

“competitive quotations” means a quotation in the prescribed form submitted in response to an advertisement or request for construction, goods or services;

“competitive sealed bid” means a sealed bid in the prescribed form submitted in response to an advertisement or request for construction, goods or services;

“competitive sealed proposals” means a sealed proposal in the prescribed form submitted in response to an advertisement or request for construction, goods or services;

“construction” means the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works and includes services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection therewith if the value does not exceed the value of the construction, reconstruction, erection, installation, repair, renovation or extension or demolition of the building, structure or works;

“co-operative procurement agreement” means an agreement under which the Government agrees with one or more—

- (a) other governments; or
- (b) statutory bodies or public authorities inside or outside Antigua and Barbuda

to procure goods or services through a central organization, such as the Eastern Caribbean Central Bank or a regional organization using the procurement procedures of the central organization;

“department” includes a unit or part of a department;

“donor organisation” means an organisation based outside Antigua and Barbuda which provides, or joins in providing, grants, credits or loans to the Government of Antigua and Barbuda or its agencies;

“estimate of the amount of contract award” means the estimate of the amount of the contract award referred to in section 17;

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

“goods” means tangible personal property and software, whether on a CD-ROM or other tangible medium or as a download from the Internet or otherwise, and includes services incidental to the supply of goods if the value of those services does not exceed the value of the goods;

“Government” means the Government of Antigua Barbuda;

“large emergency solicitation” means the solicitation procedure referred to in section 20;

“large sole source solicitation” means the solicitation procedure referred to in section 21;



THE PROCUREMENT ADMINISTRATION ACT, 2011

No. 16 of 2011

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

20th December, 2011.

ANTIGUA AND BARBUDA

THE PROCUREMENT ADMINISTRATION ACT, 2011

No. 16 of 2011

AN ACT to reform the procurement administration procedures of the Government and specified statutory bodies and entities in the public sector, to repeal the Tenders Board Act and to provide for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Procurement Administration Act, 2011 and shall come into operation on a date as the Minister may, by Notice published in the *Gazette*, appoint.

2. Interpretation

In this Act—

“Accountant General” includes any public officer acting in the post of Accountant General;

“accounting officer” means a public officer designated as such under section 8(1) of the Finance Administration Act, 2006;

“Board” means the Procurement Board established under section 38(1);

“Chief Procurement Officer” means the Chief Procurement Officer appointed under section 9(1);

THE PROCUREMENT ADMINISTRATION ACT, 2011

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matter that is before the Board or committee or that is expected to come before the Board or committee.

15. Offences and penalties under this part

(1) A person who contravenes section 13 commits an offence and is liable on summary conviction to a fine of \$50,000 or to a term of imprisonment for two years or to both.

(2) A person who contravenes section 14 commits an offence and is liable on conviction on indictment to a fine of \$100,000 or to a term of imprisonment for five years or to both.

(3) Where a person who commits an offence under subsection (2) is a corporate body, every director or officer thereof who knowingly authorised or conspired with another person to commit the offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment for five years or to both.

PART IV

PROCUREMENT PROCEDURES

Division 1

Solicitation Procedures

16. Requirements for all procurements

(1) All procurements shall be made in accordance with this Act with the exception of those prescribed under section 5.

(2) Notwithstanding subsection (1) if this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Antigua and Barbuda under any treaty or other form of agreement, those procurement rules shall prevail.

17. Estimate of amount of contract award

Before commencing a solicitation, the responsible authority shall ensure that an accurate estimate of the amount of the contract award for the procurement has been prepared.

18. Solicitation by competitive sealed bids to be default procedure

(1) A procurement shall be made by soliciting competitive sealed bids unless the procurement may be made by one of the solicitation procedures referred to in section 19, 20, 21, 23, 24 or 25.

(2) Where procurement is solicited by competitive sealed bids even though the estimate of the amount of the contract award for the procurement is less than that prescribed for a small procurement, the solicitation shall be treated as a procurement by competitive sealed bids.

“Minister” means Minister responsible for Finance;

“Permanent Secretary” includes anyone acting in the post of the Permanent Secretary;

“person” means a corporation, association, individual, sole proprietorship, partnership or joint venture and includes their assigns and heirs, executors and administrators or other legal representatives;

“procurement” means—

(a) all activities that pertain to the solicitation for construction, the purchase, lease, rental or acquisition of goods or the rendering of services and includes the award of contract, execution of a contract and other activities related to the finalization of a contract for the construction, the purchase, lease, rental or acquisition of goods or the rendering of services; and

(b) where the context permits, includes the construction, goods or services procured;

“public officer” means a person working in the government service and includes but is not limited to the meaning of “public officer” in section 127 (1) of the Antigua and Barbuda Constitution Order 1981, Cap. 23;

“responsible authority”, in respect of the solicitation of construction, goods or services, means the responsible authority listed in the following paragraphs—

(a) the accounting officer of the department designated by the Board under section 44(1) (a) in respect of specified construction, goods and services approved as centralized solicitations;

(b) the accounting officer of the department in respect of—

(i) a solicitation by competitive sealed bids,

(ii) a solicitation by competitive sealed proposals, or

(iii) a solicitation by competitive quotation;

(iv) sole source solicitation where the estimate of the amount of the contract award for the procurement is that of a small procurement or more; or

(c) the Chief Procurement Officer in respect of—

(i) an emergency solicitation or sole source solicitation where the estimate of the amount of the contract award for the procurement is less than that of a small procurement, or

- (ii) a solicitation by competitive quotations;

“secretary” means the Chief Procurement Officer;

“services” means the supply of—

- (a) labour, time or effort, not involving furnishing a tangible end-product other than a report or goods or other tangible property produced or supplied incidental to the labour, time or effort but does not include the employment of a public officer;
- (b) insurance coverage or other similar services; or
- (c) electricity, telecommunications, water and other similar services and includes goods, products or other tangible property supplied in connection with electricity, telecommunications, water and other similar services;

but does not include services exempted under this Act;

“small emergency solicitation” means the solicitation procedure referred to in section 24;

“small procurement” means a procurement for which the value of an estimate for an award of contract, goods or services is less than an amount prescribed by the Cabinet by order published in the *Gazette* pursuant to section 22;

“small sole source solicitation” means the solicitation procedure referred to in section 25;

“solicitation”, in relation to construction, the purchase, lease, rental or acquisition of goods or the rendering of services, means all the activities commencing with the preparation of the solicitation documents for one of the solicitation procedures referred to in section 18, 19, 20, 21, 23, 24 or 25 and ending with the delivery of the submissions to the responsible authority;

“standard solicitation documents” means—

- (a) documents approved by the Board under section 44(1) (b) (i); and
- (b) all variations or amendments of standard solicitation documents approved by the Board under section 44(1) (b) (ii);

“submission” means the response to a solicitation; and

“unserviceable item” means an item that no longer satisfies the purpose for which it was obtained.

(2) Unless the context otherwise requires, the cognates and grammatical forms of a word or phrase in this Act have the same meaning as the word or phrase.

- (d) provide advice to Government on all aspects of procurement;

- (e) shall maintain a record of the inventory for goods procured under this Act;

- (f) shall from time to time reconcile the inventory for goods procured under this Act held by the Public Works Department with the record under paragraph (e); and

- (g) shall notify the Permanent Secretary with responsibility for the Public Works Department of any discrepancies discovered in the reconciliation done under paragraph (f).

(2) The Public Works Department shall be responsible for all goods procured under this Act that are not held by the supplier.

PART III

ETHICAL STANDARDS

13. Confidentiality of Board business

(1) A person having an official duty or being employed in the administration of this Act or engaged as a consultant to the Board shall consider and deal with all documents and information relating to the functions of the Board as confidential.

(2) Subject to section 47 a person in possession of or control over any document or information relating to any business or transaction of the Board shall not communicate or attempt to communicate any information contained in that document or pass on the document to any person other than a person authorised under this Act to receive the document.

14. Corruption prohibited

(1) A person, whether that person has made an offer or not, shall not, with intent to gaining any advantage or concession for himself or any other person—

- (a) offer any member of the Board or a committee thereof or any employee of the Board or any consultant or person providing service under this Act, a gift of money or other thing;
- (b) approach any member of the Board, committee or any officer under this Act with respect to any matter that is before the Board or a committee or that is expected to come before the Board or Committee.

(2) A person appointed under this Act shall not accept any gift of money or other thing which is intended—

- (a) to influence the vote at any meeting of the Board, or
- (b) to influence the Board or any member of the Board or committee with respect to any

- (e) administer, or oversee the administration of contracts in accordance with the contract documents and the Regulations;
- (f) facilitate the determination of the course of action to be taken in the event that a contract of procurement is breached or frustrated or any other similar situation arises; and
- (g) comply with the Finance Administration Act and obtain all approvals required by the Minister in respect of the solicitation.

(2) A responsible authority, other than the Chief Procurement Officer shall submit the documents for a solicitation by competitive sealed bids or competitive sealed proposals to the Chief Procurement Officer to be dealt with by him under Division 2 of Part IV and, in accordance with the Regulations, support the Chief Procurement Officer in the discharge of his duties under that Division or the Regulations, including advising on and preparing addenda and cancelling solicitations.

(3) The Chief Procurement Officer may delegate his authority to any other responsible authority and shall give notice in writing of the delegation to the Board.

(4) A responsible authority other than the Chief Procurement Officer may delegate his authority to any other responsible authority other than the Chief Procurement Officer and shall give notice in writing of the delegation to the Chief Procurement Officer.

12. General duties and powers of Chief Procurement Officer

(1) In addition to any other duties and powers, the Chief Procurement Officer—

- (a) shall have responsibility for—
 - (i) determining which goods should be held in the inventory held at the Public Works Department and in what amounts,
 - (ii) determining whether the supplier of goods hold those goods in the supplier's inventory, and
 - (iii) minimizing the overall cost of the goods, including the cost of transportation, insurance and other expenses of procuring the goods, while maximizing the convenience to persons requiring the goods;
- (b) may enter into contracts or arrangements with statutory bodies or other entities in the public sector to procure construction, goods or services on their behalf and may require the payment of a fee approved by the Minister for the services by the statutory body or other entity;
- (c) shall procure construction, goods or services or a class or classes of construction, goods or services on behalf of specified statutory bodies or entities in the public sector and may require the payment of a fee for such services by the statutory body or other entity;

(3) Where a power to delegate, designate, appoint or authorise a person to do an act or thing is given under this Act, the delegation, designation, appointment or authorisation may be made by the person's name, title or office and where a delegation, designation, appointment or authorisation is by title or office, delegation, designation, appointment or authorisation applies to every person while he holds that title or office.

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

3. Meaning of "confidential" in relation to solicitations

A solicitation is confidential if—

- (a) the procurement is for the purpose of national defence or national security; and
- (b) the Minister responsible for national defence and national security certifies in writing that the confidentiality of the solicitation is necessary to preserve the national interest.

PART I

PURPOSES AND EXEMPTIONS

4. Purposes

The purposes of this Act are to simplify, clarify and modernize procurement, to make procurement by the Government transparent and more particularly to—

- (a) encourage public competition in the procurement process except to the extent that the circumstances or size of the procurement make it impracticable;
- (b) foster and encourage broad participation in the procurement process by persons in Antigua and Barbuda and, where required under an international or regional agreement, to persons outside Antigua and Barbuda;
- (c) provide for increased public confidence in the Government procurement process by maintaining safeguards to ensure its integrity, fairness and transparency;
- (d) ensure fair and equitable treatment of all persons who participate in the procurement process; and
- (e) provide increased economy in procurement activities and to maximize to the fullest extent practicable the procurement value of the money of the Government.

5. Procurements exempt under the Act

The procurements exempted from this Act are listed in the Schedule and the Cabinet may by Order published in the *Gazette* amend the procurements exempted from this Act.

6. Artificial division of solicitations prohibited

A solicitation shall not be artificially divided so as to be treated as a small procurement and artificial divisions include the division of solicitations—

- (a) as an exempt procurement under section 5;
- (b) to avoid a financial limit established under this Act whether by using—
 - (i) two or more competitive quotations rather than competitive sealed bids or competitive sealed proposals,
 - (ii) two or more oral competitive quotations rather than written competitive quotations,
 - (iii) two or more small emergency solicitations rather than a large emergency solicitation, or
 - (iv) two or more small sole source solicitations rather than a large sole source solicitation.

PART II

PROCUREMENT ADMINISTRATION

7. Definition of “solicitation”

In section 11, “solicitation” in the case of a solicitation by competitive sealed bids or competitive sealed proposals, includes an invitation to pre-qualify for a solicitation.

8. Establishment of Procurement Unit

There is established a Procurement Unit in the Ministry of Finance which shall be a public office under the Civil Service Act, Cap. 87.

9. Appointment of Chief Procurement Officer and staff

(1) There shall be appointed a Chief Procurement Officer who shall hold office as prescribed under the Civil Service Act, Cap. 87 and who shall—

- (a) be the head of the Procurement Unit; and

- (b) perform the duties and exercise the powers assigned to him under this Act.

(2) There shall be appointed a Deputy Procurement Officer and such additional staff as are necessary for the due administration of this Act who shall hold office as prescribed under the Civil Service Act, Cap. 87.

(3) The Chief Procurement Officer may delegate the performance of his duties or the exercise of his powers to any public officer employed in the Procurement Unit and the making of occasional small procurements to any public officer outside the Procurement Unit.

(4) Subsection (3) does not permit any delegation under Division 2 of Part IV other than a delegation that is expressly permitted therein.

10. Duties and powers of Chief Procurement Officer regarding standardized documents

The Chief Procurement Officer shall, as soon as practicable after this Act comes into force—

- (a) develop standard solicitation documents that comply with and facilitate the administration of this Act and that are appropriate for the solicitation of construction, goods or services or a class of construction, goods or services; and
- (b) submit the standard solicitation documents developed under paragraph 10(1) (a) to the Board for approval as appropriate for use in the solicitations to which they relate.

11. Duties and powers of responsible authority

(1) In addition to the other duties and powers of a responsible authority under the Act, a responsible authority shall—

- (a) make the procurements for which he is responsible;
- (b) prepare the solicitation documents using standard solicitation documents, where they exist for the solicitation, subject to such modifications as are necessary to adapt them to the circumstances and nature of the solicitation;
- (c) do all things necessary and advisable, after receipt of submissions, to facilitate a decision to award or not award a contract or to facilitate the determination of the course of action to be taken where a solicitation is unsuccessful, including—
 - (i) the review and evaluation of submissions,
 - (ii) the correction, confirmation or withdrawal of solicitations, and
 - (iii) making recommendations and obtaining necessary approvals;
- (d) ensure that formal contracts are prepared, where required under this Act;

procedure as is practicable in the circumstances in the opinion of the Chief Procurement Officer, is determined by the Board to be the most appropriate, having regard to the solicitation procedure referred to in section 18, 19, 21 or 23 to which the competitive procedure bears the closest analogy.

(2) A contract for a procurement that is awarded after a large emergency solicitation referred to in section 20(1) (b) shall be awarded by the Board to the qualified person who, after such competitive procedure as is practicable in the circumstances in the opinion of the Board, is determined by the Board to be the most appropriate, having regard to the solicitation procedure referred to in section 18, 19, 21 or 23 to which the competitive procedure bears the closest analogy.

33. Award of contract after a large sole source solicitation

A contract for a procurement that is awarded after a large sole source solicitation shall be the best terms that can be negotiated in the circumstances and shall be awarded by the Board.

34. Award of contract after a solicitation by competitive quotations

(1) A contract for a small procurement that is awarded after a solicitation by competitive quotations shall be awarded to the qualified person who submits the lowest responsive evaluated quotation.

(2) For the purposes of subsection (1), “evaluated” means evaluated in accordance with the evaluation criteria, if any, set out in the request for quotations.

35. Award of contract after a small emergency solicitation

(1) A contract for a small procurement that is awarded after a small emergency solicitation referred to in section 24(1)(a) shall be awarded by the responsible authority to the qualified person who, after such competitive procedure as is practicable in the circumstances in the opinion of the Chief Procurement Officer, is determined by the responsible authority to be the most appropriate, having regard to the solicitation procedure referred to in section 34 and 37 to which the competitive procedure bears the closest analogy.

(2) A contract for a small procurement that is awarded after a small emergency solicitation referred to in section 24(1)(b) shall be awarded by the responsible authority to the qualified person who, after such competitive procedure as is practicable in the circumstances in the opinion of the responsible authority, is determined by the responsible authority to be the most appropriate, having regard to the solicitation procedure referred to in sections 34 and 37 to which the competitive procedure bears the closest analogy.

36. Award of contract after small sole source solicitation

A contract for a small procurement that is awarded after a small sole source solicitation shall be on the best terms that can be negotiated in the circumstances and shall be awarded by the responsible authority.

(3) A solicitation by competitive sealed bids is commenced by an invitation to bid in response to which a bidder submits a bid.

19. Solicitation by competitive sealed proposals where practicable or advantageous

(1) A procurement may be made by soliciting competitive sealed proposals only if a responsible authority other than the Chief Procurement Officer, upon the approval of the Chief Procurement Officer, determines that it is not practicable or advantageous to make the procurement by soliciting competitive sealed bids.

(2) Whether a solicitation by competitive sealed bids is practicable relates to such factual circumstances as whether there is sufficient time or information to prepare an invitation to bid.

(3) Whether a solicitation by competitive sealed bids is advantageous relates to such matters as whether quality, availability or capability are overriding in relation to price.

(4) Where a procurement is solicited by competitive sealed proposals even though the estimate of amount of the contract award for the procurement is less than that of a small procurement, the solicitation shall be treated as a procurement by competitive sealed proposals for all the purposes of this Act.

(5) A solicitation by competitive sealed proposals is commenced by a request for proposals in response to which an offeror submits a sealed proposal.

20. Large emergency solicitations

(1) A large emergency solicitation may be made with such competition as is practicable in the circumstances—

- (a) by the Chief Procurement Officer on the written instruction of the Board, if the Board determines that there exists a threat to public health, welfare or safety and the procurement is for the purpose of eliminating or mitigating the threat; or
- (b) by the Board, if the Board determines that—
 - (i) the procurement is urgently required in the public good, and
 - (ii) the urgency justifies a less stringent competitive procedure than would otherwise apply.

(2) For the purposes of subsection (1) (b), the Board shall have regard to the purposes of this Act and shall consider the relevant circumstances in determining what competition is appropriate in the circumstances.

(3) Relevant circumstances under subsection (2) include—

- (a) the time and resources required to prepare, or complete the preparation of solicitation

documents;

- (b) the time required to permit solicitation by competitive sealed bids sealed proposals, as the case may be;
- (c) the degree of urgency of the procurement and the damage to, or additional damage to, the public good that would likely ensue from delaying the procurement to permit solicitation referred to in paragraph (b) to take place; and
- (d) the time required if a less stringent competitive procedure were adopted and the damage to, or additional damage to, the public good that would likely ensue if that less stringent procedure was followed.

21. Large sole source solicitations

A large sole source solicitation may be made if the procurement is not reasonably available except from a single source as determined by the Board.

22. Small procurements

(1) The Cabinet may by Order published in the *Gazette* prescribe an amount for which the value of a procurement is considered to be a small procurement

(2) A small procurement may be made by a solicitation procedure referred to in section 23, 24 or 25.

23. Competitive quotations to be default procedure for small procurements

(1) A small procurement shall be made by soliciting competitive quotations unless the solicitation may be made as a small solicitation under section 24 or a small sole source solicitation under section 25.

(2) A solicitation by competitive quotations is commenced by a request for quotations in response to which a person solicited submits a quotation.

24. Small emergency solicitations

(1) A small emergency solicitation may be made with the competition practicable in the circumstances—

- (a) by the Chief Procurement Officer if the responsible authority determines that there exists a threat to public health, welfare or safety and the small procurement is for the purpose of eliminating or mitigating the threat; or
- (b) by the responsible authority, where the responsible authority is not the Chief Procurement Officer, if the responsible authority determines that—

shall be awarded by the Board to the qualified bidder who submits the lowest responsive evaluated bid.

(2) For the purposes of subsection (1), “evaluated” means evaluated in accordance with objective evaluation criteria set out in the invitation to bid to determine if the construction, goods or services meets the description of what is being procured.

31. Award of contract after competitive sealed proposals

(1) A contract for a procurement that is awarded after a solicitation by competitive sealed proposals shall be awarded by the Board to the offeror who—

- (a) is qualified and submits a proposal that is responsive and that, after being evaluated accordance with the request proposals, is reasonably capable of acceptance; and
- (b) submits the best and final offer that is determined to be most advantageous to the Government after—
 - (i) discussions with offerors whose proposals comply with paragraph (a), and
 - (ii) the offerors are given an opportunity to revise their proposals on a fair basis,

if and to the extent that discussions with offerors, revision of proposals and submission of best and final offers are provided for in the request for proposals.

(2) For the purposes of subsection (1), “evaluated” means evaluated in accordance with evaluation criteria set out in the request for proposals relating to the relative importance of quality, availability and capability in relation to price.

(3) A person conducting or privy to discussions with an offeror shall not disclose any information derived from a proposal or discussions—

- (a) with any offeror to any other offeror directly or indirectly; or
- (b) to any other person except if it is necessary for that person to know the information in order to perform his functions under this Act.

(4) An offeror shall be accorded fair and equal treatment with respect to any opportunity for discussions, revision of proposals and submission of best and final offers.

32. Award of contract after a large emergency solicitation

(1) A contract for a procurement that is awarded after a large emergency solicitation referred to in section 20 (1) (a) shall be awarded by the Board to the qualified person who, after such competitive

(b) in the presence of at least one member of the Board or his designate.

(2) An opening is in private if the only persons present and able to hear or see are—

(a) the Chief Procurement Officer and persons employed in the Procurement Unit and authorised by the Chief Procurement Officer to be present;

(b) the responsible authority or a representative of the responsible authority; and

(c) any member of the Board or his designate and the secretary.

(3) In the case of bids referred to in subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall read aloud—

(a) the name and address of each bidder; and

(b) the amount of the bid or, where there is more than one amount in the bid, each amount bid.

(4) In the case of proposals referred to subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall—

(a) read aloud the name and address of each offeror; and

(b) keep confidential any other information contained in the proposal.

(5) In the case of an application to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals referred to in subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall—

(a) read aloud the name and address of each applicant; and

(b) keep confidential any other information contained in the application.

Division 3

Award of Contract

30. Award of contract after competitive sealed bids

(1) A contract for a procurement that is awarded after a solicitation by competitive sealed bids

(i) the small procurement is urgently required in the public good, and

(ii) the urgency justifies a less stringent competitive procedure than would otherwise apply.

(2) For the purposes of subsection (1) (b), the responsible authority shall have regard to the purposes of this Act and shall consider the relevant circumstances in determining what competition is appropriate in the circumstances.

(3) Relevant circumstances under subsection (2) include—

(a) the time and resources required to prepare, or complete the preparation of solicitation documents;

(b) the time required to permit solicitation by competitive quotations,

(c) the degree of urgency of the small procurement and the damage to, or additional damage to, the public good that would likely ensue from delaying the small procurement to permit a solicitation referred to in paragraph (b) to take place; and

(d) the time required if a less competitive procedure were adopted and the damage to, or additional damage to, the public good that would likely ensue if that less stringent procedure was followed.

25. Small sole source solicitations

A small sole source solicitation may be made if a small procurement is not reasonably available except from a single source or as determined by the Chief Procurement Officer.

Division 2

Notice of Competitive Sealed Bids or Proposals and Invitations to Pre-qualify and

Opening of Bids, Proposals and Applications

26. Notice of solicitation or invitation to pre-qualify that is not confidential

(1) This section does not apply to a solicitation by competitive sealed bids or competitive sealed proposals or an invitation to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals that is confidential under section 3.

(2) Subject to subsection (3), the Chief Procurement Officer, or a person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall give public notice of—

(a) a solicitation by competitive sealed bids or competitive sealed proposals; or

- (b) an invitation to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals,

in at least one newspaper of general circulation in Antigua and Barbuda for a reasonable period before the day and time for the close of bids or proposals or invitations to pre-qualify, as the case may be.

(3) Notwithstanding paragraph (2) (a), where applicants have been pre-qualified in respect of solicitation by competitive sealed bids or competitive sealed proposals, the Chief Procurement Officer is required to give notice only to the applicants who pre-qualify.

27. Opening bids, proposals and applications to pre-qualify that are not confidential

(1) Bids, proposals and applications to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals, other than those that are confidential, shall be opened publicly—

- (a) by the Chief Procurement Officer, or a person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, on the day and at the time and place specified in the invitation to bid, request for proposals or invitation to pre-qualify, as the case may be; and
- (b) in the presence of at least one member of the Board or his designate and any other persons who wish to be present, including—
- (i) any person who submitted a competitive sealed bid or a competitive sealed proposal or application to pre-qualify, and
- (ii) any member of the public.

(2) In the case of bids referred to in subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall read aloud—

- (a) the name and address of each bidder; and
- (b) the amount of his bid or, where there more than one amount in the bid, each amount bid.

(3) In the case of proposals referred to in subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall—

- (a) read aloud the name and address of each offeror; and
- (b) keep confidential any other information contained in the proposal.

(4) In the case of applications to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals referred to in subsection (1), the Chief Procurement Officer, or person employed in the Procurement Unit and authorised by the Chief Procurement Officer for purpose, shall—

- (a) read aloud the name and address of each applicant; and
- (b) keep confidential any other information contained in the application.

28. Notice of solicitation or invitation to pre-qualify that is confidential

(1) Subject to subsections (2) and (3), the Chief Procurement Officer, or a person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, shall give notice of—

- (a) a solicitation by competitive sealed bids or competitive sealed proposals; or
- (b) an invitation to pre-qualify for a solicitation by competitive sealed bids or competitive sealed proposals;

that is confidential under section 3—

- (c) a reasonable time before the day and time for the close of bids or proposals invitations to pre-qualify, as the case may be; and
- (d) to as many bidders as practicable who meet the requirements of the Chief Procurement Officer under subsection (2).

(2) Where the Chief Procurement Officer considers it appropriate, he may require potential bidders, offerors or applicants for pre-qualification to enter into a confidentiality agreement in respect of a solicitation or application or to comply with the requirements in relation to confidentiality as are provided for in the Regulations or, in the absence of Regulations, as he considers appropriate.

(3) Notwithstanding paragraph (1) (a), where applicants have been pre-qualified in respect of a solicitation by competitive sealed bids or competitive sealed proposals, the Chief Procurement Officer shall give notice only to the applicants who pre-qualify.

29. Opening bids, proposals and applications to pre-qualify that are confidential

(1) Bids, proposals or applications to pre-qualify by competitive sealed bids or competitive sealed proposals that are confidential shall be opened in private—

- (a) by the Chief Procurement Officer, or a person employed in the Procurement Unit and authorised by the Chief Procurement Officer for the purpose, on the day and at the time and place specified in the invitation to bid, the request for proposals or the invitation to pre-qualify, as the case may be; and

53. Regulations, Orders and Reports

(1) Regulations and Orders made under this Act shall be subject to the positive resolution of the Parliament.

(2) The reports to be laid before the Parliament under sections 45 shall be subject to the positive resolution of the Parliament.

54. Repeal of Cap, 424A

The Tenders Board Act (Cap. 424A) is repealed.

SCHEDULE

(Section 5)

1. A procurement made under a co-operative procurement agreement; or
2. A procurement, the funding or part of the funding for which, is furnished to the Government by another government or by an international or regional agency, on the condition that the procurement procedures of the other government or international or regional agency, or procurement procedures approved or agreed to, by the government or international or regional agency will apply to the procurement.
3. A procurement for hospitality and catering services for which the value is \$25,000 or less than \$25,000.
4. A procurement for books and magazine subscriptions.
5. A procurement for stationery for which the value is \$1,000 or less than \$1,000.
6. A procurement for sanitation and janitorial supplies for which the value is \$1,000 or less than \$1,000.

Passed by the House of Representatives on the 24th day of June, 2011.

D. Gisele Isaac-Arrindell,
Speaker.

Ramona Small,
Clerk to the House of Representatives.

Passed by the Senate on the 21st day of November, 2011.

Hazlyn M. Francis,
President.

Ramona Small,
Clerk to the Senate.

37. Award where the consideration for a proposed contract exceeds the amount prescribed as a small procurement

Notwithstanding anything in sections 34, 35 or 37, and subject to the consent of the Board under section 44(1)(e), where a procurement is solicited by competitive quotations as a small emergency solicitation or a small sole source solicitation and the amount of a proposed contract will be that of a small procurement or more, the contract may be awarded as if it had been a solicitation by competitive sealed bids or competitive sealed proposals or a large emergency solicitation or a large sole source solicitation, as the case may be.

PART V

PROCUREMENT BOARD

38. Procurement Board established

- (1) There is hereby established a Procurement Board consisting of—
- (a) the following *ex officio* members—
 - (i) the Permanent Secretary of the Ministry responsible for public works;
 - (ii) the Accountant General; and
 - (iii) the Director of Public Works
 - (b) a Senior Public Officer appointed by the Minister from the Ministry of Finance for a term of three years;
 - (c) an attorney-at-law of more than ten years standing appointed by the Minister on the advice of the Cabinet for a term of three years; and
 - (d) two persons from the private sector with the requisite qualifications, skills, knowledge and experience as may be prescribed by regulations made under this Act, appointed by the Minister on the advice of the Cabinet for a term of three years.

(2) Only a member under subsections (1) (a) or (b) may in writing designate a person with the written consent of the Minister to represent him at any meeting of the Board.

(3) The Board is considered to be properly constituted notwithstanding that there is a vacancy or defect in the appointment of a member or designation of a person to represent a member.

(4) A previous appointment under subsection (1) (b) does not affect a public officer's eligibility to be reappointed as a member.

(5) The Minister may in writing on the advice of the Cabinet revoke the appointment of a member of the Procurement Board appointed pursuant to subsections (1) (c) or (d) if that person fails to perform his functions under this Act.

39. Chairperson, deputy chairperson and interim chairperson

(1) The Minister shall appoint a chairperson and a deputy chairperson from among the members of the Board.

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

(3) In the absence of the chairperson and the deputy chairperson, the remaining members and designates may select an interim chairperson for the meeting from among themselves.

(4) In the event of a tie vote, the chairperson has a second or casting vote.

40. Quorum

A quorum of the Board shall be five members present.

41. Authority of chairperson to act on behalf of the Board

(1) Where a matter that requires a decision of the Board cannot, in the opinion of the chairperson referred to in section 39(1) or the deputy chairperson named under section 39(2), await the next meeting of the Board without causing substantial prejudice to the Government, the chairperson or deputy chairperson, as the case may be, may, after such consultations with other members of the Board as are reasonable the circumstances, make the decision on behalf of the Board.

(2) The decision and a summary of the consultations by the chairperson or deputy chairperson, as the case may be, shall be reported to the Board and recorded in the minutes.

42. Board may hold meeting by signing resolution

(1) Where all the members of the Board or their designates sign a resolution, a meeting of the Board relative to the resolution is considered to have been held.

(2) The secretary shall include the resolution in the minutes of a meeting.

43. Committees

(1) The Board may appoint committees, either generally or with respect to a specific matter, to advise the Board.

(k) respecting the maintenance of procurement files;

(l) respecting the maintenance of procurement files for procurements exempted under section 5(2);

(m) respecting the confidentiality of solicitations, invitations to pre-qualify, awards of contract and particulars of contract performance;

(n) respecting the suspension or debarment of bidders, offerors and other persons who have or propose to participate in procurement;

(o) respecting contract administration and the role of the Board therein;

(p) respecting the treatment of small procurements;

(q) for the purposes of subsection 38(1)(d) prescribing the requisite qualifications for the Members of the Board from the private sector; and

(r) respecting the procedure for conducting investigations and taking evidence under section 47(3).

(2) For the purposes of sub-section (1)(b) a statutory body or entity shall be specified by the Minister by Order published in the *Gazette*.

50. Immunity

A person shall not commence proceedings for a function done or duty performed in good faith under this Act against—

(a) an employee or agent of the Government; or

(b) a member of the Procurement Board.

51. Transitional provision

A solicitation commenced before the coming into operation of this Act shall continue as if this Act had not been passed until the solicitation is cancelled, a contract is awarded or the solicitation is abortive.

52. Transitional Regulations

The Minister may, in the one year period following the coming into operation of this Act, make Regulations providing for any transitional matter arising as a consequence of the coming into operation of this Act and may make the Regulations retroactive to the day this Act comes into force.

construction, goods or services; or

(b) is aggrieved by a decision of the Board.

(2) Notwithstanding subsection (1) a person shall not make a complaint regarding an award of contract under this Act before the contract to which the complaint relates has been awarded.

PART VII

REGULATIONS AND MISCELLANEOUS

49. Regulations

(1) The Minister may make Regulations for the better administration of this Act, including regulations—

- (a) exempting services for the purposes of the definition of “services” in section 2;
- (b) for the purposes of section 12(c) and notwithstanding any other Act, providing for the mandatory procurement by the Chief Procurement Officer of construction, goods or services, or a class or classes of construction, goods or services, on behalf of a specified statutory body or other entity in the public sector and requiring the payment of a fee for such services by the statutory body or other entity;
- (c) respecting solicitations by competitive sealed bids, including defining “qualified” in relation to “bidder” and the meaning of “lowest” and “responsive” in relation to a bid and further defining “evaluated” for the purposes of section 30;
- (d) respecting solicitations by competitive sealed proposals, including defining “qualified” in relation to “offeror” and the meaning of “responsive” in relation to a proposal and further defining “evaluated” for the purposes of section 31;
- (e) respecting large emergency solicitations and large sole source solicitations;
- (f) respecting solicitations by competitive quotations, including defining “qualified” relation to a person who submits a quotation and the meaning of “lowest” and “responsive” in relation to a quotation and further defining “evaluated” for the purposes of section 34;
- (g) respecting small emergency solicitations and small sole source solicitations;
- (h) respecting the course of action to be taken in the event that a solicitation is abortive;
- (i) respecting the course of action to be taken in the event that a contract of procurement is breached, frustrated or any other similar situation arises;
- (j) respecting the award and execution of contracts;

(2) A committee may consist of members of the Board, persons designated under section 38(2) or persons other than members of the Board or designated persons or any combination thereof.

44. Duties and powers of the Board

(1) The Board, in addition to the duties and powers assigned to it under this Act, has the authority to—

- (a) approve specified construction, goods or services as centralized solicitations and designate the accounting officer of the department that has responsibility for their solicitation;
- (b) confirm the minutes of each meeting and after they are certified by the Chairperson, forward the minutes, through the Secretary, to the Minister at the next succeeding meeting;
- (c) approve—
 - (i) standard solicitation documents as appropriate for the solicitation of construction, goods or services or a class or classes of construction, goods services for use in the solicitations to which they relate, or
 - (ii) variations or amendments of standard solicitation documents;
- (d) make the determinations under section 20 (1) (a) or (b);
- (e) make the determination under section 21;
- (f) make an award of contract under section 30, 31, 32 or 33;
- (g) consent or refuse to consent to the award of a contract referred to in section 37;
- (h) dispose of any unserviceable item in the manner prescribed by regulation;
- (i) determine, in consultation with the Attorney General, the course of action to be taken in the event that a solicitation is abortive;
- (j) determine, in consultation with the Attorney General and subject to the rights of any person who furnished a performance security, the course of action to be taken in the event that a contract of procurement is breached or frustrated or any other similar situation arises;
- (k) suspend or debar a person from participating in solicitations; and
- (l) exercise the powers in respect of contract administration conferred on the Board.

(2) The Board may make rules governing its procedure.

45. Annual assessment and report

(1) The Board shall annually and after considering the submissions under subsection (2),—

- (a) do an assessment of procurement and contract administration under this Act, having regard to—
 - (i) the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year and the representations referred to in subsection (2), and
 - (ii) the costs and other measures necessary to address those issues and problems; and
- (b) prepare a report setting out its findings and its recommendations to address the issues and problems identified in the assessment, including a summary of the steps that need to be taken and by whom.

(2) The Board shall annually, not later than March 31, publish in a newspaper of general circulation in Antigua and Barbuda a notice inviting written representations from the public respecting government procurement and contract administration and setting out the deadline for the receipt of the representations, which shall not be less than 30 days after the notice is published.

(3) The report may contain recommendations for the amendment of the Act.

(4) The report prepared by the Board shall be sent to the Minister who, after such consultations as appear to him to be appropriate, shall—

- (a) determine what action shall be taken no later than July 30th in relation to the report; and
- (b) cause the report to be laid before the Parliament at the sitting of the Parliament immediately following the receipt of that report .

46. Secretary to the Board

There is established a Secretary who shall be an officer under the Civil Service Act, Cap. 87 and whose duties shall include—

- (a) providing administrative support to the Board;
- (b) preparing the agenda for each meeting of the Board and giving notice of meetings that include the agenda, the day, time and place of the meeting and the minutes of the previous meeting;
- (c) taking accurate minutes of meeting of the Board, including attendance by each member and each person designated as the representative of a member under section 38 (2);

- (d) providing copies of minutes to members of the Board;
- (e) preparing correspondence of the Board; and
- (f) carrying out such other tasks as are assigned to him by the Board or under the Act.

PART VI**REVIEW****47. The Review Committee**

(1) The Minister shall appoint an ad hoc Review Committee for the purpose of hearing complaints under section 48.

(2) The Review Committee shall consist of—

- (a) a chairperson who shall be appointed in writing by the Minister from among attorneys-at-law who have been practicing or have practiced for a period of not less than ten years before a judge of the High Court; and
- (b) two other members who shall be appointed in writing by the Minister from among persons who have wide experience and qualifications in legal, administrative, economic, financial, public procurement, engineering or scientific and technical matters.

(3) The procedure for conducting investigations and taking evidence under this Act by the Review Committee shall be that prescribed by Regulations.

(4) Regarding a complaint made under this Act the Review Committee—

- (a) shall not recommend the cancellation of any contract awarded under this Act;
- (b) may make recommendations to the Board regarding any action to be taken with respect to persons who suffered as a result of an award of contract made under this Act or the procurement process; and
- (c) shall, where it investigates a complaint, submit a report of its findings and make recommendations regarding any action to be taken, to the Minister within three months of the completion of its investigation.

48. Complaints

(1) A person may make a complaint regarding the award of a contract or any procurement procedure under this Act in writing to the Review Committee if that person—

- (a) has an interest in an agreement made pursuant to this Act for the procurement of