

## TABLE OF CONTENTS

	SCOPE AND PURPOSE OF REGULATIONS	- 4 –
	INTRODUCTION TO THE REGULATIONS	- 4 –
1.	ESTABLISHMENT OF THE PUBLIC PROCUREMENT BOARD	- 5 –
2.	OBJECTIVE OF THE BOARD	
3.	FUNCTIONS OF THE BOARD	
	i. Policy Functions of the Board	
	ii. Monitoring Functions of the Public Procurement Board	
	iii. Capacity Building Functions Of The Public Procurement Board	
	iv. Regulatory Functions of the Board	
	v. Data Management Function of the Board	
	vi. Environmental Protection in Public Procurement	
	vii. Debarment of the Tenderers	
4.	MEMBERSHIP OF THE BOARD	- 8 –
5.	TERM OF OFFICE	- 8 –
6.	MEETINGS OF THE BOARD	- 8 –
7.	COMMITTEES OF THE BOARD	- 8 –
8.	SECRETARIAT OF THE BOARD	- 8 –
9.	CHIEF EXECUTIVE OF THE BOARD	- 8 –
10.	EXPENSES OF THE BOARD	- 8 –
11.	ACCOUNTS AND AUDIT	- 8 –
12.	FINANCIAL YEAR OF THE BOARD	- 8 –
13.	ANNUAL REPORT	- 8 –
	<b>PART II - PROCUREMENT STRUCTURES</b>	<b>- 9 -</b>
14.	SCOPE OF APPLICATION	- 9 –
15.	PROCUREMENT ENTITY	- 9 –
	i. Head of Entity	
	ii. Approval of Contract Award by the Head of Entity	
	iii. Procurement Unit	
16.	DECLARATION OF PROCUREMENT ENTITY	- 11 –
17.	TENDER COMMITTEE	- 11 –
18.	MEETINGS OF TENDER COMMITTEES	- 12 –
19.	TENDER EVALUATION PANEL	- 12 –
	i. Composition of Tender Evaluation Panels	
	ii. Proceedings of Tenderers	
20.	TENDER REVIEW BOARDS	- 13 –
	<b>PART III – PROCUREMENT RULES</b>	<b>- 14 –</b>
21.	PROCUREMENT PLAN	- 14 –
	i. Contract Packages	
22.	QUALIFICATION PROCEEDINGS	- 15 –
	i. Qualification Requirements for Joint Venture Partners	
23.	PREQUALIFICATION PROCEEDINGS	- 15 –
24.	DECISION ON PREQUALIFICATION	- 15 –
25.	PARTICIPATION IN PROCUREMENT PROCEEDINGS	- 16 –
26.	FORM OF COMMUNICATION	- 16 –
27.	DOCUMENTARY EVIDENCE IN PROCUREMENT PROCEEDINGS	- 16 –
28.	RECORDS OF PROCUREMENT PROCEEDINGS	- 16 –
29.	REJECTION OF TENDERS, PROPOSALS AND QUOTATION	- 16 –
30.	ENTRY INTO FORCE OF THE PROCUREMENT CONTRACT	- 17 –
31.	PUBLIC NOTICE OF PROCUREMENT CONTRACT AWARDS	- 17 –

32.	INDUCEMENTS FROM SUPPLIERS, CONTRACTORS AND CONSULTANTS	- 18 -
33.	DESCRIPTION OF GOODS, WORKS OR SERVICES	- 18 -
	i.    Description of Goods	
	ii.   Use of Brands Names	
	iii.  Description of Works	
	iv.   Description of Services	
	v.    Initiation of Procurement Processes	
	vi.   Procurement Requisition and Authorisation	
	vii.  Budget Verification and Commitment of Funds	
34.	LANGUAGE	- 20 -
	<b>PART IV – METHODS OF PROCUREMENT</b>	<b>- 21 -</b>
35.	COMPETITIVE TENDERING	- 21 -
36.	TWO-STAGE TENDERING	- 21 -
37.	PROCEDURES FOR TWO-STAGE TENDERING	- 21 -
38.	RESTRICTED TENDERING	- 21 -
39.	PROCEDURE FOR RESTRICTED TENDERING	- 21 -
40.	SINGLE-SOURCE PROCUREMENT	- 21 -
41.	PROCEDURE FOR SINGLE-SOURCE PROCUREMENT	- 22 -
42.	REQUEST FOR QUOTATION	- 22 -
43.	PROCEDURE FOR REQUEST FOR QUOTATION	- 22 -
	i.    Development of Shortlist	
	ii.   Evaluation of Quotation	
	<b>PART V – TENDERING PROCEDURES</b>	<b>- 23 -</b>
	1.  SUB-PART 1 – INVITATION FOR TENDERS AND APPLICATIONS TO PREQUALIFY	- 23 -
44.	NATIONAL COMPETITIVE TENDERING	- 23 -
45.	INTERNATIONAL COMPETITIVE TENDERING	- 23 -
46.	OTHER INTERNATIONAL PROCEDURES	- 24 -
47.	PROCEDURES FOR INVITING TENDERS OR APPLICATIONS TO PREQUALIFY	- 24 -
48.	CONTENTS FOR INVITATION TO TENDER AND INVITATION TO PREQUALIFY	- 24 -
49.	PROVISION OF TENDERS DOCUMENTS	- 24 -
50.	CONTENTS OF TENDER DOCUMENTS AND USE OF STANDARD TENDER DOCUMENT	- 25 -
51.	CLARIFICATIONS AND MODIFICATIONS TO TENDER DOCUMENT	- 25 -
	2.  SUB-PART II – SUBMISSION OF TENDER	- 25 -
52.	LANGUAGE OF TENDERS	- 25 -
53.	SUBMISSION OF TENDERS	- 25 -
54.	PERIOD OF VALIDITY OF TENDER: MODIFICATION AND WITHDRAWAL OF TENDERS	- 25 -
55.	TENDER SECURITIES	- 26 -
56.	OPENING OF TENDERS	- 26 -
57.	EXAMINATION OF TENDERS	- 27 -
58.	RESPONSIVENESS OF TENDERS	- 27 -
59.	EVALUATION OF TENDERS	- 28 -
	i.    Treatment of Discounts	
	ii.   Evaluation Reports and Recommendations	
60.	MARGIN OF PREFERENCE	- 29 -
61.	MULTIPLE CURRENCY TENDERS PRICES	- 30 -
62.	REPEAT TENDER QUALIFICATIONS	- 30 -
63.	NON-DISCLOSURE OF TENDERS EVALUATION DETAILS	- 31 -
64.	PROHIBITION OF NEGOTIATIONS WITH SUPPLIERS OR CONTRACTORS	- 31 -
65.	ACCEPTANCE OF TENDER AND ENTRY INTO FORCE OF PROCUREMENT CONTRACT	- 31 -
	<b>PART VI – METHODS AND PROCEDURES TO PROCURE CONSULTANTS</b>	<b>- 31 -</b>
66.	NOTICE OF INVITATION OF EXPRESSION OF INTEREST AND PREPARATION OF SHORTLIST	- 31 -
67.	SHORTLIST CANDIDATES	- 31 -
68.	CONTENT OF REQUESTS FOR PROPOSALS FOR CONSULTANCY SERVICE	- 31 -
69.	CRITERIA FOR THE EVALUATION OF PROPOSALS	- 31 -

70.	CLARIFICATION AND MODIFICATION OF INVITATION FOR PROPOSALS	- 31 -
71.	CHOICE OF SELECTION PROCEDURE	- 31 -
72.	CONDITIONS FOR USE OF OTHER METHODS OF SELECTION OF CONSULTANTS	- 31 -
73.	RECEIPT OF PROPOSALS	- 32 -
74.	EVALUATION OF PROPOSALS	- 32 -
75.	SELECTION PROCEDURE WHERE PRICE IS A FACTOR	- 32 -
76.	SELECTION PROCEDURE WHERE PRICE IS NOT A FACTOR	- 32 -
77.	CONFIDENTIALITY	- 32 -
<b>PART VII – REVIEW</b>		<b>- 32 -</b>
78.	RIGHT TO REVIEW	- 32 -
79.	REVIEW BY PROCUREMENT ENTITY	- 32 -
80.	ADMINISTRATIVE REVIEW	- 32 -
81.	CERTAIN RULES APPLICABLE TO REVIEW PROCEEDINGS	- 33 -
82.	SUSPENSION OF PROCUREMENT PROCEEDINGS	- 33 -
<b>PART VIII - DISPOSAL OF STORES, PLANT AND EQUIPMENT</b>		<b>- 32 -</b>
83.	AUTHORITY TO DISPOSE	- 33 -
84.	DISPOSAL PROCEDURES	- 33 -
	i. Transfer to Government Department or other Public Entities	
	ii. Sale by Public Tender	
	iii. Public Auction	
	iv. Destruction, Dumping or Burying	
85.	INSTRUCTIONS AND GUIDELINES FOR DISPOSAL OF UNSERVICEABLE STORES	- 34 -
<b>PART IX – MISCELLANEOUS PROVISION</b>		<b>- 34 -</b>
86.	CODE OF CONDUCT	- 34 -
87.	MODIFICATIONS	- 34 -
88.	REQUEST FOR INFORMATION BY THE BOARD	- 34 -
89.	INVESTIGATION BY THE BOARD	- 35 -
90.	PROCEDURES ON COMPLETION OF INVESTIGATION	- 35 -
91.	STATUTORY AUDITS	- 35 -
92.	OFFENCES RELATING TO PROCUREMENT	- 35 -
93.	CORRUPT PRACTICES	- 35 -
94.	REVIEW OF THRESHOLDS LEVEL	- 35 -
95.	PUBLIC ACCESS TO LEGAL TEXTS	- 35 -
96.	INTERNATIONAL OBLIGATIONS	- 35 -
97.	REGULATIONS	- 35 -
98.	INTERPRETATION	- 35 -
99.	REPEAL AND SAVINGS	- 35 -
100.	ADDITIONAL REGULATIONS	- 35 -
101.	CONTRACT ADMINISTRATION	- 35 -
	i. Contract Administration Responsibilities	
	ii. Technical Inspection of Goods and Works	
	iv. Inspection and Receiving Team	
	iv. Payment Documents	

# REGULATIONS

## SCOPE AND PURPOSE OF REGULATIONS

### Introduction to the Regulations

- (1) Section 97 of the Public Procurement Act 2003, (Act 663) provides the right of the Minister, in consultation with the Public Procurement Board, to make Regulations by legislative instrument to give effect to the purposes of the Act. The Section also specifies the penalties for the contravention of any such regulation. The following Regulations are issued to supplement the provisions of Section 97.
  - (2) In respect of Sub-section 97 (2) (b), the manner of publication of procurement contract awards shall be in accordance with the thresholds specified in Schedule 3 of the Act, and the prescribed format issued by the Public Procurement Board.
  - (3) In respect of Sub-section 97 (2) (e), the Minister shall recommend proceedings on basis of Nationality in accordance with Sub-sections 14 (1) and 14 (3) of the Act.
  - (4) In respect of Sub-section 97 (2) (f) of the Act, the Public Procurement Board or the Minister responsible for finance may designate a special Agency, Central Administration or Special Procurement Unit and Tender Committee to conduct the procurement of common use items, or works or specialist services for a group of procurement entities. Additional guidelines and instructions to give effect to this policy shall be issued by the Public Procurement Board.
  - (5) These Regulations are issued in accordance with section 97 of the Public Procurement Act, 2003, for the purpose of establishing detailed rules and procedures to fulfil the objectives and implement the provisions of the Act.
  - (6) These Regulations shall apply to all public procurement activity and alternative or modified procurement rules may only be applied in the cases of: procurement subject to the rules of a donor or funding agency in accordance with Section 96 of the Act; where the Minister for Finance decides that it is in the national interest to use a different procedure under Section 14 of the Act or; where subject to approval by the Public Procurement Board, a procurement entity is permitted to undertake procurement in accordance with established private sector or commercial practices under Section 16 of the Act if:
    - (a) the procurement entity is legally and financially autonomous and operates under commercial law;
    - (b) it is beyond contention that public sector procurement procedures are not suitable, considering the strategic nature of the procurement; and
    - (c) the proposed procurement method will ensure value for money, provide competition and transparency to the extent possible.
  - (7) Compliance with these Regulations is obligatory for procurement entities and other participants in public procurement.
  - (8) Under the authority of Sub-section 97 (2) (i) of the Act, additional Regulations on any other matter connected with public procurement are issued commencing from Regulation number 100 below.
  - (9) These Regulations are effective after publication in the Gazette.
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## **PART I – ESTABLISHMENT OF THE PUBLIC PROCUREMENT BOARD**

### **1. Public Procurement Board (Section 1)**

- (1) Section 1 of the Act establishes the Public Procurement Board as a legal entity.

### **2. Object of the Board (Section 2)**

- (1) Section 2 of the Act defines the objectives of the Board.

### **3. Functions of the Board (Section 3)**

- (1) Section 3 of the Act defines the functions of the Public Procurement Board. In addition to the functions specified in Section 3, the Public Procurement Board shall conduct any other functions specified in this Regulation:

#### **(i) Policy Functions of the Public Procurement Board**

- (2) The Public Procurement Board shall ensure that public procurement policy, systems and procedures are consistent with and integrated with other relevant Government policies, systems and procedures, including, but not limited to those for:

- (a) finance, budgeting and expenditure management;
- (b) private sector development or the development of small enterprise development;
- (c) anti-corruption initiatives;
- (d) decentralisation;
- (e) the use of information and communications technology; and
- (f) environmental protection.

#### **(ii) Monitoring Functions of the Public Procurement Board**

- (3) In conducting its monitoring functions, the Public Procurement Board shall co-operate and work closely with other bodies responsible for oversight and shall, where appropriate, refer cases to other bodies for action.

- (4) The Public Procurement Board may participate in any mechanisms established for:

- (a) sharing information with other oversight bodies;
- (b) establishing common methodologies or standards for investigations and the collection of evidence;
- (c) establishing joint teams to conduct oversight functions;
- (d) promoting joint capacity building programmes relating to oversight functions;
- (e) scheduling work programmes, so as to avoid the duplication of effort or overlapping investigations;
- (f) conducting any other function which facilitates the conduct of oversight functions.

- (5) In order to conduct its monitoring functions, the Public Procurement Board shall request such reports as required from procurement entities under the authority of Section 88 of the Act. Such reports may relate to any aspects of procurement covered by the Act and these Regulations.

#### **(iii) Capacity Building Functions of the Public Procurement Board**

- (6) In developing any training and certification schemes for procurement officers and members of Tender Committees, the Public Procurement Board shall work with appropriate bodies responsible for public sector employment and capacity building.

- (7) In developing training and certification schemes for procurement officers and members of Tender Committees, the Public Procurement Board shall take into account:
- (a) the differing types, volumes and complexity of procurement managed by different procurement entities;
  - (b) the needs of small procurement entities, where it may not be necessary to employ a full-time procurement officer
  - (c) the differing skills needed in ministries, local government and state-owned enterprises;
  - (d) the differing skills needed in central offices, regional offices and district branches of procurement entities; and
  - (e) requirements for different levels of procurement staff and requirements for career progression for procurement officers;
- (8) In implementing measures aimed at developing human resources and professionalism for public procurement, the Public Procurement Board may contract external organisations to deliver capacity building programmes.
- (iv) **Regulatory Functions of the Public Procurement Board**
- (9) In drafting or revising procurement and supply management legislation, regulations, administrative instructions, standard tender documents or similar, the Public Procurement Board shall:
- (a) consult with stakeholders in both the public and private sectors; and
  - (b) liaise with the Attorney General regarding the introduction or issue of all legal documents, including the general conditions of contract and contract forms in standard tender documents.
- (v) **Data Management Functions of the Public Procurement Board**
- (10) The Public Procurement Board shall require procurement entities to submit regular reports of procurement activities, to facilitate the establishment and maintenance of data and information bases concerning procurement and to assist in the monitoring of public procurement and development of public procurement policies. The Public Procurement Board will issue administrative instructions through the Minister for Finance regarding any such reports required.
- (vi) **Environmental Protection in Public Procurement**
- (11) The Public Procurement Board, in consultation with other competent authorities, shall issue administrative instructions through the Minister for Finance on environmental protection in public procurement.
- (12) Procurement entities shall implement measures to protect the environment in accordance with administrative instructions issued by the Public Procurement Board.
- (vii) **Debarment of Tenderers and Suppliers**
- (13) The Public Procurement Board may exclude a supplier, contractor or consultant from participation in all public procurement, for a minimum period of one year and a maximum period of six years, on any of the grounds specified in Section 3 (q) of the Act.
- (14) A petition to debar a supplier, contractor or consultant may be brought by a procurement entity, the Public Procurement Board, the Auditor-General or any other oversight organ authorised by the laws of Ghana.
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- (15) Upon receipt of a petition to debar, the Public Procurement Board shall immediately:
    - (a) consult with the procurement entity to gather detailed information on the circumstances;
    - (b) notify the supplier, contractor or consultant, giving details of the petition and informing the supplier or contractor of its right to a hearing or to submit written evidence, prior to any decision to exclude, as long as such request or evidence is submitted within ten working days of receipt of the notice; and
  - (16) In investigating the petition, the Public Procurement Board shall consider, where appropriate:
    - (a) the information contained in the petition and other information obtained through consultation with the affected procurement entity and the body bringing the petition;
    - (b) information provided by the supplier, contractor or consultant, through a hearing or in written form; and
    - (c) any other relevant sources of information, including audits already conducted by the Public Procurement Board or other oversight bodies or information from other suppliers or contractors.
  - (17) The following procedures shall apply to any hearings:
    - (a) any hearing shall be organised within ten working days of the request for a hearing from the supplier, contractor or consultant;
    - (b) the supplier, contractor or consultant, has the right to be represented by counsel;
    - (c) the hearing shall be recorded and all evidence presented shall be preserved; and
    - (d) witnesses must testify under oath and may be cross-examined.
  - (18) During the investigation of any petition to debar a supplier, contractor or consultant, the tenderer shall be permitted to participate in public procurement and shall be required to continue performance of any contract, but any recommended contract award to the supplier, contractor or consultant, shall be delayed, pending the outcome of the investigation.
  - (19) Upon completion of its investigation and following any hearing, the Public Procurement Board shall issue a written decision, indicating:
    - (a) whether the petition is upheld or rejected;
    - (b) the reasons for its decision; and
    - (c) the length of any debarment imposed.
  - (20) The written decision shall be sent to:
    - (a) the supplier, contractor or consultant;
    - (b) the organisation or individual that submitted the petition; and
    - (c) the affected procurement entity, where the petition was not submitted by the procurement entity.
  - (21) Any debarment imposed shall take effect immediately upon issue of the written decision and shall be published in the Public Procurement Bulletin.
  - (22) During the period of any debarment, a supplier, contractor or consultant, shall not be permitted to participate in any public procurement proceedings, but shall be required to continue performance of any contracts already awarded.
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(23) The Public Procurement Board shall maintain a list of excluded suppliers, contractors or consultants, which shall be circulated to all procurement entities and made available on the Public Procurement Board website. The Public Procurement Board shall immediately inform all procurement entities of any changes to the list, including suppliers, contractors or consultants removed from the list following expiry of their debarment period.

(24) The Public Procurement Board shall also take into account any other international lists of debarred suppliers and contractors.

**4. Membership of the Board (Section 4)**

(1) Section 4 of the Act establishes the composition of the Public Procurement Board.

**5. Term of office (Section 5)**

(1) Section 5 of the Act establishes the period of office for members of the Public Procurement Board.

**6. Meetings of the Board (Section 6)**

(1) Section 6 of the Act establishes the procedures for meetings of the Public Procurement Board.

**7. Committees of the Board (Section 7)**

(1) Section 7 of the Act establishes the authority of the Public Procurement Board to appoint committees to assist in the discharge of its functions.

**8. Secretariat of the Board (Section 8)**

(1) Section 8 of the Act provides for establishment of the secretariat to assist and support the Board.

**9. Chief Executive of the Board (Section 9)**

(1) Section 9 of the Act provides for the appointment of a Chief Executive of the Board.

**10. Expenses of the Board (Section 10)**

(1) Section 10 of the Act establishes the sources of funding for the Board.

**11. Accounts and audit (Section 11)**

(1) Section 11 of the Act establishes the requirements for accounting records to be maintained by the Board and for audit by the Auditor General.

**12. Financial Year of the Board (Section 12)**

(1) Section 12 of the Act establishes the financial year of the Board.

**13. Annual report (Section 13)**

(1) Section 13 of the Act establishes the requirement for an annual report by the Board.

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**PART II – PROCUREMENT STRUCTURES****14. Scope of application (Section 14)**

- (1) Section 14 of the Act defines the application of the Act.

**15. Procurement Entity (Section 15)**

- (1) Section 15 of the Act establishes the responsibility of a procurement entity for all procurement activity of the entity in compliance with the Law, and any Regulations or administrative instructions issued by the Minister for Finance acting in consultation with the Public Procurement Board.

- (2) Section 15 of the Act also defines the role and responsibilities of the head of an entity, and in implementation of such roles and responsibilities the following Regulation is issued:

**(viii) Head of Entity**

- (3) Every Entity shall establish a Procurement Unit to undertake all activities related to procurement within the Entity in accordance with the Act.

- (4) The Head of Entity shall appoint or designate a proficient procurement person with the requisite qualifications, experience and skills as head of the Procurement Unit to undertake the detailed activities of procurement on behalf of the entity.

- (5) Depending on the size and volume of procurement activities in the entity,, The Head of Entity may appoint additional staff to the Procurement Unit.

- (6) To avoid conflict of interest, the Head of Entity's role in the procurement processes shall be restricted to:

- (a) review and approval of recommendations for contract awards submitted by the Procurement Unit;
- (b) participating as the Chairman or a Member in decisions of a Tender Committee [or Tender Review Board as the case may be];
- (c) review decisions on complaints submitted under Section 79 of the Act; and
- (d) signing contracts on behalf of the procurement entity.

- (7) The Head of Entity may formally delegate his authority to an officer to undertake any of his powers or responsibilities for procurement under the Act or this Regulation.

**(ix) Approval of Contract Awards by the Head of Entity**

- (8) Schedule 1 of the Act provides threshold values up to which the Head of Entity may approve the award of contracts. In considering submissions made by the Procurement Unit, the Head of Entity may:

- (a) approve a submission;
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to clarifications or amendments.

- (9) The Head of Entity shall not:

- (a) modify a submission; or
- (b) reject any submission without good reasons in writing.

- (10) Where the Head of Entity has a conflict of interest in any submission, he shall declare his interest in the submission and refer it to the officer to whom authority has been delegated (as in 7 above) for a decision.
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- (11) For Contracts above the Head of Entity's threshold as stipulated in Schedule 3, the Head of Entity shall, in consultation with the Procurement Unit, review all documentation and decisions related to the contract and submit the recommendations for approval by the Entity Tender Committee.
- (x) **Procurement Unit**
- (12) The Head of the Procurement Unit (and his/her team) shall be responsible for undertaking and co-ordinating all detailed procurement activity within the procurement entity. This shall include:
- (a) receiving procurement requests from originating officers, checking that the proposed procurement is within the approved procurement plan, and that budgeted funds are available prior to commencement of procurement proceedings;
  - (b) ensuring that funds are properly committed prior to issue of any contract or Purchase Order;
  - (c) co-ordinating the preparation of specifications, terms of reference, bills of quantities, drawings, short-lists or advertisements, and prequalification, tender or request for quotation documents. Where so required by the Tender Committee, submission of documentation for review and approval by the Tender Committee prior to issue;
  - (d) arranging the publication of advertisements and notices of contract award;
  - (e) co-ordinating the process of opening of tenders and quotations and ensuring the preparation of formal records of tender or quotation opening in accordance with Section 56 of the Act. Interested Members of the Entity Tender Committee may attend tender openings as observers.
  - (f) participating in evaluation activities of the Evaluation Panel and assisting in preparation of formal Evaluation Reports;
  - (g) preparing submissions for approval of award of by the appropriate authority in accordance with the threshold values established in Schedule 3 of the Act.
  - (h) maintaining and updating the database of suppliers, contractors and consultants;
  - (i) participating in negotiations with consultants or other tenderers where expressly permitted in the Act or these Regulations;
  - (j) preparing notification of awards and contracts;
  - (k) arranging publication of notices of contract awards;
  - (l) preparing contract documents and Purchase Orders, in line with the award decision;
  - (m) preparing and issuing tender rejection and tenderer debriefing letters;
  - (n) preparing contract variations and modifications;
  - (o) assisting with the inspection and acceptance of goods, works and services, and where necessary, use a member of the user department in conducting technical inspection;
  - (p) maintaining procurement records in accordance Section 28 of the Act and with these Regulations;
- (13) In performing its functions, the Procurement Unit shall at all times liaise with the originating officer or end-user who initiated the procurement, to ensure that the procurement meets the requirement;
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**16. Declaration of procurement entity (Section 16)**

- (1) Section 16 of the Act establishes the right of the Minister for Finance in consultation with the Public Procurement Board to declare any entity or person to be a procurement entity.

**17. Tender Committee (Section 17)**

- (1) Section 17 of the Act establishes the requirement for and responsibilities of Tender Committees. The following Regulations shall apply to the activities of Tender Committees:
  - (2) Tender Committees shall be responsible for review and approval of annual Procurement Plans in accordance with Schedule 1 of the Law and for review and approval of quarterly updates to procurement plans.
  - (3) Where any lower value award of contract or issue of a contract modification is made within the delegated authority granted to the Head of the Procurement Entity, the Tender Committee shall provide retrospective verification and approval at its next meeting.
  - (4) In considering submissions made by the Procurement Unit or the Tender Evaluation Panel, the Tender Committee may:
    - (a) approve a submission;
    - (b) reject a submission with reasons; or
    - (c) approve a submission, subject to clarifications or minor amendments.
  - (5) The Tender Committee shall not:
    - (a) modify a submission, including, in particular recommendations for contract award; or
    - (b) reject any submission without good and justifiable reason.
  - (6) Award of contract shall be made solely on the basis of information and evaluation criteria provided in the tender documents or request for proposals, and without recourse to any extrinsic evidence, or influenced by personal or political preferences.
  - (7) Where any member of the Tender Committee has a conflict of interest in any submission, he shall declare his interest in the submission, leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the Committee in relation to that submission.
  - (8) Decisions of the Tender Committee should be unanimous. Where unanimity cannot be achieved after extensive discussions, a decision shall be by simple majority vote with the Chairperson of the Tender Committee having a casting vote in the event of a tie. The result of the voting shall be recorded in the minutes of the Tender Committee together with an explanation of the failure to reach a unanimous decision.
  - (9) The Tender Committee shall provide explanation and justification of its reasons for any rejection to assist the Procurement Unit or Tender Review Panel in remedying any defects in the submission prior to re-submission to the Tender Committee.
  - (10) All decisions of a Tender Committee, including reasons for any rejections, shall be recorded in minutes and notified to the Procurement Unit and the Tender Evaluation Panel in writing.
  - (11) The secretary of the Tender Committee shall record minutes of all Tender Committee meetings, which shall include:
    - (a) a register of attendance;
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- (b) a list of all submissions considered;
- (c) the decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- (d) any conflicts of interest declared by members; and
- (e) any dissenting opinions among Tender Committee members.

## **18. Meetings of Tender Committees (Section 18)**

- (1) Section 18 of the Act establishes the minimum frequency of Tender Committee meetings and the requirements for notice of meetings.

## **19. Tender Evaluation Panel (Section 19)**

- (1) Section 19 of the Act establishes the requirement for appointment of a Tender Evaluation Panel by each procurement entity. The following Regulations shall apply to the composition and activities of the Tender Evaluation Panel

### **(xi) Composition of Tender Evaluation Panels**

- (2) A Tender Evaluation Panel shall be an ad hoc body of not more than five members constituted for a specific procurement package. The panel shall include members with skills, knowledge and experience relevant to procurement requirements, which may include:
  - (a) relevant technical skills;
  - (b) end user representation;
  - (c) procurement and contracting skills;
  - (d) financial management or analysis skills; or
  - (e) legal expertise.
- (3) Members appointed to the Panel may be staff of the Procurement Unit but no Member of the Entity Tender Committee shall act as a member of the Tender Evaluation Panel.
- (4) Evaluation of low value or routine procurement shall normally be undertaken by the Procurement Unit. Where the evaluation is of a technical specialised nature, additional members may be invited to join the Tender Evaluation Panel..
- (5) To ensure transparency, members of the Tender Evaluation Panel shall not be directly involved in the approval of any award of contract.

### **(xii) Proceedings of Tender Evaluation Panels**

- (6) Recommendations for award of contract shall be made solely on the basis of information and evaluation criteria provided in the tender documents or request for proposals, and without recourse to any extrinsic evidence, or influenced by personal or political preferences.
  - (7) Where any member of the Tender Evaluation Panel has a conflict of interest in any tender evaluation, he shall declare his interest in the tender, leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the Panel in relation to that submission.
  - (8) A formal evaluation report shall be prepared for each evaluation conducted and signed by all participating Members of the Panel.
  - (9) Except in the case of simple price evaluations, scoring of tenders shall be conducted individually by Members of the Tender Evaluation Panel and the scores formally
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combined to arrive at a recommendation for contract award. Recommendations of the Tender Evaluation Panel shall be unanimous, but any dissenting views shall be recorded within the evaluation report to be submitted to the Tender Committee.

- (10) The secretary of the Tender Evaluation Panel shall record minutes of all Panel meetings, which shall include:
- (a) a register of attendance;
  - (b) a list of all submissions considered and the recommendations made;
  - (c) any conflicts of interest declared by members; and
  - (d) any dissenting opinions among Tender Evaluation Panel members.

**20. Tender Review Boards (Section 20)**

- (1) Section 20 and Schedule 1 of the Act requires the establishment of Tender Review Boards, and specifies the functions of Tender Review Boards. The following Regulation is issued for clarification:
- (2) In considering submissions made by the Procurement Entity, the Tender Review Board may:
- (a) approve a submission;
  - (b) reject a submission with reasons; or
  - (c) approve a submission, subject to clarifications or minor amendments.
- (3) The Tender Review Board shall not:
- (a) modify a submission, including, in particular recommendations for contract award; or
  - (b) reject any submission without good and justifiable reason.
- (4) Award of contract shall be made solely on the basis of information and evaluation criteria provided in the tender documents or request for proposals, and without recourse to any extrinsic evidence, or influenced by personal or political preferences.
- (5) Where any member of the Tender Review Board has a conflict of interest in any submission, he shall declare his interest in the submission, leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the Board in relation to that submission.
- (6) Decisions of the Tender Review Board should be unanimous. Where unanimity cannot be achieved after extensive discussions, a decision shall be by simple majority vote with the Chairperson of the Board having a casting vote in the event of a tie. The result of the voting shall be recorded in the minutes of the Tender Review Board together with an explanation of the failure to reach a unanimous decision.
- (7) The Tender Review Board shall provide explanation and justification of its reasons for any rejection to assist the Procurement Entity in remedying any defects in the submission prior to re-submission to the Tender Review Board.
- (8) All decisions of a Tender Review Board, including reasons for any rejections, shall be recorded in minutes and notified to the Procurement Entity in writing.
- (9) The secretary of the Tender Review Board shall record minutes of all Tender Review Board meetings, which shall include:
- (a) a register of attendance;
  - (b) a list of all submissions considered;

- (c) the decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- (d) any conflicts of interest declared by members; and
- (e) any dissenting opinions among Tender Review Board members.

### **PART III – PROCUREMENT RULES**

#### **21. Procurement Plan (Section 21)**

- (1) Section 21 of the Act requires procurement entities to prepare a procurement plan for each fiscal year, and prepare quarterly updates for approval by the Tender Committee. The following Regulation is issued to supplement the provisions of the Act:
  - (2) Procurement planning shall be fully integrated with applicable budget processes and circulars issued by the Public Procurement Board and the budget preparation instructions of the Ministry of Finance.
  - (3) The procurement plan for each Procurement Entity shall include:
    - (a) a detailed breakdown of the goods, works and services required;
    - (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
    - (c) the source of funding;
    - (d) an indication of any items that can be aggregated for procurement as a single package, or for procurement through any applicable arrangements for common use items;
    - (e) an estimate of the value of each package of goods, works and services required and the source of funding; and
    - (f) details of any committed or planned procurement expenditure under existing multi-year contracts.
  - (xiii) **Contract Packages**
  - (4) In determining the optimum packaging of planned contracts a Procurement Entity shall aggregate procurement requirements, where appropriate, to achieve economies of scale. In deciding where aggregation is appropriate, the Procurement Entity shall consider all relevant factors, including:
    - (a) which procurements are of a similar nature and likely to attract the same potential tenderers;
    - (b) shelf-life and storage constraints;
    - (c) when delivery, implementation or completion is required;
    - (d) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the requirement;
    - (e) which procurements will be subject to the same tendering requirements and conditions of contract; and
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- (f) the potential to realise savings in time or transaction costs or to facilitate contract administration by the Procurement Entity.

## **22. Qualifications of Tenderers (Section 22)**

- (1) Section 22 of the Act specifies the qualification requirements for a tenderer to participate in public procurement. The following Regulation is issued to supplement the provisions of Section 22 of the Act.

### **(xiv) Qualification Requirements for Joint Venture Partners**

- (2) Invitation and pre-qualification documents shall clearly state:
  - (a) whether qualification criteria apply to lead contractors or partners in a joint venture, consortium or association;
  - (b) whether criteria will be applied individually or collectively to each contractor or partner; and
  - (c) any alternative criteria which apply to partners in a joint venture, consortium or association.

## **23. Prequalification Proceedings (Section 23)**

- (1) Section 23 of the Act defines the issue and contents of prequalification documents, proceedings. The following Regulation is issued to supplement the provisions of Section 23 of the Act:
- (2) The price to be charged for the prequalification documents shall reflect only the cost of printing them and providing them to suppliers or contractors, and shall not be directly or indirectly related to the value of the contract.
- (3) Prequalification and ranking of contractors for works contracts, and any other supplier, contractor or consultant registration process used within procurement entities for the purpose of prequalification, shall be subject to the provisions of the Act on prequalification proceedings. Such processes shall also be subject to detailed review and certification by the Public Procurement Board, and additional Regulations will be issued to ensure transparency and accountability within each process. Pending the issue of any additional Regulations, any such registration process shall be based on the following principles:
  - (a) periodic public advertisement to invite applications;
  - (b) the establishment and publication of clear evaluation criteria for acceptance into categories and grades;
  - (c) monitoring and recording the performance on contracts awarded;
  - (d) sharing of database information with other procurement entities; and
  - (e) registration to be subject to formal renewal or cancellation if a supplier, contractor, or consultant has not satisfactorily undertaken any contracts within a three-year period.
  - (f) Procurement entities shall not be obliged under restricted tendering or request for quotations procedures to invite all registered tenderers to submit tenders, but shall ensure a rotation of registered tenderers on successive shortlists.

## **24. Decision on prequalification (Section 24)**

- (1) Section 24 of the Act specifies the process of determining adequacy of qualifications and the communication of results to a supplier or contractor.
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**25. Participation in procurement proceedings (Section 25)**

- (1) Section 25 of the Act requires the general use of a competitive selection process in procurement.

**26. Form of Communication (Section 26)**

- (1) Section 26 of the Act requires all communications between procurement entities and tenderers to be in writing, or to be confirmed in writing.

**27. Documentary evidence in procurement proceedings (Section 27)**

1. Section 27 of the act requires that documentary evidence in procurement proceedings shall comply with the Evidence Decree 1975 (NRCD 323).

**28. Record of procurement proceedings (Section 28)**

- (1) Section 28 of the Act requires a comprehensive record of each procurement process to be maintained and requirements for disclosure. The following Regulation supplements the provisions of Section 28 of the Act:
- (2) Notwithstanding the filing system adopted in a particular entity, the Procurement Unit shall maintain the record of procurement activities for each procurement package. The record should contain, or indicate the location of, principle source documents, including as a minimum: The record of each procurement shall be securely maintained in an individual contract file containing, in chronological sequence, a copy of each and every document raised during the procurement and contract performance process from the initial purchase requisition through to the final payment approval and closure of the contract file. The documents shall include, but not be restricted to, copies of:
  - (a) initial Purchase Requisitions or requests;
  - (b) prequalification or solicitation documents;
  - (c) advertisements;
  - (d) requests for clarification and responses;
  - (e) records of Tender Opening;
  - (f) Evaluation Report and recommendations for award of contract;
  - (g) decisions of the Tender Committee;
  - (h) decisions of the Tender Review Board;
  - (i) letter and notice of contract award;
  - (j) documents relating to any bid protest and decisions;
  - (k) the signed contract;
  - (l) goods received records, certificates, or other confirmations of satisfactory performance;
  - (m) contract variations; and
  - (n) records of payment and retentions.

**29. Rejection of tenders, proposals and quotations (Section 29)**

- (1) Section 29 of the Act establishes the right of a procurement entity to reject tenders, proposals or quotations. The following Regulation is issued to support the provisions of Section 29:
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- (2) The rejection of individual tenders, proposals or quotations shall be subject to the grounds stated in the tender documents or in the request for proposals or quotations.
- (3) The rejection of all tenders in accordance with Section 29 of the Act may be undertaken where:
  - (a) the procurement need has ceased to exist or changed significantly;
  - (b) insufficient funding is available for the procurement;
  - (c) there is a significant change in the required technical details, tender conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
  - (d) insufficient, or no responsive tenders are received;
  - (e) there is evidence of corruption, fraud, coercion or collusion among tenderers; or
  - (f) cancellation is deemed to be in the interest of national security.
- (4) Before rejecting all tenders, the Head of Entity in consultation with the Procurement Unit shall clearly state:
  - (a) detailed reasons for recommending rejection;
  - (b) the status of the procurement proceedings, including in particular, whether tenders have already been opened; and
  - (c) whether new procurement proceedings are recommended and, if so, the modifications recommended.
- (5) The reason for rejecting all tenders shall be noted in the record of the procurement proceedings, and promptly communicated to the tenderers.
- (6) A procurement entity shall not be liable to a tenderer by reason only of rejection of all tenders under subsection (2) above.
- (7) If a decision to reject all tenders is taken before the deadline for submission of tenders, any tender received shall be returned unopened to the tenderer.
- (8) In the event of rejection of all tenders, the procurement shall not be re-tendered to the same specifications and contract conditions unless the rejection of the initial tenders, proposals or quotations 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 rejection of the initial proceeding shall be examined by the Procurement Entity and the technical specification or contract conditions, or both may be suitably modified prior to re-tendering.

### **30. Entry into force of the procurement contract (Section 30)**

- (1) Section 30 of the Act explains the manner of entry into force of the procurement contract. The following Regulation is issued to clarify the provisions of Sub-section 30 (2):
- (2) Sub-section 30 (2) shall apply to single-source procurement (Section 40) and to request for quotations (Section 42) in defining the manner of entry into force of the procurement contract.

### **31. Public notice of procurement contract awards (Section 31)**

- (1) Section 31 of the Act establishes the requirement for publication of notice of procurement contract awards. The following Regulation is issued to supplement the provisions of Section 31:
  - (2) Public notice of award of contracts shall be provided by a Procurement Entity for all contracts to the Public Procurement Board.
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- (3) For contracts awarded the Procurement Entity shall submit to the Public Procurement Board not later than one month after contract signature a list of contracts signed in electronic format for publication on the Public Procurement Board Website or in the Procurement Bulletin or both.
- (4) The information on contracts awarded/signed shall include:
  - (a) Name of contractor/supplier/consultant;
  - (b) Description of works/goods/services;
  - (c) Contract Sum;
  - (d) Duration of contract;
  - (e) Method of procurement;
  - (f) Source of funding (Donor or GoG or IGF).

### **32. Inducements from suppliers, contractors and consultants (Section 32)**

- (1) Section 32 of the Act requires a procurement entity to reject a tender, proposal, offer or quotation if the supplier, contractor or consultant offers an inducement. The Section also provides a definition of such inducements. Section 32 of the Act is supplemented by the following Regulation.
- (2) A Procurement Entity shall record any such attempt in its record of proceedings and immediately notify the Public Procurement Board of any attempt to influence an award of contract or performance of a contract.

### **33. Description of goods, works or services (Section 33)**

- (1) Section 33 of the Act requires the accurate and non-restrictive description and specification of goods, works and services to be procured. The provisions of Section 33 are supplemented by the following Regulation:

#### **(xv) Description of Goods**

- (2) Description of goods to be procured shall contain or be accompanied by a complete, precise and unambiguous description of the goods required. This description shall include, where appropriate:
  - (a) a list of goods and the quantities required, including any incidental services or works, such as delivery, installation, commissioning, maintenance, repair, user training, the provision of spares and after-sales services; and
  - (b) drawings.
- (3) Specifications shall include, where appropriate:
  - (a) the purpose and objectives of the goods;
  - (b) a full description of the requirement;
  - (c) a functional description of the goods, including any environmental or safety features;
  - (d) performance parameters, including outputs and any indicators or criteria by which satisfactory performance can be judged;
  - (e) process and materials descriptions;
  - (f) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
  - (g) inspection and testing requirements; and
  - (h) any applicable national or international standards required.

#### **(xvi) Use of Brand Names**

- (4) Descriptions of goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included and the description shall serve only as a benchmark during the evaluation process.
- (5) Notwithstanding the provisions of sub-regulation (4) above, where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is essential for reasons of technical compatibility, servicing, maintenance or preservation of warranty conditions, such description may be used, subject to inclusion of the words “or equivalent”.

**(xvii) Description of Works**

- (6) Description of works to be procured shall include:
- (a) a description of the full scope of the works, which may include the design, construction or installation of equipment;
  - (b) the purpose and objectives of the works;
  - (c) drawings, design requirements and preliminary surveys;
  - (d) bill of quantities or activity schedule; and
  - (e) inspection and testing requirements.

**(xviii) Description of Services**

- (7) Description of services/Terms of Reference shall be accompanied by a complete, precise and unambiguous description of the services required. This description shall include:
- (a) a background narrative to the required services;
  - (b) the objectives of the services and targets to be achieved;
  - (c) a list of specific tasks, duties or responsibilities;
  - (d) required deliverables or outputs for the services;
  - (e) the role, qualifications or experience required for any key staff;
  - (f) contract management and administrative arrangements including the reporting requirements of the procurement entity;
  - (g) any facilities, services or resources to be provided by the procurement entity;
  - (h) inspection or quality testing requirements or other indicators of successful performance; and
  - (i) the duration of the contract or implementation schedule.

**(xix) Initiation of Procurement Processes**

**(xx) Procurement Requisition and Authorisation**

- (8) Every procurement requirement shall be documented using a Procurement Requisition, which shall include:
- (a) a unique procurement number that can be used to facilitate tracking of procurement documentation throughout the process;
  - (b) a description of the goods, works or services required;
  - (c) the estimated value of the goods, works or services; and
  - (d) details of the estimated cost of the requirement, including any need for funds to be budgeted in future years for multi-year contracts.
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- (9) In preparing the description of goods, work or services, the originating officer shall ensure that appropriate technical advice is sought, where required.
- (10) In estimating the value of the goods, works or services, the originating officer shall ensure that the estimate is realistic and based on up-to-date information of economic and market conditions.
- (11) Purchase Requisitions shall be approved by the head of department or unit, prior to the initiation of procurement proceedings.
- (12) Approved Purchase Requisitions shall be submitted to the Procurement Unit of the procurement entity to undertake procurement proceedings.

**(xxi) Budget Verification and Commitment of Funds**

- (13) The Procurement Unit shall ensure that the proposed procurement is identifiable within the annual procurement plan and adequate funds are available within the remaining annual budget, prior to initiating procurement proceedings. This shall take into account all costs involved in the procurement, and, in addition to the total contract price shall include the following:
  - (a) contingencies, including any anticipated contract variations, exchange rate fluctuations or allowance for price adjustment;
  - (b) other costs relating to the successful completion of a procurement requirement for which the procurement entity will be liable, such as freight charges, insurance, customs clearance, inland delivery, import taxes or duties, inspections, installation or any costs relating to service or maintenance agreements;
  - (c) costs relating to facilities, services or resources to be provided by the procurement entity, such as office space or communication facilities for consultants or counterpart staff; and
  - (d) the cost of any related contract, which is necessary for the successful implementation of the procurement, such as a contract for engineering supervision of a construction contract.
- (14) The Procurement Unit shall also ensure that adequate funds are available for managing the procurement proceedings, including, but not limited to, any funds required for publication of advertisements or procurement notices.
- (15) Notwithstanding the provisions of sub-regulation (13) above, a procurement entity may initiate procurement proceedings, up to, but not including contract award, prior to formally committing the funds required.
- (16) Where a procurement entity wishes to initiate procurement proceedings for a multi-year contract, which will commit the procurement entity to make payments in subsequent fiscal years, the procurement entity shall ensure that funds for future fiscal years are included in the procurement plan and budgets for subsequent fiscal years.

**34. Language (Section 34)**

- (1) Section 34 of the Act specifies use of the English language in all procurement documents.
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## **PART IV - METHODS OF PROCUREMENT**

### **35. Competitive tendering (Section 35)**

- (1) Section 35 of the Act confirms that competitive tendering shall be the preferred method for procurements, and that quality and cost based selection shall be the default method of selection of consultants.

### **36. Two-stage tendering (Section 36)**

- (1) Section 36 of the Act defines the conditions for the use of two-stage tendering procedures. The following Regulation is issued to support the provisions of Section 36:
- (2) Two-stage tendering is a variant of tender proceedings in which, the procurement entity holds consultations with bidders following a first stage on the basis of preliminary tender documents, with a view to considering various possible technical and contractual solutions to the procurement need; thereafter, in the second stage, a tendering proceeding is held on the basis of revised tender documents.

### **37. Procedures for two-stage tendering (Section 37)**

- (1) Section 37 of the Act defines the procedures for two-stage tendering.

### **38. Restricted tendering (Section 38)**

- (1) Section 38 of the Act defines the conditions for the use of restricted tendering and the requirement for specific approval by the Public Procurement Board.

### **39. Procedure for restricted tendering (Section 39)**

- (1) Section 39 of the Act provides the general procedural requirements for restricted tendering. The following Regulation is issued to supplement the provisions of Section 39:
- (2) In preparing shortlists of suppliers and contractors for restricted tendering, the shortlist should comprise a minimum of three and a maximum of six capable suppliers or contractors. If there are only two known suppliers or contractors, both shall be invited to tender.
- (3) To avoid unfair discrimination, a Procurement Entity shall ensure that a rotation of suppliers and contractors identified on standing lists is maintained when preparing the shortlists for individual procurements.
- (4) All notices of selective tendering award shall be submitted to the Public Procurement Board within four weeks after contract signature.

### **40. Single-source procurement (Section 40)**

- (1) Section 40 of the Act defines the conditions for use of single-source procurement subject to approval by the Public Procurement Board. The following Regulation is issued to supplement the provisions of Section 40:
  - (2) Details of the criteria required for justification and successful approval to use single-source procurement shall be specified in guidelines and instructions issued by the Public Procurement Board.
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- (3) Where the procurement entity uses single-source procurement on grounds of an emergency, the procurement entity shall limit the procurement to the quantity needed to deal with the urgent requirements only.
- (4) Where single-source procurement under Sub-section 40 (2) is required to promote a policy specified in Sub-sections 59 (4) (c), (d) or 69 (2) (c) (i) of the Act, public notice shall be provided in the Procurement Bulletin and a period of seven (7) days after publication allowed for comment.

#### **41. Procedure for single-source procurement (Section 41)**

- (1) Section 41 provides for single-source procurement to be undertaken by invitation of a proposal or price quotation. The following Regulation is issued to supplement the provisions of Section 41:
- (2) One receipt of the single proposal or price quotation, a formal evaluation process shall be conducted to confirm acceptability, and an evaluation report with recommendations for award of contract submitted for approval.

#### **42. Request for quotations (Section 42)**

- (1) Section 42 of the Act establishes the use of request for quotations as a method of procurement, subject to the value thresholds established in Schedule 3 of the Act.

#### **43. Procedure for request for quotation (Section 43)**

- (1) Section 43 of the Act defines the outline procedures for procurement by requesting quotations. The following Regulation is issued to supplement the provisions of Section 43:
- (2) The Procurement Entity shall prepare a written Request for Quotations document, using the appropriate standard document issued by the Public Procurement Board.
- (3) The Request for Quotations shall include all information necessary to enable tenderers to participate in the procurement proceedings and to submit quotations that are responsive to the needs of the procurement entity. In particular, the Request for Quotations shall include:
  - (a) instructions on the conduct of the procurement process, including the preparation and submission of quotations and information on the evaluation of quotations and award of contract;
  - (b) instructions on any documents required to be submitted with the quotation, which shall include a minimum of a certified copy of the tenderer's business registration, ownership and tax clearance certificate;
  - (c) a description of the goods, works or services required;
  - (d) information on the methodology and criteria for the evaluation of quotations;
  - (e) the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
  - (f) the terms and conditions of contract which will apply;
  - (g) information on the tenderer's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of tenderers.

#### **Development of Shortlist**

- (4) Written quotations shall be requested from a shortlist of tenderers. The shortlist shall include sufficient tenderers to ensure effective competition, but in any case, no less than three.
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- (5) In developing a shortlist, the Procurement Entity may use:
  - (a) lists of pre-qualified tenderers;
  - (b) its own knowledge of the market;
  - (c) any other appropriate sources of information.
- (6) In developing a shortlist, the Procurement Entity shall comply with the following regulations:
  - (a) a fair and equal opportunity shall be afforded to all tenderers and there shall be a revision of the shortlist at least on a quarterly basis;
  - (b) the shortlist shall not include any tenderers who do not fully satisfy any eligibility and qualification requirements;
  - (c) the shortlist shall not include tenderers with the same ownership.
- (7) The Procurement Unit shall record the names of the tenderers included on the shortlist and the reasons for their inclusion. The shortlist and reasons for their inclusion shall be kept as part of the procurement record required under Section 28 of the Act.

(xxii) **Evaluation of Quotations**
- (8) The evaluation shall be conducted by the Tender Evaluation Panel appointed by the head of entity.
- (9) The evaluation of quotations shall be conducted in accordance with the rules and procedures defined in Part V, Sub-Part III of the Act, except that the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria as prescribed in Section 59 of the Act.
- (10) The lowest evaluated quotation, which is substantially responsive to the requirements of the Procurement Entity, shall be recommended for award of contract.

## **PART V - TENDERING PROCEDURES**

### **1. Sub-Part I - Invitation of Tenders and Applications to Prequalify**

#### **44. National competitive tendering (Section 44)**

- (1) Section 44 of the Act defines the application and use of national competitive tendering. The following Regulation is issued to supplement the provisions of Section 44:
- (2) National competitive tendering may be used as a procurement method for any values below the threshold established for National Competitive Tendering in Schedule 3.
- (3) Where the value exceeds the threshold established in Schedule 3 for National Competitive Tendering, the use of National Competitive Tendering shall be subject to prior approval by the Public Procurement Board.

#### **45. International competitive tendering (Section 45)**

- (1) Section 45 of the Act defines the use of international competitive tendering when effective competition cannot be obtained unless foreign firms are invited to tender and provides general provisions to be applied. The following Regulation is issued to supplement the provisions of Sections 45:

- (2) A procurement entity shall use the thresholds established in Schedule 3 as a guide in determining when to apply international competitive tendering procedures.

**46. Other international procedures (Section 46)**

- (1) Section 46 permits the use of international procurement in other than open competitive international tendering when effective competition cannot be obtained unless foreign firms are invited. The following Regulation is issued to supplement the provisions of Section 46:
  - (2) International procurement may be considered when:
    - (a) the goods, works or services are proven not to be available under competitive price and other conditions from two or more suppliers in Ghana; or
    - (b) two previous national competitive tenders have failed to identify an acceptable tenderer.
  - (3) Any use of international procurement under Section 46 shall be subject to prior approval by the Public Procurement Board.

**47. Procedures for inviting tenders or applications to prequalify (Section 47)**

- (1) Section 47 of the Act provides for the publication of invitations for tender and prequalification. The following Regulation is issued to supplement the provisions of Section 47:
  - (2) Publication in the Procurement Bulletin and two national papers of wide national circulation is adequate for all procurement other than International Competitive Tendering;.
  - (3) For International Competitive Tendering, publication in international newspapers or journals is also required. However, copies of the Invitation to Tender or Prequalify submitted to all foreign Embassies and High Commissions in Ghana shall be deemed to have met this requirement.

**48. Contents of invitation to tender and invitation to prequalify (Section 48)**

- (1) Section 48 of the Act defines the required contents of invitation to tender and invitation to prequalify documents.

**49. Provision of tenders documents (Section 49)**

- (1) Section 49 of the Act states the requirement for tender documents to be provided to suppliers or contractors and the price that may be charged. The following Regulation is issued to supplement the provisions of Section 49 of the Act.
  - (2) The price to be charged for the tender documents shall reflect only the cost of printing them and providing them to suppliers or contractors, and shall not be directly or indirectly related to the value of the contract.
  - (3) Procurement entities shall ensure that tender documents are available for before publication of the invitation.
  - (4) Potential tenderers shall be allowed to inspect tender documents before confirming their decision to purchase the tender documents.
  - (5) If the stock of tender documents is exhausted, immediate action to print additional copies shall be initiated. It is an offence to deny a prospective tenderer the opportunity to purchase a tender document at any time prior to the tender closing date.



- (6) Failure to provide a tender document for inspection or purchase by a potential tenderer may constitute grounds for complaint under Part VII-Review of the Act.

**50. Contents of tender documents and use of standard tender documents (Section 50)**

- (1) Section 50 of the Act requires that procurement entities shall use the standard tender documents issued by the Public Procurement Board and specified in Schedule 4 of the Act.

**51. Clarifications and modifications of tender documents (Section 51)**

- (1) Section 51 of the Act provides for the conduct of clarification and modification of tender documents. The following Regulation is issued for clarification of Section 51:
- (2) For the purposes of Sub-section 51 (2) a “reasonable time” for the submission of a request for clarifications shall be fourteen (14) days prior to the deadline for submission of tenders in the case of an international tender, and seven (7) days prior to the deadline for submission of tenders in respect of a national tender;
- (3) The Procurement Entity shall respond to each request for clarification within seven (7) days of receipt of the request, and may extend the deadline for submission of tenders in accordance with Section 53 (3).

**2. Sub-Part II - Submission of Tenders**

**52. Language of tenders (Section 52)**

Section 52 of the Act specifies the English language requirements for submission of tenders.

**53. Submission of tenders (Section 53)**

- (1) Section 53 of the Act defines the conditions and procedures for submission of tenders. The following Regulation is issued to modify and supplement the provisions of Section 53:
- (2) Under National Competitive Tendering, a minimum period of two (2) weeks shall be allowed for tenderers to prepare their tenders.
- (3) The Public Procurement Board may, from time to time, issue instruction regarding alternative forms of tender submission acceptable to the Board. A Procurement Entity in adopting other forms for submission shall take into consideration the latest instructions issued by the Board.
- (4) The Procurement Entity shall make arrangements for the receipt and safekeeping of tenders in a tender box.
- (5) The Procurement Entity shall not be held liable for the loss or delay in delivery of any tender delivered by mail or courier.
- (6) The Procurement Entity shall not disclose the number or identity of tenders received, prior to the tender opening, other than to public officials who require the information as part of their official duties.

**54. Period of validity of tenders; modification and withdrawal of tenders (Section 54)**

- (1) Section 54 of the Act defines the period of validity of tenders and the conditions for modification and withdrawal of tenders.
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**55. Tender securities (Section 55)**

- (1) Section 55 of the Act specifies the requirement for tender securities and the applicable terms for their use and discharge. The following Regulation is issued to supplement the provisions of Section 55:
- (2) The Procurement Entity shall require a tender security for all international and National competitive tenders for goods and works. Tender securities shall not be requested for consultant services.
- (3) Any requirement for a tender security shall be based on a percentage of between two (2) and four (4) percent of the estimated cost of the procurement, and stated in the tender document as a fixed sum of money.

**56. Opening of tenders (Section 56)**

- (1) Section 56 of the Act specifies the general procedures to be followed during the opening of tenders. The following Regulation is issued to supplement the provisions of Section 56:
  - (2) Tender opening shall commence not later than two (2) hours after the deadline for submission of tenders, and continue without break until all tenders have been opened.
  - (3) The record of tender opening shall follow the format provided in Annex 2 of the Standard Evaluation Format for Goods and Works and include:
    - (a) the time and place of Tender Opening;
    - (b) a list of representatives of the Procurement Entity present;
    - (c) a list of representatives of the tenderers;
    - (d) the number of tender receipts and number of tenders received;
    - (e) a record of any tenders received late;
    - (f) a note of any withdrawal or modification notices;
    - (g) details for each tender as opened:
      - (i) the time received;
      - (ii) the names of the tenderers;
      - (iii) the tender amount;
      - (iv) any modification;
      - (v) any discounts, alternatives, etc;
      - (vi) the presence or absence of a tender security, if one was required;
    - (h) any comments made by tenderers during the tender opening proceedings; and
    - (i) confirmation that tenderers were informed that the evaluation process is confidential and any attempt by a tenderer or its agents to influence the evaluation of tenders or award decisions, including the offering or giving of bribes, gifts or inducements, could result in the invalidation of its tender and the forfeiture of its tender security. All contact with tenderers will be for the purpose of clarification and will be initiated by the Procurement Entity in writing.
  - (4) The record of tender opening proceedings shall be retained as a formal part of the Record of procurement proceedings required under Section 28.
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- (5) The opened tenders shall immediately be taken to a secure location, where they shall be kept until the evaluation begins.

**57. Examination of tenders (Section 57)**

- (1) Section 57 of the Act specifies the procedures for initial examination of tenders and provides for clarifications to be sought from a tenderer. The following Regulation is issued to supplement the provisions of Section 57:
- (2) The procedures for examination of tenders and clarifications shall be conducted in accordance with the specific terms contained in the Tender Document used.
- (3) The preliminary examination shall determine whether tenders are complete and are responsive to the basic instructions and requirements of the tender document including checks that:
- (4) the tenderer is eligible to tender where this has not been determined prior to inviting tenders;
- (5) the tender has been submitted in the correct format;
- (6) any required tender security has been submitted, in the correct form and amount and valid for at least the period required;
- (7) the tender has been submitted without material reservations or deviations from the terms and conditions of the tender document;
- (8) the tender has been correctly signed and authorised;
- (9) the correct number of copies of the tender have been submitted;
- (10) the tender is valid for at least the period required;
- (11) all key documents and information have been submitted;
- (12) any required samples have been submitted; and
- (13) the tender meets any other key requirements of the tender document.
- (14) If a prequalification procedure was applied, a tender received from any other than the prequalified tenderers shall be rejected and excluded.
- (15) The Procurement Entity shall correct purely arithmetical errors in tenders in accordance with the procedure stated in the tender document;
- (16) Tenderers shall be notified of any arithmetic corrections and requested, in writing, to agree to the correction;
- (17) If a tenderer does not accept the correction of an arithmetical error, his tender shall be rejected and the tender security may be forfeited.
- (18) Any communications between the Procurement Entity and a tenderer during the preliminary examination of tenders shall be made in writing.

**58. Responsiveness of tenders (Section 58)**

- (1) Section 58 of the Act defines the rules for determination of responsiveness of a tender. The following Regulation is issued to supplement the provisions of Section 58 and the specific terms contained in the Tender Document used:
- (2) Following the preliminary examination of tenders, the Tender Evaluation Panel shall examine the tenders to determine whether any issues arising from the preliminary examination affect the responsiveness of an individual tender and whether each tender is substantially responsive to the technical specification and contract conditions set forth in the tender documents.
- (3) Material deviations, reservations or omissions may typically include:

unacceptable time schedules, where it is stated in the tender document that time is of the essence;

unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or

unacceptable counterproposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

(a) The classification of deviations, reservations and omissions as material or non-material shall be consistently applied to all tenders.

(4) Where a tender is determined to be substantially responsive, the procurement entity may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation.

(5) The non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of tenders.

## **59. Evaluation of tenders (Section 59)**

(1) Section 59 describes the general procedures to be followed in the evaluation of tenders.

### **(xxiii) Treatment of Discounts**

(2) Tenderers shall be permitted to offer discounts to their tenders, which shall be included in the tender and read out at the tender opening.

(3) Any discount offered after the deadline for submission of tenders shall not be taken into account.

(4) Any non-conditional discounts shall be taken into account in the financial evaluation and comparison of tenders.

(5) Any prompt payment discount included in a tender shall become a term of the contract, if that tender is accepted, and shall be utilised by the Procurement Entity, if payment is made in accordance with the terms of the discount. However, prompt payment discounts shall not be considered in the evaluation and comparison of tenders.

### **(xxiv) Evaluation Reports and Recommendations**

(6) The Tender Evaluation Panel shall prepare an evaluation report for submission to the Head of Entity.

(7) The evaluation report shall be prepared using the standard Format for the Evaluation of Goods & Works, and shall include:

(a) a summary of the tenders received and opened;

(b) the results of the preliminary examination;

(c) the results of the technical evaluation;

(d) reasons why tenders were declared non-responsive;

(e) details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;

(f) the evaluated price of each tender, showing any corrections or adjustments to the tender price and any conversion to a common currency;

(g) the ranking of the tenders, according to their total evaluated price;

- (h) a statement of the lowest evaluated substantially responsive tender, for each lot where applicable;
  - (i) the results of any post-qualification examination; and
  - (j) a recommendation to award the contract or contracts to the lowest evaluated responsive tender or combination of tenders, or other appropriate recommendation, such as the cancellation of the procurement process.
- (8) The evaluation report shall form a part of the record of procurement proceedings required under Section 28 of the Act.

#### **60. Margin of preference (Section 60)**

Section 60 of the Act permits the use of a margin of preference for the benefit of domestic suppliers, contractors and consultants. The following Regulation is introduced to supplement the provisions of Section 60:

The detailed application of a margin of preference shall conform to the specific terms of application contained in the Tender Document and guidelines approved by the Public Procurement Board as follows.

#### **(3) Proposals for Margins**

##### **(a) Goods**

Margins of Preference will be allowed under National Competitive Tendering as well as International Competitive Tendering.

Eligibility for preference for goods is determined by the sources of the domestic goods and not by the nationality of the Tenderer. The Nationality of the Tenderer or Supplier is irrelevant, making it clear that the preference is given to the GOODS and not to the Tenderer:

To qualify under **DOMESTIC GOODS** the following conditions should be met:

- (a) Where local labour, raw materials and components from within Ghana account for 15 percent or more of the Ex-Works (EXW) price of the product offered.
- (b) Where imported raw materials or component constitute the bulk of the inputs and local labour and additional components are required for processing into finished products and the proportion of domestic value added is equal to 10 percent or more of the Ex Works (EXW) price of the product offered.

Goods satisfying Condition (i) will attract a margin of preference of the 20 percent and those meeting Condition (2) will attract 15 percent.

##### **(4) Works**

Under works Margin of Preference is applied to International Competitive Tendering (ICT). This is because in Ghana, most of the Contractors tendering for Works under the National Competitive Tendering are locally registered firms/contractors. Thus they are classified as **DOMESTIC CONTRACTORS**.

To be eligible for the margin of domestic preference under ICT, the following minimum criteria must be met:

##### **(a) Domestic Contractors**

- i. are registered and incorporated under the laws of Ghana;
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- ii have majority shareholding by Ghanaians; and
- iii. will not subcontract more than 50 percent of the total value of the works to foreign contractors

**(b) Joint Ventures**

A joint venture between a domestic Contractor and its foreign partner is eligible for preference only if:

- i. the domestic partners(s) would not qualify for the Work on technical or financial grounds without the foreign partner's participation; and
- ii. the domestic partner(s) demonstrate a beneficiary interest of not less than 30 percent in the Joint Venture as demonstrated by the profit and loss sharing provisions of the joint venture agreement.

**(c) Subcontracting by Foreign Firms**

Foreign firms may be eligible for domestic preference if they undertake to do the following:

- i. subcontract 30 percent or more of the value of the works to a Domestic Contractor. The Margins of preference for Works are as follows:
- ii. 10 percent for Contractors satisfying criteria (a)
- iii. 7.5 percent for Contractors satisfying criteria (b) or (c)

**(5) Services**

To promote the development of Ghanaian technical and professional capacity to contribute to the economic progress of Ghana, the following incentive shall be allowed under the Technical Scores when evaluating proposals for services

The use of local expertise should be given points ranging from 10 – 15 points during the evaluation of Technical Proposals. The minimum of 10 points will be awarded where 40 percent of the Key Personnel are Ghanaians. This will apply irrespective of the proposal coming from a wholly Ghanaian owned firm or a joint venture led by a foreign forms

**61. Multiple currency tender prices (Section 61)**

- (1) Section 61 of the Act specifies that the rules for conversion of two or more currencies for evaluation of tender prices shall be specified in the invitation document. The following Regulation is issued to supplement the provisions of Section 61:
- (2) The applicable exchange rate shall be specified in the invitation document and fixed at a date not less than seven (7) days prior to the deadline for the submission of tenders.
- (3) The conversion of currencies to a common currency for evaluation purposes shall be recorded in Table 4A or 4B of the standard Evaluation Format for Goods & Works

**62. Repeat tender qualifications (Section 62)**

- (1) Section 62 of the Act provides provisions for repeat tender qualifications (also referred to as post-qualification) in accordance with the terms of the tender document.
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**63. Non-disclosure of tender evaluation details (Section 63)**

- (1) Section 63 of the Act restricts the disclosure of tender examination, clarification evaluation and comparison information.

**64. Prohibition of negotiations with suppliers or contractors (Section 64)**

- (1) Section 64 of the Act prohibits negotiations with a supplier or contractor in Sub-section 64 (1) of the Act.

**65. Acceptance of tender and entry into force of procurement contract (Section 65)**

- (1) Section 65 of the Act specifies the process for acceptance of tender and entry into force of a procurement contract subject to the terms stated in the tender documents. The following Regulation is issued to supplement the provisions of Section 65:
- (2) A precise definition of the conditions for entry into force of the procurement contract including any additional conditionality for contract effectiveness such as the provision of a performance security, shall be provided in the tender document.

**PART VI - METHODS AND PROCEDURES TO PROCURE CONSULTANTS****66. Notice of invitation of expressions of interest and preparation of shortlists (Section 66)**

- (1) Section 66 of the Act defines the procedures for invitation of expressions of interest and restrictions on the use of shortlists subject to prior approval of the Public Procurement Board.

**67. Shortlisted candidates (Section 67)**

- (1) Section 67 of the Act provides rules for the preparation of shortlists of consultants.

**68. Content of requests for proposals for consultancy services (Section 68)**

- (1) Section 68 of the Act specifies the contents of invitations for proposals subject to the detailed provisions of the standard tender document for Request for Proposals.

**69. Criteria for the evaluation of proposals (Section 69)**

- (1) Section 69 of the Act establishes criteria for the evaluation of proposals. The following Regulation is issued for the clarification of Section 69:
- (2) Under Sub-section 69 (3), additional points for participation by nationals who are key staff in foreign and national firms, shall be specified in the technical evaluation criteria for key staff and awarded up to a maximum of 20 points out of the 100 points available for the evaluation of key staff.

**70. Clarification and modification of invitation for proposals (Section 70)**

- (1) Section 70 of the Act provides for clarification and modification of the invitation for proposals.

**71. Choice of selection procedure (Section 71)**

- (1) Section 71 of the Act requires the use of a selection procedure for the procurement of consultants as notified in the invitation for proposals.

**72. Conditions for use of other methods of selection of consultants (Section 72)**

- (1) Section 72 of the Act defines the use of other methods for the selection of consultants.
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**73. Receipt of proposals (Section 73)**

- (1) Section 73 of the Act specifies the conduct of the process for the receipt of proposals.

**74. Evaluation of proposals (Section 74)**

- (1) Section 74 of the Act provides for the conduct of the process for evaluation of proposals. The following Regulation is issued to clarify the provisions of Section 74:
- (2) Sub-section 74 (2) of the Act is clarified to require that evaluators of technical proposals shall not have access to the financial proposals until after the financial proposals are opened publicly in accordance with Sub-section 73 (5) of the Act.
- (3) The Tender Evaluation Panel shall prepare an evaluation report for submission to the Head of Entity.
- (4) The evaluation report shall be prepared using the standard Evaluation Format for Selection of Consultants.

**75. Selection procedure where price is a factor (Section 75)**

- (1) Section 75 of the Act specifies the process for evaluation of proposals where price is a factor. The following Regulation is issued to clarify the provisions of Section 75:
- (2) Negotiation of proposed unit rates for staff months and reimbursables where price is a factor as defined in Sub-section 75 (8) shall be subject to specific prior approval of the Public Procurement Board.

**76. Selection procedure where price is not a factor (Section 76)**

- (1) Section 76 of the Act specifies the process for evaluation of proposals where price is not a factor.

**77. Confidentiality (Section 77)**

- (1) Section 77 of the Act requires confidentiality of the evaluation process and of negotiations.

**PART VII - REVIEW****78. Right to Review (Section 78)**

- (1) Section 78 of the Act defines the rights and limitations of a supplier, contractor or consultant to seek review.

**79. Review by procurement entity (Section 79)**

- (1) Section 79 of the Act defines the conduct of any review process by the Head of the Procurement Entity. The following Regulation is issued to supplement the provisions of Section 79:
- (2) Any decision required under Sub-section 79 (1) as to whether a contract has already entered into force shall be based on the specific terms of the tender document or request for proposals for the procurement in question.

**80. Administrative Review (Section 80)**

- (1) Section 80 of the Act defines the right to administrative review and the conduct of the review process by the Public Procurement Board. The following Regulation is issued to supplement the provisions of Section 80:



- (2) The Board shall commence review proceedings within fourteen (14) days of receipt of a complaint.

**81. Certain rules applicable to review proceedings (Section 81)**

- (1) Section 81 of the Act defines additional rules applicable to review proceedings.

**82. Suspension of procurement proceedings (Section 82)**

- (1) Section 82 of the Act provides rules applicable to suspension of procurement proceedings during the review process.

**PART VIII - DISPOSAL OF STORES, PLANT AND EQUIPMENT**

**83. Authority to dispose (Section 83)**

- (1) Section 83 of the Act defines the authority to dispose of stores, plant and equipment. Section 83 is supplemented by the provisions of the Guidelines for Disposal of Goods & Equipment issued under Schedule 4 of the Act and the following Regulation:
- (2) For the purposes of Sub-section 83 (1) the definitions of unserviceable, obsolete or surplus stores, plant and equipment shall be:
  - (a) Unserviceable: any item of stores, plant and equipment which cannot be used for the intended purpose in its present condition due to major defects or damage, and is beyond economic repair. Classification as beyond economic repair for this purpose shall be determined on the basis that repair costs are certified to cost more than fifty percent (50%) of the current market price of a new replacement item.
  - (b) Obsolete: any item of stores plant and equipment which is rendered incapable of further effective use by developments in technology, incompatibility with associated items, or where the annual maintenance and breakdown costs can be certified to exceed thirty percent (30%) of the estimated cost of a new replacement item.
  - (c) Surplus: any stores item which has not moved for a period in excess of two years, or any item of plant or equipment which has remained unused for a period in excess of one year, and where no potential use for the item can be envisaged within the Entity.

**84. Disposal procedures (Section 84)**

- (1) Disposal of stores, plant and equipment shall be conducted in accordance with Section 84 of the Act, supplemented by the provisions of the Guidelines for Disposal of Goods & Equipment issued under Schedule 4 of the Act and this Regulation.

**(xxv) Transfer to Government departments or other public entities**

- (2) Transfer to Government departments or other public entities is applicable where:
  - (a) an asset can be usefully deployed by another Procurement Entity;
  - (b) agreement is reached with the recipient Entity on price (if any), formal transfer of ownership, and removal from the premises.

**(xxvi) Sale by public tender**

- (3) Sale by public tender is applicable where:
  - (a) the estimated value of the asset, or group of assets packaged together, is of sufficient value to justify the costs of conducting a public tender;

- (b) a number of separate lots of lower estimated value assets may be included in a single public tender; or
- (c) for reasons of transparency a formal public tender is required to dispose of assets provided directly by a donor purchased with donor funds.

(xxvii) **Public Auction**

(4) Disposal by public auction is applicable where:

- (a) items or lots have an individual estimated sale value of less than Cedis 5 million; and
- (b) sufficient items or lots can be assembled for disposal to justify the costs of conducting the auction process.

(xxviii) **Destruction, Dumping or Burying**

(5) Destruction, dumping or burying shall only be used where:

- (a) the asset has no residual value and cannot be transferred to any other entity;
- (b) the asset cannot be converted into any other form which subsequently gives it value; and
- (c) approval has been obtained from the appropriate environmental agency.

**85. Instructions and guidelines for disposal of unserviceable stores**

- (1) Section 85 of the Act provides for the issue of further regulations and detailed policy guidelines relating to the disposal of unserviceable stores and equipment. The following Regulation is issued to supplement the provisions of Section 85:
- (2) Any additional Regulations on the disposal of stores, issued under the authority of Section 30 of the Financial Administration Act, 2003 (Act 654), shall be complied with.

**PART IX - MISCELLANEOUS PROVISIONS**

**86. Code of Conduct (Section 86)**

Section 86 of the Act requires the compilation and publication of a code of conduct to apply to every official of a procurement entity, members of Tender Review Boards, as well as suppliers, contractors or consultants.

**87. Modifications (Section 87)**

(87) Section 87 of the Act provides for the approval of modifications, variations and extensions to a contract.

**(88) Request for information by the Board (Section 88)**

- (1) Section 88 of the Act requires procurement entities to provide the Public Procurement Board with any information regarding procurement activities.

**(89) Investigation by the Board (Section 89)**

- (2) Section 89 of the Act allows the Public Procurement Board to appoint a person to investigate any matter related to the conduct of procurement proceedings, or the conclusion or operation of a procurement contract.
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**(90) Procedures on completion of investigation (Section 90)**

- (3) Section 90 of the Act defines the procedures on completion of investigation by the Public Procurement Board.

**(91) Statutory Audits (Section 91)**

- (4) Section 91 of the Act requires the Auditor General to conduct annual audits of the procurement activities of procurement entities.

**(92) Offences relating to procurement (Section 92)**

- (5) Section 92 of the Act establishes that contravention of any provision of the Public Procurement Act is an offence and indicates the penalties to be applied.

**(93) Corrupt Practices (Section 93)**

- (6) Section 93 of the Act defines corrupt practices in terms of article 284 of the Constitution, and the Criminal Code, 1960 (Act 29).

**(94) Review of threshold levels (Section 94)**

- (7) Section 94 of the Act defines the authority for review of threshold levels specified in Schedule 3 of the Act.

**(95) Public access to legal texts (Section 95)**

- (8) Section 95 of the Act defines the responsibility of the Chief Executive of the Public Procurement Board to ensure that all administrative rulings and directives of general application are promptly made available to the public. The following Regulation is issued to supplement the provisions of Section 95:
- (9) Administrative rulings or directives of general application shall be published in the Procurement Bulletin and/or the Public Procurement Website, as appropriate within a maximum of thirty (30) days from the date of issue.

**(96) International obligations (Section 96)**

- (10) Section 96 of the Act provides for procurement arising from any grant or concessionary loan to the government to be conducted in accordance with the terms of the grant or loan.

**97 Regulations (Section 97) this to move and become introduction to the document****98 Interpretation (Section 98)**

Section 98 of the Act provides definitions of the terms used within the Act.

**99 Repeal and savings (Section 99)**

- (11) Section 99 of the Act revokes or repeals a list of enactments and provides authority to the Public Procurement Board to rectify inconsistencies with other legislative instruments.

**100 ADDITIONAL REGULATIONS:****101 Contract Administration**

(xxix) **Contract Administration Responsibilities**

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The Procurement Entity shall designate the Procurement Unit, a member of staff, or a team of staff, as the contract administrator for each contract.

- (12) The contract administrator shall:
- (a) manage the obligations and duties of the Procurement Entity specified in the contract; and
  - (b) ensure that the supplier or contractor performs the contract in accordance with the terms and conditions of the contract.

In administering the contract, the contract administrator shall use existing systems, procedures and resources within the Procurement Entity. In particular, the contract administrator shall use existing payment systems and verification procedures for processing payments to tenderers.

- (13) The contract administrator shall be responsible for:
- (a) monitoring the performance of the supplier or contractor, to ensure that all delivery or performance obligations are met or appropriate action taken by the Procurement Entity in the event of obligations not being met;
  - (b) ensuring that the supplier or contractor submits all required documentation;
  - (c) ensuring that the Procurement Entity meets all its payment and other obligations on time and in accordance with the contract;
  - (d) ensuring that there is adequate cost, quality and time control, where required;
  - (e) preparing or co-ordinating the preparation of any required contract variations or change orders and obtaining all required approvals before their issue;
  - (f) preparing or co-ordinating the preparation of any required contract modifications and obtaining any required approvals before their issue;
  - (g) managing any handover or acceptance procedures;
  - (h) making recommendations for contract suspension or termination, where appropriate, obtaining all required approvals and managing any termination process;
  - (i) ensuring that all contract administration records are maintained and archived as required;
  - (j) ensuring that the contract is completed in all respects, prior to closing the contract file; and
  - (k) ensuring that the supplier or contractor and the Procurement Entity act in accordance with the Act, the Regulations and the contract.

#### **(102) Technical Inspection of Goods and Works**

**The requirement for inspections and tests shall be as stated in the conditions of contract, including:**

- (l) the type of inspection or test to be performed and the standards to be met;
  - (m) the location for inspection;
  - (n) the person to carry out the inspection or tests;
  - (o) when inspection is to be conducted;
  - (p) who is responsible for payment of the various costs of inspection;
  - (q) any notification or documentation required from the supplier relating to inspection or testing;
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- (r) that samples provided for testing shall be provided free of charge by the supplier; and
- (s) that where goods or works fail an inspection, the supplier is liable for the correction of any defects at his own expense and the costs of any re-inspection required.

### **103 Inspection and Acceptance of Goods, Works and Services**

The Procurement Entity shall ensure that all goods, works and services are subject to inspection and verification by a purchasing or stores officer, supervising engineer or a formal inspection and receiving team, prior to their acceptance.

#### **(xxx) Inspection and Receiving Team**

An Inspection and Receiving Team shall consist of at least three persons, including:

- (t) a representative of the Procurement Unit;
- (u) a supervising engineer, contract manager or public officer with appropriate technical knowledge; and
- (v) a storekeeper or representative of the end user department or unit.

### **104 Payment Documents**

The contract document shall require the supplier or contractor to submit an original invoice and a copy for each payment requested and shall clearly state the documentary evidence against which payments shall be made.

The documents required shall relate to the delivery, progress or performance of the contract for which the payment is due or provide evidence of fulfilment of contract terms and conditions. The documents required may include, but not be limited to:

- (w) Goods Received Notes, Bills of Lading, Air Waybills or other documentation proving delivery or receipt of goods, in accordance with the terms of the contract;
  - (x) Packing Lists, or other documentation proving the content of any consignments delivered;
  - (y) Inspection Certificates or Reports, or other documentation proving that goods, works or services have passed inspection;
  - (z) Installation, Commissioning, Acceptance or Handover Certificates, or other documentation proving that goods, works or services have been accepted;
  - (aa) Insurance Certificates or other documentation proving that the supplier or contractor has taken out the required insurance for the goods, works or services;
  - (bb) Certificates of Origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
  - (cc) Interim Certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments;
  - (dd) Final Certificates, certifying completion of the contract and commencement of the warranty period; or
  - (ee) receipts or other documentation, proving that specified costs have been incurred, such as air tickets or timesheets for personnel.
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