

PUBLIC PROCUREMENT ACT

Act 33 of 2006 – 17 January 2008

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PUBLIC PROCUREMENT ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Procurement Act.

2. Interpretation

In this Act—

“bid” includes a proposal submitted in response to a request issued pursuant to section 24;

“bid security” means the security instrument required to ensure that a bid will remain valid during the period stated in the bidding document;

“bidder” means a participant or potential participant in procurement proceedings;

“bidding document”—

- (a) means any document issued by a public body on the basis of which bidders prepare bids; and
- (b) includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or other similar items;

“Board” means the Central Procurement Board established under section 8;

“Chairperson” means the Chairperson of the Board or Review Panel, as the case may be;

“challenge” means a challenge made pursuant to section 24, 40 or 43;

“Chief Executive” means the person referred to in section 9 (1);

“chief executive officer” means the administrative head of a public body;

“consultancy services” means services of an intellectual and advisory nature, not incidental to the supply of goods or execution of works, such as design, supervision, training, analysis, auditing, software development, and similar services;

“consultant” means a person under contract to provide consultancy services to a public body in relation to a procurement contract;

“contractor” means a person who has entered into a procurement contract with a public body;

“control” has the same meaning as in the Public Debt Management Act;

“donor organisation” means an organisation based outside Mauritius which provides, or joins in providing, grants, credits or loans to Government or its agencies;

“exempt organisation” means a body which is, by regulations, excluded from the application of this Act;

“foreign State” includes any Ministry, department of Government, organ, statutory body, Government-owned or Government-controlled corporation, or other agency, of the foreign State;

“framework agreement” means an agreement or other arrangement between one or more public bodies or a lead organisation and one or more suppliers which establishes the terms and conditions under which the supplier will enter into one or more contracts with the public body in the period during which the agreement or arrangement applies;

“goods” means objects of every kind and description, including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the goods such as freight and insurance;

“lead organisation” means a public body designated by the Policy Office to enter into and manage a framework agreement on its own behalf and that of other public bodies, or on behalf of other public bodies;

“local authority”—

- (a) has the same meaning as in the Local Government Act; and
- (b) includes the Rodrigues Regional Assembly;

“major contract” means a contract for the procurement of goods or services or the execution of works—

- (a) to which a public body is or proposes to be a party; and
- (b) the estimate of the fair and reasonable value of which exceeds the prescribed amount;

“member” —

- (a) means a member of the Policy Office, Board or Review Panel, as the case may be; and
- (b) includes the Director, or Chairperson of the relevant body, as the case may be;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“officer” means a person who is assigned to, or employed by, the Policy Office, Board or Review Panel;

“other services” means any services other than consultancy services or services incidental to the supply of goods or execution of works;

“own” has the same meaning as in the Public Debt Management Act;

“Policy Office” means the Procurement Policy Office referred to in section 4;

“prescribed amount” means the amount specified in column 3 of the Schedule corresponding to the public body specified in column 1 in relation to the type of contract specified in column 2 of that Schedule;

“procurement” means the acquisition by a public body, by purchase, lease or any other contractual means, of goods, works, or consultancy or other services;

“procurement contract” —

- (a) means a contract between a public body and a supplier, contractor or consultant resulting from procurement proceedings; and
- (b) includes a contract under a framework agreement;

“public body” —

- (a) means any Ministry or Government department;
- (b) includes —
 - (i) a local authority;
 - (ii) a parastatal body; and
 - (iii) such other bodies as may be specified in the Schedule;

“public official” means —

- (a) an officer;
- (b) a supplier, contractor or consultant or any of their agents; and
- (c) a public officer or other person employed by a public body;

“responsive” in relation to a bid, means responsive to the basic requirements of a bid regarding ability to perform and complete on time;

“Review Panel” means the Independent Review Panel referred to in section 44;

“supplier” means a person delivering goods, works, consultancy services or other services;

“Vice-chairperson” means any Vice-chairperson of the Board;

“works” means any work 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.

[S. 2 amended by s. 35 (a) of Act 14 of 2009 w.e.f. 30 July 2009; s. 24 (a) of Act 38 of 2011 w.e.f. 15 December 2011; s. 22 (a) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (a) of Act 27 of 2013 w.e.f. 21 December 2013; s. 43 (a) of Act 9 of 2015 w.e.f. 15 August 2015; s. 44 (a) of Act 10 of 2017 w.e.f. 24 July 2017; s. 59 (a) of Act 11 of 2018 w.e.f. 9 August 2018.]

3. Application of Act

(1) Notwithstanding any other enactment but subject to this section, this Act shall not apply to procurement undertaken—

- (a) to protect national security or defence, where—
 - (i) the Prime Minister so determines; and
 - (ii) the procurement is undertaken by the most competitive method of procurement available in the circumstances;
- (b) pursuant to an agreement or arrangement between Mauritius and a foreign State which allows Mauritius to benefit from the expertise and development experience of that foreign State in a particular field, provided that such procurement is undertaken by—
 - (i) the foreign State or by, or through, an entity designated by the foreign State;
 - (ii) the Government of Mauritius; or
 - (iii) a statutory body or entity—
 - (A) specified in an enactment; or
 - (B) designated for that purpose by the Government of Mauritius; or
- (c) by any Ministry, acting on its own or on behalf of another public body, where—
 - (i) such procurement is in respect of an information and communication technology project which requires interfacing with different existing systems; and
 - (ii) in view of confidentiality of sensitive information and potential risks in the execution of the project, the supervising officer of the Ministry considers that, in order to protect the safety or interests of Mauritius, it is necessary that the project be executed by an entity which has initially developed the system or which has previously developed a similar system.
- (d) – (g) —

(1A) For any procurement under subsection (1) (b) or (c)—

- (a) the relevant Ministry shall—
 - (i) perform due diligence, with such assistance as it may request from the Board, to ensure that the procurement constitutes value for money;
 - (ii) submit a report on the due diligence, together with supporting documents and its recommendations, to the high-powered committee;
- (b) the high-powered committee shall, after examining the documents and recommendations referred to in subparagraph (a) (ii)—
 - (i) forward its report, including its recommendations, to Cabinet; and
 - (ii) notify the relevant Ministry of its recommendations to enable it to take a decision on the procurement.

(1B) For the purpose of subsection (1A)—

- (a) the Policy Office shall issue guidelines to assist the Ministry in performing due diligence;
- (b) the high-powered committee—
 - (i) shall be chaired by the Secretary to Cabinet and Head of Civil Service, or his representative;
 - (ii) shall comprise such other senior officials as the Secretary to Cabinet and Head of Civil Service may designate;
 - (iii) may co-opt such public officer as it considers appropriate.

(1Ba) – (1C) —

(1D) —

(2) This Act shall apply to any other procurement effected by a public body, other than an exempt organisation.

(2A) Every exempt organisation shall establish its own procurement rules in relation to such types of contracts as may be prescribed.

(3) Where this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Mauritius under any treaty or other form of agreement, those rules shall prevail.

(4) This Act shall bind the State.

[S. 3 amended by s. 35 (b) of Act 14 of 2009 w.e.f. 30 July 2009; s. 24 (b) of Act 38 of 2011 w.e.f. 15 December 2011; s. 22 (b) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (b) of Act 27 of 2013 w.e.f. 21 December 2013; s. 43 (b) of Act 9 of 2015 w.e.f. 15 August 2015; s. 42 (a) of Act 18 of 2016 w.e.f. 7 September 2016; s. 44 (b) of Act 10 of 2017 w.e.f. 24 July 2017; s. 59 (b) of Act 11 of 2018 w.e.f. 9 August 2018.]

3A. Non-application of Parts IV, V and VI

(1) Parts IV, V and VI of this Act shall not apply to the procurement of goods, works and services specified in the Second Schedule.

(2) Any procurement of goods, works and services specified in the Second Schedule shall be undertaken on such conditions as may be prescribed.

[S. 3A inserted by s. 59 (c) of Act 11 of 2018 w.e.f. 9 August 2018.]

PART II – PROCUREMENT POLICY OFFICE

4. Procurement Policy Office

(1) There shall be a Procurement Policy Office in the Ministry, which shall be administered by a Director and 2 other independent persons appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition, on such terms and conditions as the Prime Minister may determine.

(2) The persons referred to in subsection (1) shall be appointed for a period of 3 years and shall be eligible for reappointment for one additional term.

(3) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of a member who has been guilty of—

- (a) any misconduct, default or breach of trust in the discharge of his duties;
- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

5. Staff of Policy Office

(1) The Policy Office shall appoint on contract terms and conditions its professional staff composed of persons of high integrity and substantial experience in the field of procurement, with a strong background in legal, financial and administrative matters.

(2) The Head of the Civil Service shall designate such public officers as may be required to assist the Policy Office and every person so designated shall be under the administrative control of the Director.

6. Policymaking responsibility

(1) The Policy Office—

- (a) shall serve as an independent procurement policy making and monitoring body;
- (b) shall not in any way be operationally involved in conducting procurement proceedings or resolving procurement disputes; and
- (c) may request information from, and consult with, the Board, the Review Panel, or any public body in the development of procurement policy for Government.

(2) In the exercise of its functions, the Policy Office shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.

7. Functions of Policy Office

The Policy Office shall—

- (a) issue instructions to public bodies concerning the coordination of their actions with the Policy Office, Board and Review Panel;
- (aa) where appropriate, designate a public body to enter into and manage a framework agreement on its own behalf and that of other public bodies, or on behalf of other public bodies;
- (b) formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of this Act;
- (c) issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement;
- (d) collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with this Act;
- (da) act as a focal point to guide the Board and public bodies with a view to ensuring consistency in the application of this Act and regulations made under this Act;
- (db) attend to complaints from bidders or suppliers and advise the Board or public bodies on the appropriate course of action;
- (e) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement;
- (f) prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement;
- (g) solicit the views of the business community on the effectiveness of the procurement system;
- (h) present an annual report to the Minister regarding the overall functioning of the procurement system;
- (i) communicate and co-operate with international institutions and other foreign entities on matters of procurement;
- (j) advise on and monitor foreign technical assistance in the field of procurement;

- (k) advise the Financial Secretary regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and the annual review of such delegations; and
- (l) perform such other functions as the Financial Secretary may assign to it.

[S. 7 amended by s. 18 (a) of Act 1 of 2009 w.e.f. 16 April 2009; s. 35 (c) of Act 14 of 2009 w.e.f. 30 July 2009; s. 22 (c) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (c) of Act 27 of 2013 w.e.f. 21 December 2013.]

7A. Powers of Policy Office

(1) In the discharge of its functions, the Policy Office may—

- (a) request for such information, records and other documents as it may require from the Board or any public body;
- (b) examine such records or other documents; and
- (c) carry out procurement audit.

(2) Any person to whom a request is made under subsection (1) (a) and who fails to comply with the request, or wilfully provides false or misleading information, shall commit an offence.

(3) Where, in the discharge of its functions, the Policy Office finds that there has been a deliberate non-compliance with this Act or instructions issued, the Director shall refer the matter to the Head of the Civil Service, recommending such action as he may consider appropriate.

(4) The Head of the Civil Service may, where he considers appropriate, refer any matter referred to him under subsection (3) to the Police for enquiry.

[S. 7A inserted by s. 18 (b) of Act 1 of 2009 w.e.f. 16 April 2009; s. 35 (d) of Act 14 of 2009 w.e.f. 30 July 2009.]

7B. Annual report of Policy Office

(1) The Policy Office shall, not later than 6 months after the close of every financial year, cause to be published a report on its activities in respect of the previous financial year.

(2) The Policy Office shall forward a copy of every report referred to in subsection (1) to the Minister.

(3) The Minister shall, at the earliest available opportunity, lay a copy of the annual report before the National Assembly.

[S. 7B inserted by s. 39 (d) of Act 27 of 2013 w.e.f. 1 January 2014.]

PART III – CENTRAL PROCUREMENT BOARD

8. Central Procurement Board

(1) There is established a Central Procurement Board responsible for the approval of the award of major contracts by public bodies and shall consist of—

- (a) a Chairperson;

- (b) 2 Vice-chairpersons; and
- (c) 3 other persons,

having wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition, on such terms and conditions as the Prime Minister may determine.

(2) Every member shall hold office for a period not exceeding 3 years and shall be eligible for reappointment for one additional term.

(3) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of a member who has been guilty of—

- (a) any misconduct, default or breach of trust in the discharge of his duties;
- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

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

(5) In the exercise of its functions, the Board shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.

[S. 8 amended by s. 39 (e) of Act 27 of 2013 w.e.f. 21 December 2013; s. 43 (c) of Act 9 of 2015 w.e.f. 15 August 2015.]

8A. Annual report of Board

(1) The Board shall, not later than 6 months after the close of every financial year, cause to be published a report on its activities in respect of the previous financial year.

(2) The Board shall forward a copy of every report referred to in subsection (1) to the Minister.

(3) The Minister shall, at the earliest available opportunity, lay a copy of the annual report before the National Assembly.

[S. 8A inserted by s. 39 (f) of Act 27 of 2013 w.e.f. 1 January 2014.]

9. Chief Executive

(1) There shall be a Chief Executive who shall be a public officer and shall be responsible for the execution of the policy of the Board and the control and management of the day to day business of the Board.

(1A) In the discharge of his functions, the Chief Executive shall—

- (a) before the review of the recommendations of a bid evaluation committee by the Board under section 11 (1) (e), certify that all procurement rules at the level of the Board have been complied with in accordance with this Act;

- (b) act in accordance with such directives as he may receive from the Board; and
- (c) be accountable and answerable to the Board.

(2) The Chief Executive shall attend every meeting of the Board and may take part in its deliberations but shall not have the right to vote.

[S. 9 repealed and replaced by s. 22 (d) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (g) of Act 27 of 2013 w.e.f. 21 December 2013; amended by s. 43 (d) of Act 9 of 2015 w.e.f. 15 August 2015.]

9A. Secretary of Board

- (1) There shall be a Secretary of the Board who shall be a public officer.

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(2) The Secretary of the Board shall be under the administrative control of the Chief Executive.

[S. 9A inserted by s. 39 (h) of Act 27 of 2013 w.e.f. 21 December 2013.]

10. Staff of Board

(1) The Chief Executive shall be assisted by—

- (a) such public officers as may be necessary;
- (b) such other public officers as may be designated by the Head of the Civil Service; and
- (c) such other persons as may be appointed by the Board in accordance with section 12 (1) (da), on such contract terms and conditions as the Board may determine.

(2) Every person referred to in subsection (1) shall be under the administrative control of the Chief Executive.

[S. 10 amended by s. 22 (e) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (i) of Act 27 of 2013 w.e.f. 21 December 2013; s. 43 (e) of Act 9 of 2015 w.e.f. 15 August 2015.]

11. Functions of Board

(1) The Board shall, in respect of major contracts—

- (a) establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
- (b) vet bidding documents and notices submitted to it by public bodies;
- (c) receive and publicly open bids;
- (d) select persons from a list of qualified evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids;
- (e) review the recommendations of a bid evaluation committee and—
 - (i) approve the award of the contract; or
 - (ii) require the evaluation committee to make a fresh or further evaluation on specified grounds; and
- (f) review the recommendations of a public body with respect to an amendment that increases the contract value pursuant to section 25 (2) (c) or (d) or 46 (3), or a variation pursuant to section 46 (4) and—
 - (i) approve the variation or amendment proposed;
 - (ii) require the public body to make a fresh recommendation; or
 - (iii) reject the variation or amendment proposed.

(1A) (a) Where the Board requires the evaluation committee to make an evaluation pursuant to subsection (1) (e) (ii), the bid evaluation committee shall, within 5 working days, comply with the requirement of the Board.

(b) Where the bid evaluation committee fails to comply with a requirement under paragraph (a) or the Board is not satisfied with the fresh or further evaluation, the Board may appoint another bid evaluation committee to make a fresh or further evaluation within such time as the Board may determine.

(2) The Board shall strive to achieve the highest standards of transparency and equity in the execution of its duties, taking into account—

- (a) the evaluation criteria and methodology disclosed in the bidding documents;
- (b) the qualification criteria and methodology disclosed in the bidding documents;
- (c) equality of opportunity to all bidders;
- (d) fairness of treatment to all parties;
- (e) the need to obtain the best value for money in terms of price, quality and delivery, having regard to set specifications; and
- (f) transparency of process and decisions.

(3) The Board shall have such powers, and exercise such functions, as may be assigned to it under any other enactment.

[S. 11 amended by s. 35 (e) of Act 14 of 2009 w.e.f. 30 July 2009; s. 43 (f) of Act 9 of 2015 w.e.f. 15 August 2015; s. 42 (b) of Act 18 of 2016 w.e.f. 7 September 2016.]

11A. Award of public-private partnership project

Notwithstanding the provisions of this Act, the Board—

- (a) shall approve all documents relating to the bid;
- (b) shall authorise, approve and carry out pre-selection exercises;
- (c) shall authorise the advertisement, invitation locally or internationally, as the case may be, and call for bids;
- (d) shall examine and evaluate bids; and
- (e) may approve the award,

of a public-private partnership project in the manner provided for under the Public-Private Partnership Act.

[S. 11A inserted by s. 29 (a) of Act 18 of 2008 w.e.f. 19 July 2008.]

12. Powers of Board

(1) In the discharge of its functions, the Board may—

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

- (d) request any professional or technical assistance from any appropriate person in Mauritius or elsewhere;
- (da) make appointments pursuant to section 10 (1) (c) following a call for applications by public advertisement; and
- (e) do all such acts and things as it may consider incidental or conducive to the exercise of its functions.

(2) Any person to whom a request is made under subsection (1) (a) and who fails to comply with the request, or wilfully gives any false or misleading answers to any question lawfully put by the Board, shall commit an offence.

(3) Where—

- (a) any variation in a contract price subsequent to the conclusion of a procurement contract entered into by a public body causes the total contract amount to exceed the prescribed amount by more than 20 per cent; or
- (b) the lowest bid submitted in response to an invitation made by a public body exceeds the prescribed amount,

the matter together with all the bidding documents and the contract documents, if any, shall be referred to the Board for approval.

(4) Where it comes to the knowledge of the Board that a contract has been awarded or is about to be awarded in breach of this Part, the Board shall forthwith report the matter to the Head of the Civil Service, with a copy to the Director, recommending such action as it may think appropriate.

(5) The Head of the Civil Service may, where he considers appropriate, refer any matter reported to him under subsection (4) to the Police for enquiry.

[S. 12 amended by s. 43 (g) of Act 9 of 2015 w.e.f. 15 August 2015.]

13. Meetings of Board

(1) The Board shall meet as often as is necessary and at such time and place as the Chairperson may determine.

(2) Everything authorised or required to be done by the Board shall be decided by simple majority of the members present and voting.

(3) In the absence of the Chairperson at any meeting, the other members shall designate a Vice-chairperson to preside at the meeting.

(4) At any meeting of the Board—

- (a) except where the Board meets for the purpose of opening bids, no person other than a member or a person referred to in section 8 (1) shall be present;
- (b) the Chairperson or a Vice-chairperson and 2 other members shall constitute a quorum; and
- (c) each member shall have one vote on the matter in question and, in the event of an equality of votes, the person chairing the meeting shall have a casting vote.

(5) Where a member does not, for good cause, attend a meeting of the Board, the Secretary shall forthwith communicate to him the gist of every decision taken at the meeting, and he may, within 24 hours, request the Chairperson to reconvene the Board so as to reconsider the decision.

(6) Subject to this section, the Board shall conduct its proceedings in such manner as it may determine.

14. Procedure of Board

(1) The chief executive officer of a public body shall inform the Board in writing of any major contract that the public body intends to enter into and shall submit all the relevant documents to the Board.

(2) The Board shall, within such time as may be prescribed after having been notified in accordance with subsection (1), authorise the public body to call for bids or utilise another appropriate procurement method.

(3) The Board shall approve the award of every major contract.

(4) No public body shall—

- (a) advertise, invite, solicit or call for bids in respect of a major contract unless authorised by the Board; or
- (b) award a major contract unless the award has been approved by the Board.

(5) No person shall sign a major contract with a public body unless the award has been approved by the Board.

(6) For the avoidance of any doubt, this section shall not apply where the award of the contract is made following an emergency procurement under section 21 or a direct procurement under section 25.

[S. 14 amended by s. 18 (c) of Act 1 of 2009 w.e.f. 16 April 2009.]

PART IV – PROCUREMENT METHODS

15. Choice of procurement method

(1) Subject to subsection (2), the choice of procurement methods available to a public body shall be—

- (a) for the procurement of goods, other services and works, by—
 - (i) open advertised bidding;
 - (ii) restricted bidding;
 - (iii) request for sealed quotations;
 - (iv) direct procurement;
 - (v) community or end-user participation; or
 - (vi) departmental execution; and

- (b) for the procurement of consultancy services, by—
 - (i) request for proposals on the basis of—
 - (A) quality and cost;
 - (B) quality alone;
 - (C) quality and fixed budget; or
 - (D) least cost and acceptable quality;
 - (ii) direct procurement; or
 - (iii) open advertised bidding.

(2) (a) Except in the cases referred to in paragraph (d), procurement shall, in the case of goods, other services or works, be made by means of open advertised bidding, to which equal access shall be provided to all eligible and qualified bidders without discrimination.

(b) Open advertised bidding proceedings may include a prequalification stage, or post qualification procedures, before selection of the winning bidder.

(c) Open advertised bidding proceedings shall be carried out in a single stage or in 2 stages in the cases referred to in section 29.

(d) A method of procurement referred to in subsection (1) (a) (ii) to (vi) may be used only if the public body has reason to believe that open advertised bidding—

- (i) will not be efficient or practical for the procurement in question; or
- (ii) will be too costly to apply, given the value of the procurement.

(e) Where a public body uses a method of procurement other than open advertised bidding or, in the case of the procurement of consultancy services, a method other than one specified in subsection (1) (b) (i), it shall note in the record of the procurement proceedings the ground for the choice of the procurement method.

[S. 15 amended by s. 43 (h) of Act 9 of 2015 w.e.f. 15 August 2015.]

16. Open advertised bidding method

(1) Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify, shall be published in a national newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well.

(2) A public body may, in appropriate cases and subject to any regulations to that effect, confer an advantage or preference to domestic or regional goods, services or contractors in the case of open advertised bidding proceedings.

[S. 16 amended by s. 35 (f) of Act 14 of 2009 w.e.f. 30 July 2009.]

17. Open national bidding

A public body may limit participation in open advertised bidding proceedings to citizens of Mauritius or entities incorporated in Mauritius only where

such limitation is stated in the invitation to bid or, for prequalification, in the bidding documents and is otherwise in accordance with such criteria as may be prescribed.

18. Open international bidding

- (1) Open advertised international bidding shall be used where—
- (a) the estimated value of the procurement exceeds the prescribed threshold;
 - (b) the goods, works or other services are not available under competitive price and other conditions from more than one supplier in Mauritius; or
 - (c) there is no response to open national bidding and the goods, other services or works have to be obtained from international bidders.
- (2) —

[S. 18 amended by s. 35 (g) of Act 14 of 2009 w.e.f. 30 July 2009.]

19. Restricted bidding

- (1) Restricted bidding may be used—
- (a) where a public body has reason to believe that the goods, other services or works are only available from a limited number of bidders;
 - (b) where the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to such thresholds as may be prescribed; or
 - (c) by limiting the participation in a particular procurement to those suppliers included on pre-approved supplier eligibility lists drawn up and maintained by the public body, in such manner as may be prescribed, so as to ensure that suppliers of specialised goods and services have and maintain the necessary technical and financial capability to provide them.

(2) (a) Where restricted bidding is used on the ground referred to in subsection (1) (a), all known suppliers capable of supplying the goods, other services or works shall be directly solicited.

(b) Where restricted bidding is used on the ground referred to in subsection (1) (b), the public body shall, as far as reasonably possible, directly solicit bids from a minimum of 5 bidders.

20. Request for sealed quotations

(1) The request for sealed quotations method shall only be used for the procurement of—

- (a) readily available commercially standard goods not specially manufactured to the particular specifications of the public body;
- (b) small works; or
- (c) small other services,

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

(2) Sealed quotations shall be requested in writing from not less than 3 bidders, unless the item in question is not available from 3 suppliers.

(3) The request shall contain a clear statement of the requirements of the public body as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as may be prescribed.

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

[S. 20 amended by s. 29 (b) of Act 18 of 2008 w.e.f. 19 July 2008.]

21. Emergency procurement

(1) A public body may purchase goods, other services or works from a single supplier without competition in cases of extreme urgency.

(2) The scope of the emergency procurement shall as far as possible be limited to the period of the emergency, so that appropriate competitive procurement methods may be utilised at the conclusion of the emergency period.

(3) For the purpose of this section—

“extreme urgency” includes a situation wherein—

- (a) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war or Act of God;
- (b) life or the quality of life or environment may be seriously compromised;
- (c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- (d) a capital project may be seriously delayed for want of an item of a minor value.

[S. 21 amended by s. 18 (d) of Act 1 of 2009 w.e.f. 16 April 2009; s. 43 (i) of Act 9 of 2015 w.e.f. 15 August 2015.]

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22. Community and end-user participation

Where 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 in accordance with such procedure as may be prescribed.

23. Departmental execution

In the case of works which are carried out with Government resources, procurement may be effected by the public body itself where one or more of the following conditions are present, namely where—

- (a) an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location or scattered location or financing or high mobilisation costs for outside suppliers;
- (b) an activity is such that, if carried out by a contractor, it would impose an unacceptable risk on the contractor because the cost cannot be determined in advance;
- (c) the risk of unavoidable work interruptions is better borne by the public body than by a contractor;
- (d) it has been demonstrated that departmental execution is the only practical method for construction, maintenance and conservation works under special circumstances;
- (e) an activity for a pilot project of a particular nature for the development of a technology work method cannot be carried out by a contractor;
- (f) works have to be carried out without disrupting existing operations by the public body's staff because they are familiar with those operations; or
- (g) there is an emergency such as a natural disaster which calls for immediate action.

24. Request for proposals

(1) Where, in respect of consultancy services, the request for proposals method is used, the public body shall draw up a shortlist of consultants, to ensure effective competition, from among those who have the capacity to perform the required services.

(2) (a) Where the estimated value of the procurement exceeds the prescribed threshold, the public body shall, in order to draw up the shortlist, seek expressions of interest by publishing a notice in a national newspaper of wide circulation and include in the list those who have expressed interest in the procurement.

(b) Where the estimated value of the contract does not exceed the prescribed threshold, the shortlist may be drawn up on the basis of the public body's own knowledge and information.

(3) The public body shall issue a request to the shortlisted consultants, asking them to confirm their interest by submitting a proposal, which shall include such information as may be prescribed that enables them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the public body.

(4) The selection of the successful proposal shall be based—

- (a) on the technical quality of the proposal, the consultant's relevant experience, the expertise of his key staff, the proposed work methodology, as well as the price of the proposal;
- (b) on the quality of the technical proposal submitted within a pre-determined fixed budget;
- (c) on the best financial proposal submitted by the candidates having obtained an acceptable technical score pre-disclosed in the request for proposals; or
- (d) where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or national economy or may lead to the submission of proposals with prices which are not comparable, exclusively on the technical quality of the proposal.

(5) The public body shall evaluate each technical proposal on the basis of criteria which shall include—

- (a) the consultant's relevant experience for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualifications of the key staff proposed;
- (d) transfer of knowledge, if required in the request for proposals; and
- (e) in the case of international competition, the extent of participation by nationals among key staff in the performance of the assignment.

(6) The financial proposals of bidders who have secured the minimum pass mark in the technical evaluation shall then be considered and evaluated by the public body after a public announcement of the results of the technical evaluation.

(7) Where the choice of consultancy services is made in accordance with section 15 (1) (b) (i) (A), (C) or (D), the financial proposals of all consultants whose technical proposals attained the required minimum pass mark shall be read out to the bidders who wish to attend, in accordance with the prescribed procedure.

(8) Where the choice of consultancy services is made in accordance with section 15 (1) (b) (i) (B), only the financial proposal of the consultant whose technical proposal achieved the highest ranking shall be evaluated.

(9) (a) The contract may be negotiated with the winning consultant with regard to the terms of the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided by Government and, subject to paragraph (b), the financial proposal.

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

(c) Where the negotiations fail to result in an acceptable contract, the public body shall notify the consultant accordingly and proceed to the next ranked bidder, and so on.

(10) The consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for proposals, or the one with the least cost in the case of the least cost method of selection, shall be selected for award, subject to satisfactory conclusion of negotiations.

(11) Where the value of a contract—

- (a) does not exceed the prescribed threshold referred to in section 40 (3), the public body shall award the contract to the successful consultant and notify all the other shortlisted consultants of the decision;
- (b) exceeds the prescribed threshold referred to in section 40 (3), the public body shall notify the successful consultant of its or his selection for award and shall simultaneously notify all the other shortlisted consultants of the decision.

(12) In the absence of a challenge by any other shortlisted consultant within 7 days of a notice issued under subsection (11) (b), the public body shall award the contract to the successful consultant.

[S. 24 amended by s. 22 (f) of Act 27 of 2012 w.e.f. 22 December 2012.]

25. Direct procurement

(1) The direct procurement method allows a public body to purchase goods, other services or works from a single source without competition.

(2) Direct procurement shall be permitted—

- (a) where the value of the procurement does not exceed the prescribed threshold;
- (b) where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;

- (c) within the prescribed limits, for additional deliveries of goods by the original supplier which are intended as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public body to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;
- (d) within the prescribed limits, where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons;
- (e) where the nature of the consultancy services requires that a particular consultant be selected due to unique qualifications; or
- (f) where continuity of consultancy services is essential to meet the objectives of the consultancy assignment.

PART V – THE BIDDING PROCESS

26. Application of Part V

This Part shall apply to bids for every procurement contract.

[S. 26 repealed and replaced by s. 18 (e) of Act 1 of 2009 w.e.f. 16 April 2009.]

26A. Electronic bidding process

(1) There shall be an electronic bidding system to receive and process bidding documents for evaluation, and for the award of any procurement contract, in accordance with such regulations as may be made.

(2) Any reference in this Act to a document which has to be submitted in writing shall include reference to a document submitted electronically under the electronic bidding system referred to in subsection (1).

[S. 26A inserted by s. 22 (g) of Act 27 of 2012 w.e.f. 22 December 2012; amended by s. 39 (j) of Act 27 of 2013 w.e.f. 21 December 2013.]

26B. Reservation

(1) Specific types of works contracts and the estimated contract values, as may be prescribed, shall be reserved for microenterprises, small enterprises and medium enterprises.

(2) In this section—

“microenterprise”, “small enterprise” and “medium enterprise” have the same meaning as in the Small and Medium Enterprises Act.

[S. 26B inserted by s. 44 (c) of Act 10 of 2017 w.e.f. 31 December 2016; amended by s. 15 (5) (a) of Act 16 of 2017 w.e.f. 18 January 2018.]

27. Pre-qualification proceedings

(1) Pre-qualification may be effected for the procurement of large or complex works.

(1A) Notwithstanding subsection (1), an invitation for bids may, in case a prior bidding exercise has been unsuccessful, be issued without a prequalification exercise.

(2) In other cases of particularly high value or complex procurement, such as in the case of an industrial plant, a public body may engage in pre-qualification proceedings, with a view to identifying bidders that are qualified, before the invitation to bid.

(3) Where pre-qualification proceedings are held, the public body shall provide pre-qualification documents to all bidders responding to the invitation to pre-qualify, so as to provide them with the information required to prepare and submit applications for pre-qualification.

(4) On the completion of pre-qualification proceedings, the public body shall promptly make available to every applicant a list of the applicants who have been successfully pre-qualified.

[S. 27 amended by s. 42 (c) of Act 18 of 2016 w.e.f. 7 September 2016; s. 59 (d) of Act 11 of 2018 w.e.f. 9 August 2018.]

28. Bidding documents

(1) A public body shall provide the bidding documents to all bidders that respond to an invitation to bid or, if pre-qualification proceedings have taken place, to all bidders that have been pre-qualified.

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(2) In appropriate cases and subject to regulations to that effect, a bidding document may provide for—

- (a) an advantage or preference to a bidder;
- (b) qualifications and evaluation criteria based on life cycle costing.

[S. 28 amended by s. 18 (f) of Act 1 of 2009 w.e.f. 16 April 2009; s. 22 (h) of Act 27 of 2012 w.e.f. 22 December 2012.]

29. Two-stage bidding

(1) Open advertised bidding may be held in 2 stages where—

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

(2) In the first stage, the bidding documents shall—

- (a) outline—
 - (i) the purpose;
 - (ii) the expected performance;
 - (iii) the broad specifications of the equipment or works to be procured; and
 - (iv) the qualifications required to perform the contract; and
- (b) call upon bidders to submit technical bids without a bid price and their comments on the proposed contract conditions.

(3) The public body may engage in discussions with any bidder with a view to understanding a technical bid or to indicating changes required to make it acceptable and seeking the bidder's willingness to make such changes.

(4) At the end of the first stage, the public body 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; or
- (b) modify the technical specifications, evaluation criteria, and contract conditions in order to maximise competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

(5) In the second stage, the public body shall invite bidders whose bids have not been rejected to submit final bids with prices to the revised bidding documents.

29A. Procurement under framework agreement

A public body or a lead organisation may enter into a framework agreement in such manner and in accordance with such terms and conditions as may be prescribed, where—

- (a) the need for the subject matter of a procurement is expected to arise on a repeated basis during a given period of time within a public body or across public bodies;
- (b) by virtue of the nature of the subject matter of a procurement, the need for it may arise on an urgent basis during a given period of time; or
- (c) the Policy Office considers that a particular procurement can best be undertaken through a framework agreement.

[S. 29A inserted by s. 22 (i) of Act 27 of 2012 w.e.f. 22 December 2012.]

30. Bid security

(1) A public body shall, where applicable and in such manner as may be prescribed, include in the bidding documents the requirements for bid security.

(2) Forfeiture of bid security shall be imposed by the public body only in the event of—

- (a) a modification or withdrawal of a bid after the deadline for submission of bids during its period of validity;
- (b) refusal by a bidder to accept a correction of an error appearing on the face of the bid;
- (c) failure by a successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
- (d) failure by a successful bidder to provide security for the performance of the procurement contract if required to do so by the bidding documents.

31. Submission of bids

(1) Subject to this section, a bid shall be submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents.

(2) Invitations for pre-qualification and bidding documents may contain provision that allows submission of applications to pre-qualify or bids by hand or mail or by courier at the option of the bidder.

(3) The bidding documents may authorise other methods for the submission of bids where it is so prescribed.

32. Deadline for submission of bids

(1) A public body shall set a deadline for the submission of bids, applications for pre-qualification and expressions of interest so as to allow

sufficient time for their preparation and submission, with a view to maximising competition, which shall not be less than such minimum period as may be prescribed.

(2) A bid in a sealed envelope received after the deadline for submission shall be returned unopened to the bidder.

33. Withdrawal and modification of bids

A bidder may modify, substitute, or withdraw its bid after submission, where the written notice of the modification, substitution or withdrawal is received by the public body before the deadline for the submission of bids.

34. Bid validity period

(1) Every bid shall remain valid for the period of time indicated in the bidding documents which shall not be more than 180 days.

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

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

35. Disqualification of bidders and suppliers

(1) Every public body shall ensure that no disqualified supplier, contractor or consultant is permitted to receive a procurement contract or otherwise participate in procurement proceedings.

(1A) (a) A public body may, in a bidding exercise, exclude a bidder—

- (i) whose performance in a previous public contract has been deficient; or
- (ii) who has failed to deliver goods, works or services satisfactorily,

and has caused prejudice to the public body with regard to contractual requirements notwithstanding that the bidder is not disqualified.

(2) The Policy Office shall, by regulations, make provision concerning the disqualification standards and procedures for suppliers, contractors and consultants.

[S. 35 amended by s. 44 (d) of Act 10 of 2017 w.e.f. 24 July 2017.]

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36. Opening of bids

(1) Every bid shall be opened at the time and place indicated in the bidding documents.

(2) The time of bid opening shall coincide with the deadline for the submission of bids, or follow immediately thereafter, if this is necessary for logistic reasons.

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

(4) The name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, shall be read out and recorded, and a copy of the record shall be made available to any bidder on request.

(5) No decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.

37. Examination and evaluation of bids

(1) The Board, in the case of a major contract, or a public body may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.

(2) The Board, in the case of a major contract, or a public body shall, in order to evaluate bids, set up a bid evaluation committee, selected from a list of qualified evaluators maintained by it.

(3) Following the opening of bids, the Board, in the case of a major contract, or a public body shall—

- (a) examine the bids in order to determine whether they are complete and in accordance with the bidding documents; and
- (b) ascertain whether—
 - (i) they are properly signed; and
 - (ii) the documents required to establish their legal validity and the required security have been furnished.

(4) Where a pre-qualification procedure is applicable, a bid received from an entity other than a pre-qualified bidder shall be rejected.

(5) Where a bid discloses an arithmetical error, the error shall be corrected and the bidder notified.

(6) Where there is a discrepancy between figures and words, the amount in words shall prevail, and the mistake shall be corrected and the bidder notified.

(7) Where a bidder refuses to accept a correction made pursuant to subsection (5) or (6), his bid shall be rejected and the bid security forfeited in accordance with section 30 (2) (b).

(8) Where there is a minor deviation in any bid that did not warrant rejection of the bid at an earlier stage, such minor variation shall be quantified in monetary terms, as far as possible.

(9) Every bid shall be evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid shall be compared with the evaluated cost of other bids to determine the lowest evaluated bid.

(9A) Where the bidding documents provide for a margin of preference to domestic suppliers or to domestic small and medium enterprises, the applicable margin of preference shall be at the rate determined by the Policy Office.

(10) Where a pre-qualification procedure is applicable, the qualifications of the lowest evaluated bidder shall be verified anew to take account of any change since the original pre-qualification.

(10A) (a) Where a public body or the Board—

- (i) is of the view that the price, in combination with other constituent elements of the bid, is abnormally low in relation to the subject matter of the procurement; and
- (ii) has concerns as to the ability of the supplier to perform the procurement contract,

it may request in writing from the supplier such information as it considers necessary.

(b) Where, after having taken into account any information furnished by the supplier under paragraph (a) and the information included in the bid, the public body or the Board still has concerns as to the ability of the supplier to perform the procurement contract, it may reject the bid.

(11) The bid evaluation committee shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the lowest evaluated bid that meets the qualification criteria.

(12) In the exercise of its function, the bid evaluation committee shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.

[S. 37 amended by s. 29 (c) of Act 18 of 2008 w.e.f. 19 July 2008; s. 18 (g) of Act 1 of 2009 w.e.f. 16 April 2009; s. 39 (k) of Act 27 of 2013 w.e.f. 21 December 2013.]

38. Post-qualification

(1) Where there was no pre-qualification procedure, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents.

(2) Where the bid fails to conform to those criteria, the bid shall be rejected and the same check shall be applied to the next ranked bid.

39. Cancellation of bidding process

(1) A public body may, at any time prior to the acceptance of a bid, reject all bids, or cancel the public procurement proceedings where—

- (a) all the bids are non-responsive;
- (b) the lowest evaluated bid is substantially above the applicable updated cost estimate;
- (c) the goods, works or services are no longer required;
- (d) it has been established that there has been collusion among the bidders;
- (e) the bidding document requires substantial modification making it more convenient to restart a new bidding process; or
- (f) after the closing date and time for submission of bids and before the opening of bids, it is determined that one or more bidders were unable to submit bids due to such circumstances as may be prescribed.

(2) Written notice of the rejection of all bids, or cancellation of the public procurement proceedings, shall be given to all bidders that submitted bids.

(3) There shall be no invitation to re-bid for the procurement on the same specifications and contract conditions unless the rejection of all bids or cancellation of procurement proceedings is made on a ground specified in subsection (1) (a), (b) or (f).

(4) Where the invitation for the procurement is to be repeated, the reason for the rejection of all bids or the cancellation of the procurement proceedings shall be examined by the public body and the technical specifications or contract conditions shall be suitably modified.

(5) Where public procurement proceedings are cancelled by a public body under this section, no challenge under section 43 and no application for review under section 45 shall be entertained in respect of the cancellation.

[S. 39 amended by s. 43 (j) of Act 9 of 2015 w.e.f. 15 August 2015; s. 42 (d) of Act 18 of 2016 w.e.f. 7 September 2016.]

40. Award of procurement contracts

(1) A procurement contract shall, subject to subsection (1A), be awarded by a public body to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents, following the steps outlined in subsections (3) and (4).

(1A) The chief executive officer of a public body shall, before awarding a contract under subsection (1), certify and keep on record that all the procurement rules have been complied with in accordance with this Act.

(2) There shall be no negotiation between a public body and a selected bidder or other bidders except in such special circumstances as may be prescribed.

(2A) In the case of a major contract, the Board shall, where special circumstances provided in subsection (2) apply, initiate and oversee the negotiation between a public body and a selected bidder or other bidders in accordance with such instructions as may be issued by the Policy Office.

(2B) Notwithstanding subsection (1), where the specificity of the subject matter of a procurement requires recourse to more than one contractor to execute the procurement contract and the public body intends to award a procurement contract to more than one contractor based on rates, the public body may award the contracts after the determination of a common rate and the pre-qualification exercise of the contractors.

(2C) Notwithstanding subsection (1), a public body may limit the award of the number of lots to suppliers provided that such limitations are based on non-discriminatory criteria for determining which lots shall be awarded to substantially responsive suppliers that shall be indicated in the bidding document.

(3) A public body, in relation to a procurement contract, the value of which is above the prescribed threshold, shall notify the successful bidder in writing of the selection of its bid for award and a notice in writing shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract.

(4) In the absence of a challenge by any other bidder within 7 days of the date of the notice referred to in subsection (3), the contract shall be awarded to the successful bidder.

(5) A successful bidder may be asked to submit a performance security and sign a contract within the period specified in the bidding documents.

(6) Where the bidder whose bid has been accepted fails to sign a contract, if required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the public body shall select another bidder from among the remaining valid bids, and subsections (3) to (5) shall apply to the new selection.

(7) A public body shall promptly publish, in such manner as may be prescribed, notice of every procurement award.

[S. 40 amended by s. 18 (h) of Act 1 of 2009 w.e.f. 16 April 2009; s. 22 (j) of Act 27 of 2012 w.e.f. 22 December 2012; s. 43 (k) of Act 9 of 2015 w.e.f. 15 August 2015; s. 42 (e) of Act 18 of 2016 w.e.f. 7 September 2016.]

41. Debriefing of unsuccessful bidders

A public body shall promptly, on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful where the request for such debriefing was submitted within 30 days of the publication referred to in section 40 (7).

42. Auditor's certificate

The auditor of every public body shall state in his annual report whether this Part has been complied with.

PART VI – CHALLENGE AND APPEAL

43. Challenge

(1) A bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by this Act may, subject to subsections (2) and (3) and section 39 (5), challenge the procurement proceedings before the coming into force of the procurement contract.

(2) A challenge shall be in writing to the chief executive officer of the public body concerned and identify the specific act or omission alleged to contravene this Act.

(3) A challenge shall not be entertained unless it is submitted—

- (a) in the case of a challenge under section 24 (12) or 40 (4), within the time specified in the relevant subsection; or
- (b) in any other case, within such time as may be prescribed.

(4) Unless the challenge is resolved, the chief executive officer of the public body shall suspend the public procurement proceedings and shall, within such time period as may be prescribed, issue a written decision, stating his reasons, and, if the challenge is upheld, indicating the corrective measures to be taken.

[S. 43 amended by s. 22 (k) of Act 27 of 2012 w.e.f. 22 December 2012; s. 43 (l) of Act 9 of 2015 w.e.f. 15 August 2015.]

44. Independent Review Panel

(1) There shall be an Independent Review Panel which shall consist of—

- (a) a Chairperson;
- (b) a Vice-chairperson; and
- (c) 4 other persons,

having wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition, on such terms and conditions as the Prime Minister may determine.

(1A) (a) The Review Panel shall sit in one or 2 divisions.

(b) A division shall consist of the Chairperson or Vice-chairperson and 2 other members selected by the Chairperson.

(c) A decision of a division shall be considered to be the decision of the Review Panel.

(1B) (a) At a meeting of the Review Panel, the Chairperson or the Vice-chairperson and 2 other members shall constitute a quorum.

(b) In the absence of the Chairperson at a meeting of the Review Panel, the Vice-chairperson shall act as Chairperson of the meeting.

(c) In the absence of the Chairperson and Vice-chairperson at a meeting of the Review Panel, the members present shall elect a member to act as Chairperson of the meeting.

(d) The Vice-chairperson and members shall be under the administrative control of the Chairperson.

(1C) (a) There shall be a Secretary of the Review Panel who shall be a public officer.

(b) The Secretary of the Review Panel shall be under the administrative control of the Chairperson of the Review Panel.

(2) Every member shall hold office for a period not exceeding 3 years and shall be eligible for reappointment for one further term.

(3) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of a member who has been guilty of—

- (a) any misconduct, default or breach of trust in the discharge of his duties;
- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

(4) The Review Panel shall, subject to section 45, seek to avoid formality in its proceedings and shall conduct them in such manner as may be prescribed.

[S. 44 amended by s. 22 (l) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (l) of Act 27 of 2013 w.e.f. 21 December 2013; s. 42 (f) of Act 18 of 2016 w.e.f. 7 September 2016.]

45. Right of review

(1) An unsatisfied bidder shall, subject to section 39 (5), be entitled to ask the Review Panel to review the procurement proceedings where—

- (a) the chief executive officer of the public body does not issue a decision within the time specified in section 43 (4);
- (b) he is not satisfied with the decision; or
- (c) after the coming into force of the procurement contract, the value of which is above the threshold prescribed by regulations but does not exceed the prescribed threshold referred to in section 40 (3), he is not satisfied with the procurement proceedings on a ground specified in section 43 (1).

(2) An application for review under subsection (1) shall—

- (a) be in writing;
- (b) specify the precise reasons for making the application;
- (ba) be accompanied by a statement of case and a witness statement, if any; and
- (c) be made within such time as may be prescribed.

(2A) (a) For the purpose of subsection (2), a statement of case shall contain precisely and concisely—

- (i) the facts of the case;
- (ii) where a challenge has not been resolved, the reasons stated in the written decision issued pursuant to section 43 (4), if any;
- (iii) the issues in dispute and the arguments relating thereto;
- (iv) submissions on any point of law; and
- (v) any other submission on the case.

(b) A witness statement shall contain a signed statement by the witness certifying that the witness statement faithfully reproduces the facts obtained from the examination of records, statements or other documents or from any other source in relation to the case before the Review Panel.

(2B) (a) The unsatisfied bidder shall, at the time of his application for review, submit to the public body a copy of the application together with the documents specified in subsection (2).

(b) The exchange of information and particulars relating to the statement of case and witness statement referred to in subsection (2A) shall be carried out in such form and manner as may be prescribed.

(3) (a) An applicant for review shall be required to make such deposit as may be prescribed for filing the application.

(b) Where the Review Panel determines that the application was frivolous, the deposit made shall be forfeited.

(c) An applicant shall pay a non-refundable fee for processing the application in such amount, within such time and in such manner as may be prescribed.

(d) Where the Review Panel determines that there is no merit in the application, 50 per cent of the deposit under paragraph (a) shall be forfeited.

(4) Subject to subsection (5) or (8), where an application for review is made in accordance with this section, the Review Panel shall, on being satisfied *ex-facie* the application that there is a prima facie case for review, order the suspension of the procurement proceedings until the appeal is determined by the Review Panel.

(5) The suspension provided by subsection (4) shall not apply where the public body certifies that urgent public interest considerations require the procurement proceedings to proceed.

(6) A certificate issued by a public body pursuant to subsection (5) shall expressly state the grounds of the urgent public interest considerations and shall be made a part of the record of the public procurement proceedings.

(7) A certificate issued by a public body pursuant to subsection (5) shall be binding on the Review Panel and the procurement proceedings shall proceed.

(8) (a) Subject to paragraph (c), the Review Panel shall determine an application for review under this section within such period as may be prescribed.

(b) Subject to paragraph (c), any application for review pending immediately before the commencement of paragraph (a) shall, on the commencement of that paragraph, be determined within such period as may be prescribed.

(c) Where the Review Panel does not determine the application for review within the period referred to in paragraph (a) or (b)—

- (i) the suspension of the procurement proceedings under subsection (4) shall lapse;
- (ii) the public body shall proceed with the award of the contract; and
- (iii) the Review Panel shall continue with the application for review.

(d) Where an application for review is determined pursuant to paragraph (c), the Review Panel may dismiss the application for review or may, if it determines that there is merit in it, order the remedy referred to in subsection (10) (d).

(9) Where the procurement proceedings have not been suspended under subsection (5), and the application for review of an unsatisfied bidder is determined in his favour, the Review Panel shall award him compensation limited to the recovery of the costs of bid preparation and participation in the procurement proceedings.

(10) The Review Panel may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies—

- (a) prohibit the public body from acting or deciding in an unauthorised manner or from following an incorrect procedure;
- (b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body;
- (c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; or
- (d) recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.

[S. 45 amended by s. 22 (m) of Act 27 of 2012 w.e.f. 22 December 2012; s. 39 (m) of Act 27 of 2013 w.e.f. 21 December 2013; s. 43 (m) of Act 9 of 2015 w.e.f. 15 August 2015.]

PART VII – PROCUREMENT CONTRACTS

46. Contents of contracts

(1) A procurement contract shall include the terms and conditions that are set out in the bidding documents or request for proposals as well as—

- (a) the names, addresses and telephone and fax numbers, of the contact persons of the parties to the contract;
- (b) the scope of the work;
- (c) the order of priority of contract documents;
- (d) the contract price or its mode of determination;
- (e) the conditions of acceptance;
- (f) the conditions and mode of payment;
- (g) the modalities of *force majeure*;
- (h) the price adjustment mechanisms;
- (i) the provisions for termination of the contract;
- (j) the procedure for dispute resolution; and
- (k) the applicable law.

(2) Any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed by the parties in writing.

(3) An amendment to the contract that will increase the contract value by more than 25 per cent shall require fresh procurement proceedings except where the amendment has to be effected for a reason specified in section 25 (2) (c) or (d).

(4) No formal amendment of the contract shall be required where the public body wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract.

(4A) No—

- (a) amendment requiring fresh procurement proceedings under subsection (3);
- (b) variation or adjustment under subsection (4); or
- (c) direct procurement under section 25 (2) (c) or (d),

shall be made or carried out, as the case may be, with respect to major contracts that exceed the prescribed amount, without the prior approval of the Board.

(5) There shall be included in every procurement contract a clause ensuring—

- (a) rates of remuneration and other conditions of work of the workers engaged in the execution of the contract that are not less favourable than those established for work of the same character in the trade concerned—

- (i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned;
- (ii) by arbitration awards; or
- (iii) by Remuneration Regulations made under the Employment Relations Act;

(b) where remuneration and conditions of work are not regulated in a manner referred to in paragraph (a), rates of remuneration and other conditions of work which are not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

(6) No contractor shall be entitled to any payment in respect of work performed in the execution of the procurement contract unless he has, together with his claim for payment, filed a certificate—

- (a) stating the rates of remuneration and hours of work of the various categories of workers employed in the execution of the contracts;
- (b) stating whether any remuneration payable in respect of work done is due;
- (c) containing such other information as the public body administering the procurement contract may require to satisfy himself that this Act has been complied with.

(7) Where the public body administering the procurement contract is satisfied that remuneration is still due to a worker employed on a public contract at the time the claim for payment is filed under subsection (2), he may, unless the remuneration is sooner paid by the contractor, arrange for the payment of the remuneration out of the money payable under the procurement contract.

(8) Except with the written consent of the public body administering the contract, no contractor shall transfer or assign a procurement contract.

(9) Every contractor shall display a copy of subsections (5), (6), (7) and (8) at the place at which the work required by the contract is performed.

(10) In this section—

“worker” has the same meaning as in section 2 of the Employment Rights Act.

[S. 46 amended by s. 70 (6) of Act 33 of 2008 w.e.f. 2 February 2009; s. 42 (g) of Act 18 of 2016 w.e.f. 7 September 2016.]

47. Payment

(1) Subject to such specific terms of a procurement contract as may be prescribed, payment shall be made on the basis of the submission of a proper invoice.

(2) Payments due to a supplier shall be made in accordance with the deadlines set out in the procurement contract and the supplier shall be compensated for late payment by payment of interest in accordance with the rate specified in the contract or, if no such rate is specified, at the legal rate.

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48. Termination and breach

Notwithstanding any other enactment—

- (a) a public body may terminate a procurement contract for its convenience at any time upon a determination that because of changed circumstances, the continuation of the contract is not in the public interest; and
- (b) upon such a termination, the contractor will be entitled to reimbursement of expenses incurred in the performance of the contract, but will not be entitled to recover anticipated profits on the completion of the contract.

PART VIII – PROCUREMENT INTEGRITY

49. Artificial division

No public body may artificially divide the modalities of procurement in such a way as to avoid any monetary thresholds laid down in this Act or in an instrument drawn up pursuant to this Act.

50. Duties of public bodies

(1) Every public body shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Policy Office.

(2) Every public body shall—

- (a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act;
- (b) make an annual plan for budgeting purposes and plan each step of procurement for major contracts in such manner as may be prescribed.

(3) Every public body shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.

(4) Subject to this Act, all documents, notifications, decisions and other communications referred to in this Act shall be in writing.

(5) Where it is so prescribed, a public body may authorise the use of other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payment.

(6) Where other means of communication are used in accordance with subsection (5), the public body shall ensure that—

- (a) a record of the content of the communication is preserved;
- (b) an adequate level of security and confidentiality is provided;

- (c) the bidders' access to the records of the procurement proceedings is preserved; and
- (d) any other requirement of this Act is complied with.

51. Conduct of public officials

(1) A public official involved in planning or conducting public procurement proceedings or contract administration shall—

- (a) discharge his duties impartially so as to ensure fair competitive access to procurement by suppliers;
- (b) act in the public interest and in accordance with the objectives and procedures set out in this Act;
- (c) avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself;
- (d) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;
- (e) keep confidential any information that comes into his possession relating to procurement proceedings and to bids, including bidders' proprietary information;
- (f) for a period of 2 years after leaving the public service, not accept a position of authority in any private concern with which he had official dealings; and
- (g) declare his assets in such manner as may be prescribed.

(2) (a) No public official, or public official's close relative, shall participate as a bidder in procurement proceedings of that public body and no award of a procurement contract shall be made directly to such official or to any body in which he or his close relative is employed in a management capacity or has a substantial financial interest.

(b) In this subsection, "close relative" includes spouse, child, grandchild or parent.

52. Conduct of bidders and suppliers

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

(2) A bidder or a supplier shall not engage in any coercive practice threatening to harm, directly or indirectly, any person or his property to influence his participation in a procurement process, or affect the execution of a contract.

(3) A bidder shall not engage in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive a public body of the benefit of free and open competition.

(4) A public body shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) and promptly notify the rejection to the bidder concerned and to the Policy Office.

(5) (a) Subject to paragraph (b), a bidder or supplier who is responsible for preparing the specifications or bidding documents for, or supervising the execution of a procurement contract, or a related company of such a bidder or supplier, shall not participate in such bidding.

(b) Paragraph (a) shall not apply to the several bodies (consultants, contractors or suppliers) that together may be performing the supplier's obligations under a turnkey or design-build contract.

53. Suspension, debarment and disqualification of bidders and suppliers

(1) Subject to subsection (2), the Director may, under such conditions as may be prescribed, suspend, debar or disqualify a potential bidder or supplier from participation in procurement on the following grounds—

- (a) supplying false information in the process of submitting a bid or pre-qualification application;
- (b) collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;
- (c) interference by a supplier with the participation of competing bidders;
- (d) misconduct relating to the submission of bids, including corruption, price fixing, a pattern of underpricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
- (e) conviction of an offence relating to obtaining or attempting to obtain a procurement contract;
- (f) conviction of an offence related to dishonesty or fraud in his professional activity;
- (g) submitting a bid which contains inaccurate or inadequate information with a view to misleading a public body or the Board regarding the eligibility or responsiveness of its bid;
- (h) refusing, where no bid security is required, to accept an award made to it and to enter into a contract with a public body, except in a situation of force majeure;
- (i) repeated failure, in the performance of one or more contracts by the supplier, contractor or consultant, to comply with the terms and conditions of the contract or the specifications, as the case may be;
- (j) committing a material breach of contract; or
- (k) without the prior written approval of the public body, unlawfully assigning or subcontracting any of its obligations under a contract.

(2) A suspension, debarment or disqualification of a bidder or supplier under subsection (1) shall not be effected unless the Director—

- (a) reviews and considers the factual record developed by the public body that proposes the action;
- (b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and
- (c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.

(3) A period of suspension, debarment or disqualification under subsection (1) shall not exceed 5 years.

[S. 53 amended by s. 44 (e) of Act 10 of 2017 w.e.f. 24 July 2017; s. 59 (e) of Act 11 of 2018 w.e.f. 9 August 2018.]

PART IX – MISCELLANEOUS

54. Oath of office

Every member and officer shall, on assumption of duty, take such oath as may be prescribed.

55. Disclosure of interest

A member or officer having any direct or indirect interest in any matter brought before the Policy Office, the Board or the Review Panel—

- (a) shall immediately inform the Director or the Chairperson, as the case may be; and
- (b) shall not participate in the deliberations or any part of the decision-making process in relation to that matter.

56. Declaration of assets

(1) Subject to subsection (2), every member and officer shall file with the Secretary to the Cabinet a declaration of his assets and liabilities in such form and manner as may be prescribed—

- (a) within 30 days of his appointment; and
- (b) on the termination of his appointment.

(2) Where, subsequent to a declaration made under subsection (1), the state of his assets or liabilities is so altered as to be reduced or increased in value by not less than 500,000 rupees, the member or officer shall make a fresh declaration.

(3) No declaration of assets filed under this section shall be disclosed to any person except with the express consent of the member or officer concerned or by order of a Judge on reasonable cause shown.

57. Funds

The Policy Office, the Board and the Review Panel shall derive their funds from the Consolidated Fund and from any fees and charges levied by the respective institutions.

58. Undue influence

Any person who directly or indirectly, in any manner, influences, or attempts to influence, any member or public official or any member of the Policy Office, the Board, the Review Panel or a public body in the performance of his duties under this Act, shall commit an offence.

59. Protection from liability

No action shall lie against the Policy Office, the Board or the Review Panel, or any member or officer, for any act or omission, except in so far as the act or omission complained of was done in bad faith.

60. Offences

Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 8 years.

61. Regulations

(1) The Minister may, on the recommendation of the Policy Office, make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for—

- (a) detailed procedures;
- (b) competent authorities;
- (c) operational thresholds;
- (d) an alternative procurement method where any of the procurement methods referred to in section 15 (1) is not considered appropriate for any specific procurement;
- (e) time limits and other deadlines; and
- (f) the levying of fees or charges by the Policy Office, the Board or the Review Panel; and
- (g) the amendment of the Schedule.

(3) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

[S. 61 amended by s. 29 (d) of Act 18 of 2008 w.e.f. 19 July 2008.]

62. – 65. —

FIRST SCHEDULE

[Section 2]

Column 1 Public body	Column 2 Type of contract	Column 3 Prescribed amount (Rs)
PART I		
Local authorities	All contracts	25 million
Mauritius Qualifications Authority	All contracts	15 million
Rodrigues Regional Assembly	All contracts	25 million
Other parastatal bodies not specified in Parts II, III, IV and V	All contracts	15 million
PART II		
		(Rs)
	All Contracts	50 million
Ministries/Government Departments		
Beach Authority		
Financial Services Commission		
Food and Agricultural Research and Extension Institute		
Gambling Regulatory Authority		
Higher Education Commission		
Irrigation Authority		
Mahatma Gandhi Institute		
Mauritius Educational Development Company Ltd		
Mauritius Film Development Corporation		
Mauritius Institute of Health		
Mauritius Meat Authority		
Mauritius Oceanography Institute		
Mauritius Standards Bureau		
Mauritius Tourism Promotion Authority		
National Computer Board		
Open University of Mauritius		
Polytechnics Mauritius Ltd		
Private Secondary Schools Authority		
Public Officers' Welfare Council		
Quality Assurance Authority		
Rodrigues Educational Development Company Ltd		

FIRST SCHEDULE—continued

	(Rs)
All Contracts	50 million
Sir Seewoosagur Ramgoolam Botanic Garden Trust	
Sugar Industry Labour Welfare Fund	
Tertiary Education Commission	
Tourism Authority	
Université des Mascareignes	
University of Mauritius	
University of Technology, Mauritius	

PART III

	(Rs)
Goods, civil engineering works and capital goods	50 million
Consultancy services	50 million
Other services	50 million
Agricultural Marketing Board	
Mauritius Examinations Syndicate	
Mauritius Institute of Training and Development	
Outer Islands Development Corporation	

PART IV

	(Rs)
All contracts	100 million
Airports of Mauritius Ltd	
Cargo Handling Corporation Ltd	
Central Water Authority	
Development Bank of Mauritius Ltd	
Information and Communication Technologies Authority	
Mauritius Cane Industry Authority	
Mauritius Housing Company Ltd	
Mauritius Ports Authority	
Mauritius Revenue Authority	
Mauritius Shipping Corporation Ltd	
National Housing Development Company Ltd	
National Transport Corporation	
Road Development Authority	

FIRST SCHEDULE—continued

	(Rs)
All contracts	100 million
State Informatics Ltd	
State Investment Corporation Limited	
State Property Development Company Limited	
Waste Water Management Authority	

PART V

	(Rs)
Goods, civil engineering works and capital goods	100 million
Consultancy services	100 million
Other services	100 million

Central Electricity Board

Mauritius Broadcasting Corporation

State Trading Corporation

[First Sch. amended by GN 6 of 2008 w.e.f. 17 January 2008; GN 198 of 2008 w.e.f. 20 September 2008; amended by s. 27 (1) of Act 12 of 2009 w.e.f. 16 November 2009; repealed and replaced by s. 35 (h) of Act 14 of 2009 w.e.f. 16 November 2009; amended by s. 31 (1) of Act 17 of 2009; s. 35 (1) of Act 18 of 2009 w.e.f. 29 October 2010; GN 54 of 2010 w.e.f. 5 February 2010; s. 65 (2) of Act 40 of 2011 w.e.f. 19 March 2012; s. 28 (1) of Act 2 of 2010 w.e.f. 12 July 2012; s. 37 (1) of Act 4 of 2012 w.e.f. 6 September 2012; s. 26 (3) of Act 3 of 2013 w.e.f. 26 November 2013; GN 241 of 2013 w.e.f. 20 May 2013; s. 26 (3) of Act 3 of 2013 w.e.f. 26 November 2013; s. 22 (5) of Act 21 of 2013 w.e.f. 14 February 2014; s. 34 (n) of Act 9 of 2015 w.e.f. 1 July 2015; GN 163 of 2017 w.e.f. 2 March 2017; s. 42 (16) of Act 11 of 2017 w.e.f. 15 January 2018; s. 15 (5) (b) of Act 16 of 2017 w.e.f. 18 January 2018; s. 53 (16) (b) of Act 23 of 2017 w.e.f. 15 November 2018; s. 3 of GN 147 of 2018 w.e.f. 3 November 2018.]

SECOND SCHEDULE

[Section 3A]

Procurement by a diplomatic mission of Mauritius abroad

Procurement by a public body in respect of—

- (a) rental of office space;
- (b) training services; or
- (b) vessels, including maintenance, repairs and periodic overhauls in a dry dock.

[Second Sch. inserted by s. 59 (f) of Act 11 of 2018 w.e.f. 9 August 2018.]
