish such particulars as the Authority may require;
- (c) by notice in writing, to require a party to a procurement contract to complete a form contained in the notice with particulars relating to the contract or such other matter specified in the notice and to return it in the manner and within the time specified therein.

(2) A notice referred to in subsection (1)—

- (a) may be served by delivering it to the party to whom it is addressed or by sending it by registered post, fax or e-mail to his last known address;
- (b) shall state that it is served in exercise of the powers conferred by this section and shall include a general statement of the purpose for which the information, estimates, returns or particulars are required.

(3) When a requirement to furnish information, estimates, returns or particulars under this Act is made, the information, estimates, returns or particulars shall be furnished by the party concerned or a person specifically authorised for the purpose by that party.

(4) Subject to this section, every party to a procurement contract shall, to the best of his knowledge and belief, answer when so required, all questions put to such party, orally or in writing by the Chief Executive or an officer of the Authority authorised in that behalf, not later than the date specified in the notice.

(5) A party to a procurement contract who—

- (a) fails to answer a question put to him as required under this Act or furnishes an answer to such a question which is false or misleading in any material respect, knowing the answer to be false or misleading; or
- (b) wilfully obstructs the Chief Executive or any officer or employee of the Authority in the performance of any of its functions under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding one million leones, or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Confidentiality and prohibition of disclosure of information.

16. (1) Notwithstanding any law to the contrary, no return or other commercially sensitive information collected by the Authority under section 15 shall, subject to subsection (2), be disclosed to any person.

(2) The return or other information referred to in subsection (1) may, subject to the directions of the Chief Executive, be disclosed—

- (a) to any person if required for the performance of that person's functions under this Act;
- (b) if required by any law or as evidence in any court of law.

(3) Any officer of the Authority who in the course of his employment under this Act—

- (a) wilfully discloses any data or information obtained in the course of such employment to a person not authorised to receive that information;
- (b) uses information obtained in the course of such employment for the purpose of speculating in any stock, bond or other security or any goods or services, before its release is authorised by the Chief Executive; or
- (c) otherwise contravenes this section,

commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

PART III – PROCUREMENT COMMITTEES AND PROCUREMENT UNITS

17. (1) Procurement-related functions shall be carried out by persons trained and knowledgeable in procurement, in accordance with the guidelines and qualification requirements established by the Authority. Procurement staff to be trained.

(2) Subject to this Act, the procuring entity, including its concerned officials, shall be responsible for procurement with the funds at its disposal.

18. (1) A procurement committee shall be established in every procuring entity. Procurement committees.

(2) The procurement committee shall be appointed by the head of the procuring entity and its composition shall be in accordance with subsection (9).

(3) A procuring entity shall be responsible, and vote controllers and other officials concerned are accountable, for public procurement in accordance with this Act and any other enactments which may be applicable.

(4) The head of a procuring entity shall appoint a staff member of the entity to act as secretary to the procurement committee, if the entity does not have a procurement unit.

(5) The secretary to the procurement committee shall take minutes of meetings of the procurement committee and maintain a file of all matters considered by the procurement committee.

(6) A procurement committee may delegate to a procurement unit, authority to make contract award decisions, subject to such decisions being subsequently reported to and recorded in the minutes of the procurement committee.

(7) Delegation of the authority shall be expressed in terms of estimated maximum contract values, which may differ according to whether the contract is for procurement of goods, works or services.

(8) A procurement committee shall make necessary arrangements to ensure that timely information on the execution and conclusion of contracts by a department or division of a procuring entity, as well as on supplier, contractor or consultant performance is reported to the procurement committee.

(9) A procurement committee shall consist of five members, as follows:–

- (a) the vote controller, who shall act as the Chairman;
- (b) one senior official of the entity;
- (c) the head of finance, accounts or any budget professional;
- (d) the head of the procurement unit, who shall also be secretary to the committee;
- (e) a representative of the concerned end-user department, who shall be a rotating member.

(10) Additional rotating members may be drawn to provide necessary technical, legal, and business expertise to the procurement committee.

(11) The quorum for a meeting of a procurement committee shall be three, comprising the Chairman and at least two other members referred to in subsection (10).

(12) Procurement committees may appoint technical evaluation committees and advisers to assist the procurement unit in bid opening procedures, bid evaluation and making recommendations for award.

(13) The functions of a procurement committee shall include–

- (a) verification and approval of proper procurement planning and preparation of procurement proceedings carried out by the procurement unit;
- (b) consideration and approval of the draft advertisements and other bidding documents prepared by the procurement unit;
- (c) review and approval of evaluation reports and contract award recommendations, in cases of procurement beyond the authority limits of the respective procurement unit;
- (d) rejection of unsuccessful bids;
- (e) approval of contracts with a value above the authority limits of the respective procurement unit;
- (f) approval of applications for contract modifications in the following cases:–
 - (i) where the original contract award was subject to procurement committee approval;

- (ii) where the value of the modification exceeds the authority limits applicable to the procurement unit;
- (iii) where the contract modification would cause the total contract value to exceed the authority limits applicable to the procurement unit;
- (g) reporting of procurement activities to the Authority;
- (h) submitting annually updated databases of suppliers, contractors and consultants, and records of prices of the Authority for publication; and
- (i) such other functions as may be conferred by any other enactment.

(14) Procurement committees may, upon approval by the Authority, establish subsidiary procurement committees in district offices of the procuring entity.

Procurement units.

19. (1) A procurement unit shall be established in each procuring entity, staffed with persons trained and knowledgeable in procurement and charged with carrying out, on an ongoing basis, functions related to procurement.

(2) Procuring entities shall ensure that the procurement units referred to in subsection (1) are established and provided with adequate staffing and resources.

(3) The functions of procurement units shall include—

- (a) planning of procurement;
- (b) preparation of invitations to bid and of bidding documents;

- (c) publication and distribution of invitations to bid;
- (d) receiving and safeguarding of bids;
- (e) conducting bid opening procedures;
- (f) evaluation of bids, including management of necessary technical evaluation committees and advisers to properly evaluate the bids;
- (g) performance of secretarial services for the respective procurement committee;
- (h) administering the implementation and monitoring of contracts, to the extent that is not carried out by end-user departments;
- (i) assessment of the quality of the procured goods, works and services;
- (j) sourcing and profiling of all suppliers, contractors and consultants, and the maintenance of a database for that purpose;
- (k) such other functions as may be conferred by any other enactment.

(4) Appointments of staff of the procurement unit are subject to certification and approval requirements that may be instituted by the Authority and may be linked to continuing professional education requirements.

(5) Procuring entities may establish subsidiary procurement units for subdivisions of the procuring entity, which—

- (a) are located in the provinces;
- (b) have a particularly large or specialised procurement workload;
- (c) operate in practice as an independent entity; or

- (d) would otherwise operate more effectively with a subsidiary procurement unit.

Independent
Procurement
Review Panel.

20. (1) There is hereby established a body to be known as the Independent Procurement Review Panel, referred to in this Act as the “Panel”, for the purpose of conducting independent administrative review of complaints and challenges to award decisions.

(2) The Panel shall consist of three members appointed by the Minister from among eminent Sierra Leoneans with a background in public procurement, the Sierra Leone Chamber of Commerce, Industry and Agriculture, the business community, university, the legal profession and other relevant fields.

(3) The members of the Panel shall hold office for three years, but so as to achieve continuity in the work of the Panel, for the first three years when all the members of the panel would have vacated office under this section, only one member shall be replaced in each year.

PART IV – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

Qualification
of bidders.

21. (1) In order to be awarded a contract, or, if prequalification proceedings are being held, in order to participate in the procurement proceedings, a bidder must qualify by meeting the criteria set by the procuring entity, which may include–

- (a) professional and technical qualifications;
- (b) equipment availability;
- (c) past performance;
- (d) after sales service;
- (e) spare parts availability;
- (f) legal capacity;
- (g) financial resources and condition;

- (h) professional offences;
- (i) assessment by the National Revenue Authority to ascertain payment of taxes; and
- (j) payment of social security contributions.

(2) The qualification criteria set under subsection (1) shall be applied by examining, through investigation and collaboration with other Government agencies, whether the bidder does or does not meet the qualification criteria and not by using a point system for comparing the relative level of qualifications of participating bidders.

(3) The procuring entity shall be entitled to demand from potential bidders and applicants for prequalification documentation reflecting their qualification data.

(4) Any requirement established pursuant to this section shall be set forth in the prequalification documents, if any, and in the bidding documents, and shall apply equally to all bidders without discrimination; and only those criteria stated in such documents shall be applied.

(5) A procuring entity may disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.

(6) In order to identify persons that are qualified, prior to the invitation of bids, prequalification shall be used for–

- (a) procurement of large or complex works in which the cost of bid preparation is high;
- (b) procurement of particularly high value or complexity; and
- (c) groups of similar items bundled together for a consolidated purchase.

(7) When prequalification proceedings are held, the procuring entity shall—

- (a) provide to all bidders responding to the invitation to prequalify, prequalification documents which shall provide bidders with the information required to enable them prepare and submit their applications for prequalification;
- (b) make available to each applicant the results of the assessment of qualifications and all applicants that meet the minimum criteria for prequalification shall be invited to bid.

(8) If prequalification proceedings are not conducted, post-qualification, in which the procuring entity verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents, shall be used.

Clarification and modification of bidding and prequalification documents.

22. (1) The procuring entity shall respond within two working days to any request by a bidder for clarification of the bidding documents, or the prequalification documents, submitted to the procuring entity within the time specified in the bidding documents or in the prequalification documents.

(2) Responses to requests for clarification, as well as any modification or any other clarifications of the bidding documents or of the prequalification documents shall be communicated to all bidders participating in the procurement proceedings without delay, so as to allow bidders an opportunity to take the clarifications or modifications into account in preparing their submissions and if necessary to allow bidders to do so, the procuring entity shall extend the deadline for submission of bids or applications to prequalify.

23. (1) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based on the relevant objective technical and quality characteristics, and performance of the goods, works or services to be procured; but there shall be no requirement for or reference to a particular brand, trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as “or equivalent” are included.

Rules for description of goods, works and services.

(2) Any descriptions of the technical or quality characteristics of the goods, works or services to be procured, and requirements as to testing, packaging, marking, labelling, or conformity certification, or symbols and terminology, that are irrelevant to the performance of the goods or create unjustified obstacles to participation by qualified bidders, and unnecessarily and without justification limit competition, shall not be included or used in the prequalification documents, or bidding documents.

24. The procuring entity shall set the deadline for submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximising competition, in accordance with the minimum periods set in sections 39 and 40.

Deadline for bids and other applications.

25. (1) A bid may be rejected only in accordance with this Act and regulations made thereunder.

Cancellation of proceedings for rejection of all bids, etc.

(2) A procuring entity may—

- (a) reject all bids at any time prior to the acceptance of a bid;
- (b) cancel the procurement proceedings where—
 - (i) the procurement need has ceased to exist or changed significantly;
 - (ii) insufficient funding is available for the procurement;

- (iii) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
- (iv) insufficient, or no responsive bids are received;
- (v) there is evidence of corruption, fraud, coercion or collusion among bidders; or
- (vi) cancellation is deemed to be in the interest of national security.

(3) Before rejecting all bids or cancelling any procurement proceedings, the procurement unit shall prepare a written request for approval of the cancellation for submission to the procurement committee, which shall clearly state—

- (a) detailed reasons for recommending cancellation;
- (b) the status of the procurement proceedings, including in particular, whether bids have already been opened under bidding methods; and
- (c) whether new procurement proceedings are recommended and, if so, the modifications recommended.

(4) The reason for rejecting all bids, and for cancelling procurement proceedings, shall be noted in the record of the procurement proceedings, and promptly communicated to the bidders.

(5) A procuring entity shall not be liable to a bidder by reason only of rejection of all bids or cancellation of procurement proceedings under subsection (2).

(6) If a decision to cancel the procurement proceedings is taken before the deadline for submission of bids, any bid received shall be returned unopened to the bidder.

(7) In the event of cancellation or the rejection of all bids in accordance with subsection (2), the procurement shall not be re-bid to the same specifications and contract conditions, unless the cancellation of the initial proceeding is for budgetary or other reasons unrelated to the specifications and contract conditions, but if the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specifications or contract conditions, or both may be suitably modified prior to re-bidding.

26. The procuring entity shall promptly publish in the *Gazette* and any newspaper of wide national circulation notice of each contract award in which the price of the contract exceeds the threshold set in the First Schedule, indicating the contract price and the name and address of the successful bidder.

Public notice of contract awards.

27. The procuring entity shall upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful.

Debriefing of unsuccessful bidders.

28. (1) Subject to this Act, documents, notifications, decisions and other communication referred to in this Act to be submitted by the procuring entity to a bidder or by a bidder to the procuring entity, shall be in writing

Forms of communication.

(2) The Authority may authorise procuring entities to use other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts, and payment but any such other means of communication shall be such as can preserve a record of the content of the communication, provide an adequate level of security, and does not unduly restrict bidders' access to the procurement proceedings, and that other requirements in this Act and regulations, and other applicable legislation are met.

Procurement
planning.

29. (1) All procuring entities shall undertake procurement planning, with a view to achieving maximum value for public expenditures and the other objects of this Act.

(2) The procurement plan to support the procuring entity's approved programme and budget shall indicate—

- (a) contract packages,
- (b) estimated cost of each package,
- (c) the procurement method, and
- (d) processing steps and times.

(3) A procuring entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement prescribed in this Act.

(4) In accordance with the budget preparation procedures issued by the Ministry of Finance, all procuring entities shall submit to the Ministry of Finance, and the Ministry responsible for local government (for local councils) for review and approval, their annual procurement plans for the coming financial year.

(5) Procuring entities shall, where necessary and on a quarterly basis, review and update their procurement plans and notify any modifications to the Ministry of Finance, and the Ministry responsible for local government (for local councils) and the approved and updated plans shall be submitted to the Authority for publication in accordance with paragraph (i) of subsection (2) of section 14.

Contract
administration
responsibility.

30. The procuring entity shall be responsible for the administration of contracts into which it enters, as well as the monitoring of the performance of such contracts.

Price
adjustment.

31. (1) Price adjustment is not permitted unless provided for in the procurement contract to take into account changes in economic circumstances.

(2) If the procurement contract provides for the possibility of price adjustment, it shall stipulate the conditions, such as increases or decreases in the cost of materials, labour, transportation and energy, in which price adjustment would be permitted; the formulas, and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease; the frequency with which price adjustments may be implemented; and procedures to be followed.

(3) The procurement contract may provide that, when the application of price adjustment leads to a modification exceeding a stipulated percentage of the initial price or a stipulated percentage of the balance of the contract, the procuring entity may terminate the contract.

(4) Any price variation shall be subject to approval by the respective procurement committee.

32. (1) The procuring entity shall preserve all documentation relating to the procurement proceedings in accordance with applicable rules concerning archiving of government documentation, but at a minimum, for a period of six years following the date of final completion of the procurement contract, or from the date of rejection of all bids or cancellation of the proceeding, as the case may be. Records and reports of procurement proceedings.

(2) In addition to the documentation referred to in subsection (1), the procuring entity shall prepare and maintain a summary report of the procurement proceedings, including to the extent applicable—

- (a) a description of the object of the procurement;
- (b) a list of the participating bidders, their profile and qualifications, and the qualification criteria applied;
- (c) bid prices;
- (d) the bid evaluation criteria;

- (e) a summary of the evaluation of bids;
- (f) summary of any review proceedings and decisions thereon;
- (g) requests for clarifications, and responses thereto;
- (h) statement of grounds for cancellation of procurement proceedings pursuant to section 25;
- (i) statement of grounds for choice of a procurement method other than open bidding or request for proposals for services;
- (j) statement of grounds for reduction of bid preparation periods;
- (k) information concerning rejection of bids;
- (l) such other information as may be required by the regulations made under this Act.

(3) The portion of the record referred to in paragraphs (a), (b), (c), (d) and (g) of subsection (2) shall, on request, be made available to any person after a bid, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

(4) The portion of the record referred to in paragraphs (e), (h) and (i) of subsection (2) shall, on request, be made available to suppliers, contractors or consultants that submitted bids, proposals, offers or quotations, or applied for pre-qualification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

(5) The procuring entity shall not disclose—

- (a) information, if its disclosure will—
 - (i) be contrary to law,
 - (ii) impede law enforcement,
 - (iii) not be in the public interest,
 - (iv) prejudice legitimate commercial interests of the parties, or
 - (v) inhibit fair competition under this Act;
- (b) information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary referred to in paragraph (e) of subsection (2).

(6) Records and documents maintained by procuring entities on procurement shall be made available for inspection by the Authority, Anti-Corruption Commission and Auditor-General upon request; and where donor funds have been utilised for the procurement, donor officials shall also have access, upon request, to procurement files for the purpose of audit and review.

33. (1) Any public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts, shall— Conduct of public officials.

- (a) discharge his duties impartially so as to assure fair competitive access to public procurement by bidders;
- (b) always act in the public interest, and in accordance with the object and procedures set out in this Act, in the regulations and in accordance with the Public Service codes of ethics, if any, and where applicable, the Local Government Act, 2004;

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of 2004.

- (c) at all times avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself and immediately disclose any conflict of interest and excuse himself from any involvement in the matter.
- (d) not commit or abet corrupt or fraudulent practices, coercion or collusion, including the solicitation or acceptance of any inducements;
- (e) keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information;
- (f) not take up a position of authority in any private concern with which he undertook procurement activities for a period of three years after departure from the procuring entity.

(2) Public officers of a procuring entity shall not participate as bidders in the procurement proceedings of the procuring entity.

(3) A public officer shall excuse himself from any participation in a procurement proceeding, where a bid has been submitted by a bidder who is a close relative of the public officer, or by a bidder by whom the public officer or the close relative is employed in a management capacity, or as an agent or in which he is member of the board of directors, or has a financial interest.

(4) A recusal under subsection (3) shall be effected immediately the public officer becomes aware of the submission of such a bid, but not later than the opening of bids; and the requirement of recusal shall extend to the administration and management of any procurement contract awarded to such a bidder.

(5) All public officers and other persons involved in public procurement shall, in accordance with this Act and other applicable legislation—

- (a) provide full cooperation and disclosure to the Authority, the National Revenue Authority, Auditor-General, and other authorities exercising monitoring and supervisory jurisdiction over public procurement pursuant to the laws of Sierra Leone;
- (b) no later than thirty days from assuming responsibility and thirty days after leaving office, make a declaration of their assets and liabilities in such form as the Anti-Corruption Commission may determine; the declaration shall be updated annually as well as whenever there is a substantial change in assets and liabilities.

(6) Public officers who contravene this Act and the regulation made thereunder are liable to applicable administrative and civil sanctions as well as to prosecution pursuant to applicable criminal laws, including the Anti-Corruption Act, 2000.

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of 2000.

34. (1) Bidders and suppliers shall at all times abide by their obligations under this Act, the regulations, contracts, and other instruments applicable to their conduct and activities related to procurement.

Conduct of
bidders and
suppliers.

(2) A bidder or a supplier, shall not engage in or abet corrupt or fraudulent practices, including the offering or giving, directly or indirectly, of any inducement, the misrepresentation of facts in order to influence a procurement process or the execution of a contract, or interference in the ability of competing bidders to participate in procurement proceedings.

(3) Bidders shall not engage in any activity, prior to or after bid submission, designed to deprive the procuring entity of the benefits of free and open competition, including, but not restricted to, collusion over bidding for opportunities and price fixing, and coercive, corrupt or fraudulent practices.

(4) A procuring entity shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to subsection (2) and promptly notify the rejection to the bidder concerned, the Authority, and to the relevant law enforcement authorities.

(5) The procuring entity shall not award a contract to a bidder who is responsible for preparing the specifications or bidding documents for the contract or supervising the execution of a contract, or to any affiliate of such a bidder; but this subsection shall not apply to the various firms (consultants, contractors or suppliers) which together are performing the supplier's obligations under a turnkey or design and build contract.

(6) Bidders and suppliers who engage in fraudulent, corrupt or coercive practices in connection with public procurement are subject to prosecution pursuant to the applicable criminal laws, including the Anti-Corruption Act, 2000.

Debarment of
bidders and
suppliers

35. (1) The Authority may exclude a bidder or a supplier from participation in public procurement for a minimum period of one year and a maximum period of six years after—

- (a) consultation with the affected procuring entity to consider all the facts of the case;
- (b) reasonable notice to the bidder or supplier involved of the cause of the proposed action; and
- (c) reasonable opportunity for the bidder or supplier to respond to the proposed action.

(2) A potential bidder or supplier shall not be debarred from participation in procurement except on the following grounds: –

- (a) provision of false information supplied in the process of submitting a bid;
- (b) collusion between the bidder and another bidder or a bidder and a public officer concerning the formulation of any part of the bidding documents;
- (c) connivance to interfere with the participation of competing bidders;
- (d) misconduct relating to the submission of bids, including corruption, collusion, price fixing, a pattern of under-pricing of bids, breach of confidentiality, and any other misconduct referred to in section 34;
- (e) non-performance of contractual obligations under a contract deemed serious enough to warrant debarment, provided that the non-performance was not due to circumstances beyond the control of the supplier;
- (f) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract;
- (g) non-settlement of tax obligations after assessment by the National Revenue Authority or the evasion of tax by any means; or
- (h) conviction of a crime related to business or professional activities.

36. (1) A procuring entity may grant a margin of preference for the benefit of bids for work by domestic contractors or for the benefit of bids for domestically produced goods or for the benefit of domestic suppliers of services; ^{Margin of preference.}

(2) The margin of preference shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings;

(3) The margin of preference shall be authorised by the Authority and shall be subject to approval by the Authority.

PART V—METHODS OF PROCUREMENT

Choice of procurement method.

37. (1) Public procurement shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided in sections 38, 39, 40 and 41.

(2) It is not permitted artificially to divide procurement with the intention of avoiding the monetary thresholds established under to this Act or the regulations or other instruments issued for the implementation of this Act.

(3) If the procuring entity uses a method of procurement other than advertised open bidding or, in the case of procurement of consultant services, a method other than request for proposals, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.

(4) When the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services under procedures to be defined in the regulations.

(5) In the cases referred to in subsection (4), procurement may be carried out by force account, in which the procurement is carried out with self-supervision, utilising the procuring entity's own personnel and equipment or those of another government institution.

(6) The cases in which force account may be utilised include, separately or in combination with any activity—

- (a) that, in view of its size, nature, location or scattered locations (with no local suppliers available), financing or high demobilization costs for outside suppliers, does not attract bidders, at least not at a reasonable price;
- (b) that cannot be calculated, or determined in detail in advance or both, such that, if it were carried out by a supplier, contractor, or consultant, it would have to bear a large risk;
- (c) where the risk of unavoidable work interruptions is better borne by the procuring entity than by a supplier or contractor;
- (d) where it has been demonstrated that force account is the only practical method for constructing and maintaining works under special circumstances;
- (e) for a pilot project of a particular nature for development of a technology or work method or both that cannot yet be carried out by a supplier; and
- (f) for works that must be carried out without disrupting existing operations by the procuring entity's crew familiar with those operations.

(7) Where any procurement of goods, sub-contracted works or services is required to supplement the force account activity, that procurement shall be carried out in accordance with the appropriate provisions of this Act.

Open competitive bidding.

38. (1) The open bid proceedings may include a prequalification stage or apply a post qualification procedure prior to the award of contract.

(2) The open bid may be carried out in a single stage or in two stages, but use of the two-stage method is appropriate in the circumstances outlined in subsection (3); all other methods to be selected as the circumstances require from this Part.

(3) An open bid may be held in two stages in the following cases:–

- (a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and
- (b) when, because of the complex nature of the goods, works or services to be procured, the procuring entity wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications.

National competitive bidding.

39. (1) In procurement proceedings in which the procuring entity decides that only domestic suppliers or contractors are likely to be interested in submitting bids, the procuring entity may employ national competitive bidding procedures.

(2) The procuring entity is not required to employ national competitive bidding procedures if the estimated contract amount is lower than the value threshold specified in the First Schedule.

(3) The procuring entity may stipulate in the bidding documents that bidders shall quote only in the local currency and payments shall be made wholly in the local currency.

(4) At least four weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the bids as provided in section 24.

40. (1) The procuring entity shall employ international competitive bidding procedures when the estimated contract amount is higher than the value threshold specified in the First Schedule. International competitive bidding.

(2) International competitive bidding may be used whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.

(3) International competitive bidding shall be in accordance with the appropriate procedures prescribed in this Act together with the following:–

- (a) the invitation to bid and bidding documents shall be in English;
- (b) the invitation to bid shall be placed in a newspaper with adequate circulation to attract foreign competition as provided in section 24;
- (c) at least six weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the tenders as provided in section 23;
- (d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of section 23;
- (e) bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies, or in a currency widely used in international trade and stated in the bidding documents;

- (f) general and special conditions of contract shall be of a kind generally used in international trade.

Restricted bidding.

41. (1) Subject to approval by the procurement committee, restricted bidding may be held in the following cases:-

- (a) when the goods, works or services are only available from a limited number of bidders;
- (b) when the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement.

Procedures for restricted bidding.

42. (1) When restricted bidding is employed on the grounds referred to in paragraph (a) of section 41, all known suppliers capable of supplying the goods, works or services shall be invited to bid.

(2) When restricted bidding is employed on the grounds referred to in paragraph (b) of section 41, the procuring entity shall solicit bids from a minimum number of five bidders, if possible.

(3) The procedures for bidding proceedings, as set forth in Part V, apply to restricted bidding, except to the extent that they are modified by this section.

Request for proposals.

43. Request for proposals for services is the method to be used for the procurement of consultant services, subject only to the exceptions provided in section 46.

Request for quotations.

44. The request for quotations method may be used for the procurement of goods and works-

- (a) where the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the procuring entity and the estimated value does not exceed the amount set in the First Schedule;

- (b) when the estimated value of the procurement of small works, does not exceed the amount set in the First Schedule;

- (c) when the estimated value of the procurement of services does not exceed the amount set in the First Schedule.

45. (1) Quotations shall be requested in writing from as many bidders as practicable, but from at least three bidders.

Basic procedures for request for quotation.

(2) The request shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time of delivery, as well as any other special requirements.

(3) Bidders shall be given adequate time to prepare and submit their quotations, but each bidder shall be permitted one quotation, which may not be altered or negotiated.

(4) A purchase order shall be placed with the bidder that provided the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.

46. (1) Public procurement by means of the sole-source procurement method is permitted only in the following circumstances:-

Sole-source.

- (a) when only one supplier has the exclusive right to realise manufacture of the goods, carry out the works, or perform the services to be procured and no suitable alternative is available;

- (b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;

- (c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;
- (d) in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;
- (e) when the services require that a particular consultant be selected due to his unique qualifications, or when it is indispensable to continue with the same consultant.

(2) Use of sole-source procurement on the grounds referred to in paragraphs (b), (c), (d), and (e) of section (1) is subject to prior approval by the procurement committee.

Basic procedure for sole-source procurement.

47. (1) When the procuring entity engages in sole-source procurement on the grounds referred to in paragraphs (b), (c), (d), and (e) of subsection (1) of section 46, it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery; and shall request submission of a bid or proposal in writing or both and shall be free to negotiate with the sole bidder.

(2) Publication in the *Gazette*, a newspaper of national circulation and, when feasible, on the internet, of a notice of the holding of sole-source procurement proceedings is required when the estimated value of the procurement exceeds the threshold set in the First Schedule.

48. (1) The invitation to bid, or an invitation to prequalify, shall be published in the *Gazette*, national print media of wide circulation and electronic media, when feasible, and, in the case of international competitive bidding, also in selected international media listed in the guidance provided by regulations.

(2) Whenever feasible, and in accordance with the regulations, invitations to bid or to apply for prequalification shall be published on the internet and the publication of the invitation shall run at least for the period of time specified in the regulations.

(3) A procuring entity may limit participation on the basis of nationality in accordance with regulations and shall include in the record of the procurement proceedings a statement of the grounds and circumstances on which it relied.

(4) An international bid in which the participation of foreign bidders is invited, shall involve publication in the English language of the invitation to submit bids, or to apply for prequalification, if such procedures take place, in accordance with section 21 and the bidding and contract documents are also to be made available in the English language, shall be held in the following cases:—

- (i) when the estimated value of the procurement exceeds the thresholds set in the First Schedule; or
- (ii) when there is no response to a national bidding proceeding.

(5) The invitation to bid or, as the case may be, the invitation to prequalify, shall include information on—

- (a) the identity and address of the procuring entity;
- (b) the nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;

- (c) the manner of obtaining and the price of the bidding documents, or, if applicable, the prequalification documents;
- (d) the place and deadline for submission of bids, or of applications to prequalify;
- (e) such other matters as may be prescribed in the regulations and standard forms issued by the Authority.

Bidding documents.

49. (1) Unless provided otherwise under the regulations, procuring entities shall use the standard bidding documents listed in the Second Schedule.

(2) The procuring entity shall provide, in an expeditious and non discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of prequalification proceedings, to all bidders that have been prequalified, and the price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.

(3) The bidding documents shall inform bidders of –

- (a) the nature and time frame of the procurement, including, but not limited to the technical specifications or drawings, as the case may be, terms of reference, the contractual terms of the procurement, and the manner of entry into force of the contract;
- (b) bidder qualification requirements if a prequalification procedure was not followed;
- (c) information as to site visits and pre-bid conferences;
- (d) instructions for preparation and submission of bids, including the deadline for submission of bids, time and place of bid opening;

- (e) components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- (f) the criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights and when considering evaluation criteria, the procuring entity shall consider only the following:-

(i) the bid price, subject to any margin of preference applied pursuant to section 36;

(ii) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;

(iii) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in goods, works or services being offered by bidders, the transfer of technology and the development of managerial, scientific and operational skills;

(g) the preference, if any, for domestic goods and contractors as outlined in regulations;

- (h) any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
- (i) whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
- (j) if suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
- (k) the required validity period of bids;
- (l) the amount and acceptable forms of any required bid, performance or other security;
- (m) the conditions of contract which will be entered into with the successful bidder;
- (n) notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
- (o) the manner in which bidders may obtain review of actions, omissions and decisions of the procuring entity; and,
- (p) such other matters as may be required in regulations, manuals and standard forms prescribed by the Authority.

Submission of bids.

50. (1) Subject to subsection (2) of section 28, a bid shall be submitted in writing, duly signed and in a sealed envelope; and bids received after the deadline for submission of bids shall be returned unopened.

(2) Invitation for prequalification and bidding documents shall permit submission of applications to prequalify or bids by hand or mail or by courier at the option of the bidder.

(3) Subject to the policy laid down by the Authority, the bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with section 43.

(4) Bids shall remain valid for the period of time indicated in the bidding documents, but modification or withdrawal of a bid during the bid validity period is subject to forfeiture of the bid security.

(5) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned and a bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security, if such a security was required.

51. (1) The bidding documents may require bidders to submit a bid security, which shall be applied to all bidders, and set in accordance with the regulations. Bid security.

(2) Forfeiture of a bid security may be imposed only in the event of –

- (a) a modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
- (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (c) failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or

- (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.

Bid opening.

52. (1) Bids shall be opened at the time and place indicated in the bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.

(2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request; and any documents with financial implications must be signed by the chairman and two other members of the bid opening committee.

(3) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.

(4) Following opening of the bids, and until the preliminary decision on award has been notified to the successful bidder, no bidder shall make any unsolicited communication to the procuring entity or try in any way to influence the procuring entity's examination and evaluation of the bids.

Examination, evaluation and comparison of bids.

53. (1) Following the opening of bids, the procuring entity shall first examine the bids in order to determine whether the bids are complete, signed, whether required documents to establish legal validity and required bid security have been furnished and whether bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.

(2) Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, if one is required, or not accompanied by essential supporting documents such as business registration certificates, business licences and tax receipts, or are substantially non-responsive to the technical

specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.

(3) If a prequalification procedure was applied, a bid received from any entity other than the prequalified bidders shall be rejected and excluded.

(4) Bids not excluded from consideration under subsections (2) and (3), shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.

(5) The procuring entity may seek clarification from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited.

(6) If there is an arithmetical error, such an error shall be rectified and the bidder notified but if the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited.

(7) If there is a discrepancy between figures and words, the amount in words shall prevail unless the discrepancy is due to misplacement of decimal point, in which case the mistake shall be rectified and the bidder notified.

(8) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection of bid at the earlier stage, such minor variation shall be costed, if possible, and the evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.

(9) If the process included a prequalification, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.

(10) If there was no prequalification, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents; if that bid fails, the same check shall be applied to the next ranked bid.

(11) The procuring entity shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the recommendation for award of contract in accordance with the evaluation criteria specified in the bidding document.

Non-disclosure of bid evaluation details.

54. Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in subsections (3) and (4) of section 32 on the record of procurement proceedings.

Prohibition of negotiations.

55. (1) Except as provided in paragraph (b) of subsection (2), no negotiations shall take place between the procuring entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor.

(2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the procuring entity shall investigate the causes for the excessive cost and may—

- (a) consider requesting new bids; or
- (b) subject to approval by the procurement committee and guidelines issued by Authority, negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope which can be reflected in a reduction of the contract price.

Award of contract.

56. (1) The contract shall be awarded to the bidder having submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents.

(2) Prior to the expiry of the period of bid validity, the procuring entity shall notify the successful bidder of the proposed award, which shall specify the time within which the contract must be signed, subject to any intervening complaints filed in accordance with Part VII.

(3) Where the value of the contract exceeds the levels set in the regulations, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 calendar days have passed following the giving of that notice.

(4) If the bidder whose bid has been accepted fails to sign a written contract, when required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the procuring entity shall accept the next ranked bidder from among the remaining bids that are in force, but in selecting the next ranked bidder, the procuring entity shall comply with the provisions of section 52 as appropriate, as well as with the notice requirements provided in subsection (2).

57. (1) Where the bidding documents require the supplier or contractor whose bid has been accepted to sign a written procurement contract conforming to the bid, the procuring entity and the supplier shall sign the procurement contract within 30 days after the notice referred to in subsection (2) of section 56 has been dispatched to the supplier or contractor. Acceptance of bid and signature of contract.

(2) Where a written procurement contract is required to be signed, the procurement contract shall enter into force when the contract is signed by the supplier or contractor and by the procuring entity.

(3) Except as provided in subsection (2) of section 56, a procurement contract in accordance with the terms and conditions of the accepted bid shall enter into force when the notice is dispatched to the supplier or contractor that submitted the bid, if it is dispatched while the bid is in force.

(4) Contracts shall be signed by the head of a procuring entity, but he may delegate signature of small contracts to the head of the procurement unit or other senior official of the entity.

Two-stage bidding.

58. (1) Where a procurement is to be done by a two-stage bidding, the bidding documents shall, in the first stage, call upon bidders to submit initial bids without a bid price, and may solicit initial proposals relating to the technical, quality or other characteristics of the goods, works or services, as well as to contractual terms and conditions of the proposed contract and, where relevant, the professional and technical competence and qualifications of the bidders.

(2) The procuring entity may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes; minutes of these discussions shall form part of the procurement records.

(3) At the end of the first stage, the procuring entity may—

- (a) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive;
- (b) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximise competition and articulate appropriate evaluation methodology.

(4) In the second stage, the procuring entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.

(5) A bidder, not wishing to submit a final bid, may withdraw from the bidding proceedings without forfeiting any bid security that the bidder may have been required to provide, and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised bidding documents.

(6) The procedures for bidding set forth in section 57 apply to two-stage bidding proceedings, except to the extent they are modified by this section.

59. (1) For the purposes of procuring the services of a consultant, the procuring entity shall prepare a shortlist of 3 to 6 consulting firms, to the greatest extent feasible, comprising consultants of the same category, and similar capacity and business objectives, to which it shall provide the request for proposals for services; and the short-list shall be established from among those who have capacity to perform the required services, as demonstrated in their submissions.

Request for consultant's services.

(2) When the estimated value of the procurement exceeds the threshold set in the First Schedule, in order to establish the shortlist, the procuring entity shall seek expressions of interest by publishing a notice in the *Gazette*, in national print media of wide circulation, and whenever feasible, on the internet, and where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal.

(3) For assignments of a value lower than the threshold set in the First Schedule, the shortlist may be established from market knowledge, or other sources of information but in the case of assignments which have an estimated value above that threshold, or are particularly complex, an advertisement shall also be utilised.

(4) The request for proposals shall provide shortlisted bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity including, in particular—

- (a) the name and address of the procuring entity;
- (b) the nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
- (c) the criteria to be used in evaluating and comparing proposals, and their relative weights as compared to price;

- (d) the contractual terms of the procurement, and the manner of entry into force of the contract;
- (e) instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
- (f) the final selection procedures to be applied;
- (g) notice of conflict-of-interest restrictions and anti-fraud and corruption rules, including the grounds for potential debarment from future participation in procurement of goods, services or works that may result from the assignment under consideration;
- (h) and such other matters as may be prescribed in the regulations and standard documents issued by the Authority.

(5) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

Selection based on quality and cost.

60. (1) The selection of the successful proposal shall be based either—

- (a) on the technical quality of the proposal, the consultant's relevant experience and the expertise of its staff, and the proposed work methodology, as well as the price of the proposal; alternatively,
- (b) on the quality of the technical proposal submitted within a predetermined fixed budget; or
- (c) on the basis of the best financial proposal submitted by the candidates, having obtained an acceptable technical score pre-disclosed in the request for proposals.

- (2) Detailed procedures shall be set forth in the regulations.

61. When the services are of an exceptionally complex nature or of a considerable impact on future projects or national economy or when they may lead to the submission of proposals which are difficult to compare, the consultant may be selected exclusively on the basis of the technical quality of his proposal; the use of which method should be approved by the procurement committee. Selection based on quality.

62. (1) The contract may be negotiated with the selected consultant but negotiations may not be simultaneously held with several consultants. Contract award.

(2) The procuring entity shall notify its proposed award to all shortlisted consultants at the same time it notifies the selected consultant, but where the value of the contract exceeds the levels set in the regulations, the contract shall not be signed until at least 14 calendar days have passed following the giving of that notice.

(3) The selected consultant shall not be permitted to substitute key staff, unless both parties agree that undue delay in the selection process makes such changes unavoidable or that such changes are critical to meet the objectives of the assignment.

(4) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

PART VI—COMPLAINTS PROCEDURE

63. (1) A potential or actual bidder that claims to have suffered, or that is likely to suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Act, its implementing regulations and the bidding document, may seek review in accordance with this Part, at any stage of the procurement proceedings. Right to review.

(2) An application for review shall not be entertained unless it identifies the specific act of omission or commission alleged to contravene this Act or its implementing regulations and the bidding document.

(3) Where an application for review concerns alleged improprieties in the solicitation of applications to prequalify, or to solicitation of bids, which are apparent prior to bid opening, such applications shall be entertained only if submitted prior to bid opening.

Review by head of procuring entity.

64. (1) Prior to the entry into force of a contract, application for review shall be made, in the first instance, in writing, to the head of the procuring entity.

(2) The head of the procuring entity shall not entertain an application for review unless it was submitted within 14 working days, or other deadlines set in the regulations, or when the bidder submitting it became aware of the circumstances giving rise to the complaint or when that bidder should have become aware of those circumstances, whichever is earlier.

(3) Unless the complaint is resolved by mutual agreement, the head of the procuring entity shall suspend the procurement proceedings and shall, within five working days after submission of the complaint, issue a written decision, stating the reasons, and, if the complaint is upheld, indicating the corrective measures to be taken.

(4) If the Head of the procuring entity does not issue a decision within the time stated in subsection (3), or if the complainant is not satisfied with the decision of the head of the procuring entity, the complainant is entitled to submit a complaint to the Independent Procurement Review Panel pursuant to section 65.

(5) Complaints under subsection (4) shall not be heard unless submitted to the Independent Procurement Review Panel within ten working days from the elapse of the time stated in subsection (3) or from the date on which the entity's decision was communicated to the complainant.

Review by Independent Procurement Review Panel.

65. (1) Subject to subsection (4), an application for review may be brought before the Independent Review Panel in the following circumstances:—

(a) in the form of an appeal by the complaining bidder against a decision by the head of the procuring entity, provided that the appeal is submitted within ten working days of the date of the decision;

(b) where the head of a procuring entity fails to render a decision within the required time frame, provided that the application for review is filed within ten working days of the expiry of the time for the decision by the head of the procuring entity referred to in subsection (3) of section 64;

(c) in the case where the contract has already entered into force, any application for review submitted in the first instance to the Independent Procurement Review Panel shall not be entertained unless it is submitted to the Panel within ten working days or when the bidder submitting it became aware of the circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.

(2) In order for an application for review to be considered by the Independent Procurement Review Panel, the application shall be accompanied by an administrative fee in accordance with the regulations.

(3) The Independent Procurement Review Panel shall make a decision under this section within ten working days after receiving the complaint, and such decision shall be binding on all the parties.

(4) A complaint may be dismissed for—

(a) failure to comply with any of the requirements of this Part;

- (b) setting forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by the procuring entity, or with respect to deadlines for filing of a complaint with the Independent Procurement Review Panel;
- (d) concerning contract implementation or administration rather than contract award;
- (e) challenging an affirmative determination of qualifications as regards a competing bidder.

(5) Unless a complaint is dismissed, the remedies that may be ordered by the Independent Procurement Review Panel include—

- (a) prohibiting the procuring entity from acting or deciding in an unauthorised manner or from following incorrect procedure;
- (b) annulling in whole or in part any unauthorised act or decision of a procuring entity, other than any act or decision bringing the contract into force;
- (c) reversing a decision by the procuring entity or substituting its own decision for such a decision, other than any decision bringing the contract into force;
- (d) award of costs incurred in participating in the bidding process where the results were not in accordance with this Act or the regulations.

(6) The timely submission of a complaint in accordance with deadlines set in this section suspends the procurement proceedings until a decision on the complaint is issued by the Independent Procurement Review Panel.

(7) The suspension provided by subsection (6) shall not apply if the procuring entity certifies to the Authority that urgent public interest considerations, such as natural disasters, medical emergencies, civil strife and outbreak of war, require the procurement to proceed.

(8) The certification, under subsection (7) shall state the grounds for the finding that urgent considerations exist and which shall be made a part of the record of the procurement proceedings, and shall be conclusive with respect to all levels of review, except judicial review.

PART VII – DISPOSAL OF STORES AND EQUIPMENT

66. (1) The head of a procuring entity shall convene a Board of Survey comprising representatives of departments with unserviceable, obsolete or surplus stores, plant, equipment and vehicles which shall report on the items and, subject to a technical report on them, recommend the best method of disposal after the officer in charge has completed a Board of Survey form.

(2) The Board of Survey's recommendations shall be approved by the head of the procuring entity and the items shall be disposed of following disposal procedures specified in section 67.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board for handling losses shall be followed before the items are boarded and disposed of.

67. (1) Disposal of obsolete or surplus items shall be by— Disposal procedures.

- (a) transfer to government departments or other public entities, with or without financial adjustment;

- (b) sale by public bid to the highest bidder, subject to reserve price;
- (c) sale by public auction, subject to reserve price; or
- (d) destruction, dumping, or burying as appropriate.

PART VIII—MISCELLANEOUS

Regulations. **68.** (1) The Authority may, by statutory instrument, make regulations for giving effect to this Act.

(2) Without prejudice to subsection (1), regulations made thereunder may provide for—

- (a) standard bidding documents, request for proposals and other forms to be used on a mandatory basis by procuring entities;
- (b) the preparation and submission of bids;
- (c) the manner of publication of the notice of procurement contract awards;
- (d) the margin of preference in the evaluation of bids;
- (e) the preparation and submission of applications to pre-qualify for bids;
- (f) detailed procedures for selection of consultants using methods other than those specified in sections 59 to 62; .
- (g) procurement proceedings on the basis of nationality;

- (h) the procurement process where one entity or a specially appointed agent is to procure items on behalf of another entity;
- (i) the amendment of the thresholds for procurement methods and award of contracts under the First Schedule;
- (j) sample forms of the procurement plans;
- (k) print and electronic media acceptable for publication in compliance with this Act; and
- (l) on any other matter connected under this Act with public procurement.

69. This Act shall apply notwithstanding anything to the Act to prevail. contrary contained in any other enactment.

FIRST SCHEDULE

THRESHOLDS

- 1. Contract awards shall be published when the estimated value of the contract is above:**
- (a) In the case of contracts for the procurement of goods, Le 300.00 million
 - (b) In the case of contracts for the procurement of works, Le 600.00 million.
 - (c) In the case of contracts for the procurement of services, Le 300.00 million.

2. Shopping Procedures shall be used when the estimated value of the procurement is below:

(a) In the case of contracts for the procurement of goods, Le 60.00 million.

(b) In the case of contracts for the procurement of works, Le 150.00 million.

(c) In the case of contracts for the procurement of services, Le 60.00 million.

3. National Competitive Bidding (N.C.B.) shall be used when the estimated value of the procurement is below:

(a) In the case of contracts for the procurement of goods; Le 600.00 million.

(b) In the case of contracts for the procurement of works, Le 900.00 million.

(c) In the case of contracts for the procurement of services, Le 300.00 million.

4. International Competitive Bidding (I.C.B.) shall be held when the estimated value of the procurement exceeds:

(a) In the case of contracts for the procurement of goods, Le 600.00 million.

(b) In the case of contracts for the procurement of works, Le 900.00 million.

(c) In the case of contracts for the procurement of services, Le 600.00 million.

5. Expression of Interest for Selection of Consultants

The solicitation of expressions of interest is required when the estimated value of the consultants' services is above Le 600.00 million.

6. Approval of Contract Awards

	Type of contract	Contract Value (Le) (Threshold in SLL million)	Authority approving proposed contract award
1.	Goods	Less than 15	Head of Procurement Unit or Department
		15-60	Head of Procuring Entity
		Above 60	Procurement Committee
2.	Works/Technical Services	Less than 30	Head of Procurement Unit or Department
		30-100	Head of Procuring Entity
		Above 100	Procurement Committee
3.	Consulting	Less than 6 Services	Head of Procurement Unit or Department
		6-30	Head of Procuring Entity
		Above 30	Procurement Committee

SECOND SCHEDULE – STANDARD BIDDING DOCUMENTS

1. GOODS
 - (a) Shopping
 - (b) NCB
 - (c) ICB
 - (d) Health Goods
 - (e) Information Technology (IT) Goods

2. WORKS

(a) Shopping

(b) NCB

(c) ICB

3. SERVICES

(a) Request for Proposals for small contracts (less than Le 300.00 million)

(b) Request for Proposals for large contracts (above Le300.000 million).

Passed in Parliament this *2nd* day of *December*, in the year of our Lord two thousand and four.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.