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GRENADA

ACT NO. 39 OF 2014

I assent,



23rd September, 2014.

CÉCILE E. F. LA GRENADE
Governor-General.

AN ACT of Parliament to promote the public interest by prescribing the principles of good governance namely accountability, transparency, integrity and value for money in public procurement and to establish a framework of operational principles and procedures for efficient public procurement and for the disposal of public property by public entities and to provide for other related matters.

[By Order].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the Authority of the same as follows—

PART I**PRELIMINARY**

1.—(1) This Act may be cited as the

**PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC PROPERTY ACT, 2014.**

Short title and
commencement.

(2) This Act shall come into operation on a day which the Minister may by Order, publish in the *Gazette*.

Interpretation.

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

“Board” means the Public Procurement Board established under section 6;

“Commission” means the Public Procurement Review Commission established under section 8;

“consultancy services” means intellectual and/or professional services and assignments performed by consultants with outputs of advisory, design and transfer of know-how nature;

“corruption” has the meaning assigned to it in the Prevention of Corruption Act, and also includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“Chief Procurement Officer” means the director of the staff of the Board and Secretary to the Board provided for under section 7;

“framework contract” means a contract awarded on the basis of this Act and the Regulations between one or more contracting entities and one or more contractors, suppliers, service providers or consultants the purpose of which is to establish the terms governing orders for the supply of goods and related services or repair and maintenance works to be placed during a given period, in particular with regard to price, and,

where appropriate, the quantity or quantities envisaged;

“goods” includes raw materials, things in liquid or gas form, electricity and services that are incidental to the supply of the goods;

“Minister” means unless the context requires otherwise the Minister responsible for matters relating to procurement;

“Permanent Secretary” means unless the context requires otherwise, the Permanent Secretary responsible for the Ministry of Finance;

“prescribed” means prescribed by the Regulations;

“procurement” means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services, consultancy services or goods including livestock or any combination thereof by a procuring entity commencing with the identification of the need for the works, assets, services, consultancy services or goods and ending with the performances of the related contracts and the term “procure” or “procured” shall be construed accordingly;

“procurement contract” means a contract concluded between a procuring entity and a supplier, contractor, consultant or service provider at the end of the procurement proceedings;

“procuring entity” means a public entity making a procurement to which this Act applies;

“public entity” means—

- (a) the Government or any Ministry or department of the Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- (b) any executive agency or company wholly owned and controlled by the Government;
- (c) any company in which more than fifty percent of the paid up share capital is held by the Government or by one or more companies in which the Government holds more than fifty percent of the paid-up share capital;
- (d) any body, board or corporation or authority or trust or autonomous body (by whatever name called) established or constituted under an Act of Parliament;
- (e) any other entity which the Government may, by notification, specify to be a procuring entity for the purposes of this Act, being an entity that receives financial assistance from the Government in so far as the utilisation of such assistance towards procurement is concerned; or
- (f) an entity prescribed as a public entity for the purpose of this paragraph;

“public funds” has the meaning assigned to it in the Public Finance Management Act and also includes monetary resources appropriated to pro-

curing entities through the budgetary process, as well as extra budgetary funds, including aid grants and credits, put at the disposal of procuring entities by foreign donors, and revenues of procuring entities and funds that are—

- (a) received or receivable by the Government, a statutory body, an executive agency or a state controlled enterprise;
- (b) raised by an instrument from which it can be reasonably inferred that the Government accepts ultimate liability in the case of default;
- (c) spend or committed for future expenditure, by the Government, a statutory body or a Government controlled enterprise;
- (d) distributed by the Government, a statutory body or a Government controlled enterprise to a person; or
- (e) raised by a private body in accordance with a statutory instrument, for a public purpose;

“public officer” has the meaning assigned to it under section III of the Constitution;

“public procurement” means procurement involving the use of public funds;

“Regulations” means the procurement regulations made by the Minister in accordance with this Act as may be laid down, amended or otherwise modified from time to time;

“services” means any subjects of procurement or disposal other than works, goods and consultancy services, including goods and works which are incidental to but not exceeding the value of those services;

“state controlled enterprise” means a company that is registered under the Companies Act—

- (a) for a public purpose, or
- (b) where the government or any person controlled by the government is entitled to exercise control directly or indirectly over the affairs of the company;

“statutory body” means any body, board or corporation or authority or trust or autonomous body (by whatever name called) established or constituted under an Act of Parliament;

“works” means the construction, repair, maintenance, renovation or demolition of buildings, roads, highways, ports, airports or other structures and includes—

- (a) the installation of equipment and materials;
- (b) site preparation;
- (c) any construction projects;
- (d) construction work relating to excavation or drilling; and
- (e) other incidental services;

“validity period” means the period during which a tenderer agrees not to increase the cost of its tender or to remove any components of the tender.

3.—(1) The objects of this Act are to promote the public interest by prescribing the principles of good governance, namely accountability, transparency, integrity and value for money in public procurement and to establish procedures for the procurement and the disposal of public property by public entities to achieve the following objectives—

Objects of
the Act and
Illegality.

- (a) maximise economy and efficiency;
- (b) promote competition among suppliers, contractors, consultants and service providers and provide for their fair, equal and equitable treatment;
- (c) promote the integrity and fairness of such procedures;
- (d) increase transparency and accountability in such procedures;
- (e) increase public confidence in such procedures; and
- (f) facilitate the promotion of local industry and economic development.

(2) A public entity shall carry out public procurement and disposal of public property in a manner that is consistent with the objects of this Act.

(3) Any procurement of goods, works or services or disposal of public property that is not done in accordance with this Act and any procurement contract or agreement

that is not entered into in accordance with this Act shall be void and illegal.

Application of
Act.

4.—(1) This Act applies to all public procurement by procuring entities within the meaning of this Act and any activities related thereto and each disposal by a public entity of stores and equipment that are unserviceable, obsolete or surplus.

(2) This Act does not apply to the procurement of goods, works or services under \$15,000.00 or arising out of—

- (a) procurement that is below the approval thresholds prescribed from time to time for a procuring entity which is a state controlled enterprise or a statutory body whereby such procuring entities may approve procurement which is below such threshold values;
- (b) the acquiring of stores or equipment if the stores or equipment are being acquired from a public entity that is disposing of such stores and equipment in accordance with the procedure described in section 57(3)(a);
- (c) the acquiring of services provided by the Government or a department of the Government;
- (d) contracts of employment;
- (e) procurement of items of a sensitive nature for national defence and security purposes or on strategic considerations that the Government may, by general or specific order, specify;

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- (f) the acquiring or rental of real property;
 - (g) a procurement made under a co-operative procurement agreement under which the Government agrees to procure goods or services through a central organization or a regional organization, using the procurement procedures of the central organization;
 - (h) contracts for services by the Department of Public Administration; and
 - (i) any other exceptions as prescribed.

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

Conflicts with other Acts or international agreements.

(2) The requirements and obligations arising from a treaty or other international agreement to which Grenada is a party are to be applied where the provisions of this Act and the Regulations are inconsistent with it but in all other respects, procurement shall be governed by this Act and the Regulations.

PART II

BODIES INVOLVED IN THE REGULATION OF PUBLIC PROCUREMENT

6.—(1) There is hereby established a body to be called the Public Procurement Board to which section 49 of the Interpretation Act shall apply.

Establishment of Board.

(2) For all procurements above the prescribed thresholds, the Board shall be responsible for—

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- (a) approving the evaluation committee upon the proposal of the chief accounting officer of the respective procuring entity;
 - (b) providing a “Certificate of Formal Approval” and a “Certificate of ‘No-objection’ for Contract Award” in accordance with the prior review thresholds;
 - (c) providing written approval for the use of procurement methods other than open competitive tendering;
 - (d) issuing and reviewing general procedures in relation to public procurement and the disposal of public property; and
 - (e) approving in respect of each procuring entity, which is a state controlled enterprise or a statutory body, special procedures and guidelines in relation to public procurement and the disposal of public property under sections 17 (7) (b) and (c) and 55 (4) (b) and (c), subject to the approval of the line Minister.

(3) The terms and conditions of the members of the Board are prescribed in the First Schedule and the conduct of business and affairs of the Board are prescribed in the Second Schedule.

(4) In the performance of its functions, the Board shall—

- (a) act expeditiously and take such other steps as it thinks fit in order to minimize any negative

economic impact arising out of the performance of its functions;

- (b) report to the Minister;
- (c) issue directions to public entities to ensure compliance with this Act and the Regulations;
- (d) where a reason exists, notify the relevant authorities and cause to be audited, inspected or reviewed any procurement or disposal of public property transaction to ensure compliance with the provisions of this Act and the Regulations;
- (e) enforce the monetary and prior review thresholds as are prescribed for the application of the provisions of this Act by the procuring entities;
- (f) from time to time stipulate to all procuring entities the procedures and documentation pre-requisite for the issuance of a “Certificate of ‘No Objection’ for Contract Award” under this Act;
- (g) manage public procurement and disposal of public property within its jurisdiction in accordance with the provisions of this Act and the Regulations;
- (h) supervise the implementation of established procurement and disposal of public property policies;
- (i) only in accordance with the Regulations on debarment, debar any supplier, contractor,

consultant or service provider for just cause under this Act and Regulations;

- (j) initiate public procurement policy and propose amendments to this Act or to the Regulations;
- (k) prepare advice for the Cabinet on matters relating to public sector procurement and disposal of public property;
- (l) promote the application of fair, competitive, transparent, value-for money standards and practices for the procurement and disposal of public assets and services;
- (m) monitor and report on the functioning of public procurement and the disposal of public property;
- (n) assist in the implementation and operation of the public procurement system in accordance with this Act and the Regulations and in doing so to—
 - (i) establish and disseminate mandatory forms and templates for use by procuring entities including but not limited to: annual and contract specific procurement plans, standard tender documents for all types of procurement (requests for quotation, tendering, pre-qualification etc.), standard forms of contract, advertisement notices, contract award notices and templates for maintaining records;

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- (ii) provide advice and assistance to procuring entities;
 - (iii) develop, promote and support the training and professional development of persons involved in procurement;
 - (iv) foster improvements with the use of technology in public procurement including electronic trading; and
 - (v) do such other things as it considers necessary or expedient for the efficient performance of its functions under this Act and the Regulations.
- (5) Whenever procurement is centralized as prescribed by the Regulations, responsibility for centralized procurement shall vest with the Board.
- (6) In exercising its functions under subsection (5), the Board shall organise the purchase of common-use items either under individual contract or framework contract arrangements on behalf of selected or all procuring entities.
- (7) When conducting procurement under this section, the Board shall follow the procurement procedures set down in this Act and the Regulations.
- (8) The Board may, upon such terms and conditions as the Board may determine and with the approval of the Minister, hire the services of such consultants, experts or independent

investigators as may be necessary for the proper performance of its functions under this Act and the Regulations.

Staff of Board.

7.—(1) The Board shall have staff which shall provide administrative, secretarial and other support for the Board and shall be responsible for the following functions:

- (a) establish and maintain an archival system of all public procurements and public property disposals, as prescribed by the Regulations;
- (b) establish and/or maintain a single internet portal that shall serve as a primary and definitive source of all information on public procurement and disposal of public property containing and displaying all public sector procurement and disposal of public property information at all times;
- (c) maintain a list of firms and persons that have been debarred from participating in public procurement activities and publish them;
- (d) maintain an up-to-date register of suppliers and contractors in works, goods and services, or any combination thereof, in order to be cognizant at all times of the workload and performance record of each supplier and contractor;
- (e) using information provided by the Board and procuring entities, establish a comprehensive database available for public access with information on procurement processes, submissions received, the award and value of

procurement contracts and such other information of public interest as the Board determines.

(2) The Board shall have such staff as is considered necessary for the efficient performance of its functions and shall incorporate the staff of the Procurement Unit of the Ministry of Finance.

(3) The Chief Procurement Officer shall direct the staff and serve as the Secretary to the Board.

8.—(1) For the purpose of this Act there is hereby constituted a body to be known as the Public Procurement Review Commission to—

Establishment
of Review
Commission.

- (a) resolve disputes arising from candidates who claim to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act and the Regulations;
- (b) adjudicate the Board's decisions made against procuring entities on investigations and debarment of suppliers, contractors, consultants and service providers from participating in procurement proceedings; and
- (c) such other powers as are provided for under this Act and the Regulations.

(2) Administration and logistical support of the Commission shall be provided by the staff of the Board.

(3) The Commission shall be convened as necessary based on applications for review made in accordance with Part VII.

(4) The rules of procedure of the Commission shall be prescribed by the Regulations.

Composition of
Commission.

9.—(1) The membership of the Commission shall comprise a Chairman and four Commissioners being persons with a minimum of experience of ten years in the disciplines of law, accounting, finance, economics, procurement, engineering and public administration, to be appointed by the Governor-General.

(2) The Chairman of the Commission shall be a retired judge or an attorney-at-law of at least ten years qualification.

Costs of the
Commission.

10. The costs incurred for, and in relation to, the performance of the functions of the Commission shall be a direct charge on the Consolidated Fund.

PART III

REQUIREMENTS AND RESPONSIBILITIES OF PROCURING ENTITIES RELATING TO PUBLIC PROCUREMENT

Requirements
for procuring
entities.

11.—(1) Subject to any exemption allowed by this Act all procurement by procuring entities shall be—

- (a) carried out in conformity with this Act, the Regulations and any directions of the Board or the Commission as the case may be;
- (b) based only on procurement plans supported by prior budgetary appropriations;
- (c) subject to a “Certificate of Formal Approval” or a “Certificate of ‘No-Objection’ for Contract Award” from the Board when the prescribed thresholds are met; and

- (d) commenced only when the procuring entity has the funds available to meet the obligations.

(2) Where there are prescribed thresholds in the Regulations, no funds shall be disbursed from the Treasury or any bank account of any procuring entity for any procurement falling above such thresholds unless the cheque, payments or other form of request for payment is accompanied by a “Certificate of Formal Approval” or a “Certificate of ‘No Objection’ to Contract Award”, as the case may be, issued by the Board.

(3) Subject to the prescribed thresholds, any procurement purported to be awarded without a “Certificate of Formal Approval” or a “Certificate of ‘No Objection’ to Contract Award” duly issued by the Board shall be null and void.

(4) Each entity shall establish a tender committee, for the purpose of managing procurement on behalf of the procuring entity.

(5) A tender committee or body established under subsection (4) shall be established in accordance with the Regulations and shall—

- (a) consist of not less than three members;
- (b) have as its secretary, the procurement professional in charge of the tender committee of such public entity.

(6) All procurement for Works contracts shall be undertaken only by the Ministry with the responsibility for Works.

Responsibilities
of procuring
entities.

12.—(1) The chief accounting officer of a procuring entity and any public officer to whom responsibility is delegated shall be primarily responsible and accountable for ensuring that the procuring entity fulfills its obligations under section 11(1) and for any actions taken or omitted to be taken either in compliance with or in contravention of this Act, the Regulations and any directions of the Board or the Commission. In particular, the chief accounting officer shall—

- (a) ensure the establishment of a tender committee for each procuring entity provided it is undertaking public procurement;
- (b) approve the entity's annual procurement plan and ensure its dispatch to the Board for publication;
- (c) for contracts with a value above the prescribed thresholds, ensure the dispatch of the tender evaluation report and contract award recommendation to the Board for formal approval or non-objection, as the case may be, or to the Cabinet as prescribed;
- (d) issue the letter of award to the successful tenderer and inform unsuccessful tenderers of the result; and
- (e) sign the procurement contract.

(2) Each employee of a procuring entity and each member of a committee of the procuring entity shall ensure, within the areas of responsibility of the employee or mem-

ber, that this Act, the Regulations and any directions of the Board, or the Commission are complied with.

(3) With the approval of the Board a procuring entity may decide to use the services of—

- (a) another procuring entity and its tender committee; or
- (b) a procuring agent provided that such procuring agent is selected on a competitive basis in accordance with the procedures set out in this Act and the Regulations and that it complies with the provisions of this Act and the Regulations.

Except that in the case of a procurement for Works, a procuring entity shall use the services of the Ministry responsible for Works as the procuring entity for such procurement.

(4) Except as expressly allowed under the Regulations, a procuring entity shall not enter into a contract for a procurement with—

- (a) an employee of the procuring entity or a member of a committee of the procuring entity;
- (b) a Minister, public servant or a member of a committee of the Government or any department of the Government or a person appointed to any position by the Governor-General or a Minister; or
- (c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).

Whether a person is related to another person for the purpose of sub-section (c) shall be determined in accordance with the Regulations.

(5) Persons, including consultants, who have been engaged by a procuring entity in preparing for a procurement or part of the procurement proceedings thereof shall not make a submission for the procurement in question or any part thereof in any capacity nor shall they co-operate in any manner with suppliers, contractors or service providers in the course of preparing their submissions for such procurement.

(6) A procuring entity shall not request or stipulate that a person should engage a particular supplier, contractor, consultant or service provider as a requirement for participating in any procurement proceedings.

(7) A procuring entity shall comply with—

- (a) such general procedures in relation to public procurement as the Board may issue;
- (b) such special procedures in relation to public procurement approved for a procuring entity which is a state controlled enterprise or a statutory body by the Board and its Line Minister; and
- (c) such guidelines in relation to public procurement approved for a procuring entity which is a state controlled enterprise or a statutory body by the Board and its Line Minister for the purpose of ensuring compliance with this Act and procedures under paragraphs (a) and (b).

(8) Special procedures under subsection (7) (b)–

- (a) shall be prepared by a procuring entity which is a state controlled enterprise or a statutory body and submitted to the Board and its Line Minister for its approval;
- (b) may provide that general procedures under subsection (7) (a) shall apply to a procuring entity subject to such exemptions or amendments as are specified in the special procedures.

(9) Guidelines under subsection (7) (c) shall be prepared by a procuring entity which is a state controlled enterprise or statutory body and submitted to the Board for its approval.

13.—(1) The tender committee shall be responsible for–

Responsibilities
of tender
committees.

- (a) overall procurement planning on behalf of the procuring entity and shall submit the annual procurement plan to the chief accounting officer for approval;
- (b) preparing, in cooperation with the end-user department(s) the procurement plans and tender documents of the procuring entity in respect of each procurement in accordance with the templates issued by the Board;
- (c) preparing the draft contract documents in accordance with the templates issued by the Board;
- (d) ensuring the release of the performance security in accordance with the terms of the contract.

(2) For all contract award procedures, the tender committee shall:

- (a) prepare all requests for quotations, invitations to tender and tendering documents in accordance with the templates issued by the Board;
- (b) publish and dispatch requests for quotation and invitations to tender;
- (c) receive and safeguard quotations, tenders and applications to pre-qualify;
- (d) respond to requests for clarification from tenderers;
- (e) organize and record pre-tender meetings and/or site visits, if any;
- (f) organize the work of the appointed evaluation committee and receive its evaluation report and contract award recommendation;
- (g) for each contract award procedure within the prescribed threshold, nominate and appoint an evaluation committee;
- (h) for each contract award procedure above the prescribed thresholds, nominate an evaluation committee and submit the proposed composition to the Board for approval;
- (i) for contracts with a value below the prescribed threshold—
 - (i) conduct the tender opening; and
 - (ii) approve the tender evaluation report and contract award recommendation;

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- (j) prepare and dispatch the evaluation report and contract award recommendation for approval by the chief accounting officer of the procuring entity, Board or the Cabinet, as the case may be;
 - (k) publish the contract award notice;
 - (l) administer and implement procurement contracts to the extent that it is not carried out by end-user departments; and
 - (m) maintain the procurement file and complete the full record of the procurement and submit a summary report of the record to the Board in accordance with this Act and Regulations.

14.—(1) Evaluation committees shall be appointed by the chief accounting officer of the procuring entity for all contracts whose value falls within the prescribed thresholds.

Establishment
and Responsibilities
of evaluation
committees.

(2) For all contracts whose value exceeds the prescribed threshold, the chief accounting officer of the procuring entity shall nominate the composition of the evaluation committee and submit this to the Board for approval.

(3) In addition to the obligatory membership of a representative of the tender committee of the procuring entity, the evaluation committee shall be composed of a minimum of three further members which shall include—

- (a) the officer responsible for preparing the requirement/technical specifications;
- (b) the financial officer of the procuring entity;
and

- (c) other members to provide technical, legal or commercial expertise, as appropriate.

(4) The evaluation committee shall include skills, knowledge and experience relevant to the procurement requirement, which may include—

- (a) technical skills relevant to the procurement requirement;
- (b) end user representation;
- (c) procurement and contracting skills;
- (d) financial management or analysis skills;
or
- (e) legal expertise.

(5) The duties of the evaluation committee shall include—

- (a) receiving from the tender committee the tender opening record and tenders;
- (b) evaluating tenders and preparing the tender evaluation report and recommendation for award of a contract and submitting them to the tender committee for onward transmission to the chief accounting officer, Board or Cabinet, as the case may be;
- (c) responding to any queries raised by the approving authority; and
- (d) any other functions specified under this Act and Regulations.

PART IV**FUNDAMENTAL OPERATIONAL PRINCIPLES AND
RULES OF PROCUREMENT**

15.—(1) Except as provided under Part VI of this Act, all public procurement of goods, works and services by all procuring entities shall be conducted by open competitive tendering under Part V.

Operational
Principles
and Rules of
Procurement.

(2) In every case of a procurement to be made under this Act, the procuring entity shall first determine the need for the subject matter of procurement and the procuring entity shall, to the extent possible, take into account the estimated cost of the procurement and shall also decide on the following matters, namely—

- (a) the scope or quantity of the subject matter of procurement, if determined;
- (b) if not by open tendering, the method of procurement to be followed with justification thereof;
- (c) need for pre-qualification, if any; and
- (d) any other matter as may be prescribed.

(3) A procuring entity shall use such standard tender documents as may be prescribed.

16.—(1) Subject to any exemption allowed by this Act no procuring entity may package, divide or structure any procurement as two or more procurements nor use a particular valuation method for estimating the value of procurement for the purpose of avoiding the use of a procurement procedure or take any other action so as to limit competition among

Procurement
not to be split or
inflated.

suppliers, contractors, consultants or service providers or to avoid its obligations under the Act.

(2) In estimating the value of procurement, the procuring entity, shall include the estimated maximum total value of the procurement contract over its entire duration, taking into account all forms of remuneration.

(3) Standard goods, services and works with known market prices shall not be procured above the procuring real market price.

Qualifications
of suppliers,
contractors,
consultants
and service
providers for
procurement.

17.—(1) A procuring entity shall not award a procurement contract to suppliers, contractors, consultants or service providers unless they have the following qualifications—

- (a) the necessary, professional, technical, financial and managerial qualifications, capability, experience, resources, equipment and facilities to perform the procurement contract;
- (b) the legal capacity to enter into the procurement contract;
- (c) are not insolvent, in receivership, bankrupt or in the process of being wound up and are not the subject of legal proceedings relating to any of the foregoing;
- (d) have fulfilled their obligations to pay all required taxes and contributions in Grenada as are applicable;
- (e) neither the person nor any of its management have been debarred from participating in procurement proceedings under Part VIII; and

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- (f) neither the person nor any of its directors or officers have been convicted in any country of any criminal offence related to fraud or financial impropriety or making false statements or misrepresentations with respect to their qualifications to enter into a procurement contract, within a period of two years preceding the commencement of the procurement proceedings, or have been otherwise disqualified.

(2) Subject to the right of suppliers, contractors, consultants or service providers to protect their intellectual property or trade secrets, the procuring entity may require them to provide appropriate documentary evidence or other information to establish that they are qualified under sub-section (1).

(3) The criteria under sub-section (1) and any requirements under sub-section (2) shall be set out in pre-qualification documents, if any, and in the tender documents and shall apply equally to all suppliers, contractors, consultants or service providers.

(4) The procuring entity may disqualify a supplier, contractor, consultant or service provider at any time for submitting false, materially inaccurate or incomplete information about his qualifications.

(5) A procuring entity may disqualify a supplier, contractor, consultant or service provider who, without reasonable cause, fails to demonstrate his qualifications when requested to do so.

18.—(1) A procuring entity may engage in a pre-qualification process, prior to soliciting submissions, for the

Pre-qualification
procedures.

purpose of identifying the suppliers, contractors or service providers that are qualified by inviting those interested to submit applications.

(2) For the purpose of sub-section (1), a procuring entity shall solicit submissions to pre-qualify by giving wide publicity and shall set out the pre-qualification criteria to be met in the pre-qualification documents.

(3) The pre-qualification shall be valid for such period as may be specified by the procuring entity in the pre-qualification document.

(4) The procuring entity shall solicit submissions from pre-qualified applicants during the period referred to in sub-section (3) and in case solicitations are not made within such period, the procuring entity shall commence a fresh pre-qualification before soliciting fresh submissions.

(5) The pre-qualification of applicants shall ordinarily be for a single procurement: Provided that during the period of validity of the pre-qualification under sub-section (2), the procuring entity may solicit invitations from the pre-qualified applicants for further requirements of the subject matter of procurement, if, it determines that engaging in fresh pre-qualification shall not result in enhanced competition.

(6) Where a procuring entity has undertaken a pre-qualification process under subsection (1), all suppliers, contractors or service providers who have met the qualification criteria shall be invited to submit a tender in the procurement proceedings.

(7) The procuring entity shall identify the pre-qualified suppliers, contractors and service providers in accordance

with the provisions of Section 19 and the criteria set out in the pre-qualification document.

19.—(1) The procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings.

Specific requirements and description of subject matter of procurement.

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

(3) The technical requirements shall, where appropriate—

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

(4) The technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless—

- (a) there is no other sufficiently precise or intelligible way of describing the requirements; and
- (b) the requirements allow equivalents to what is referred to.

(5) The procuring entity shall set out in the tender documents, or pre-qualification documents if any, the detailed description of the subject matter of the procurement that it will use in the examination of submissions, including

the minimum requirements that submissions must meet in order to be considered responsive and the manner in which those minimum requirements are to be applied.

(6) No description of the subject matter of a procurement that may restrict the participation of suppliers or contractors in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification documents, if any, or in the tender documents.

Verification that
not debarred.

20. A submission made by a supplier, contractor, consultant or service provider shall include a statement verifying that the supplier, contractor, consultant or service provider is not debarred from participating in procurement proceedings under Part VIII and a declaration that the person will not engage in any corrupt practice.

Cancellation
of procurement
proceedings.

21.—(1) A procuring entity may cancel the procurement at any time prior to the acceptance of a successful submission and shall not open any tender after taking a decision to cancel the procurement.

(2) A procuring entity that wishes to cancel procurement proceedings shall give prompt notice of such cancellation to each supplier, contractor, consultant or service provider who made a submission and in the case of open competitive tendering under Part V, shall in addition promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published and return any tenders that remain unopened at the time of the decision to the respective suppliers, contractors or service providers.

(3) The procuring entity shall give its reasons for cancelling the procurement proceedings within thirty (30)

days of the request of a person to whom notice is provided pursuant to subsection (2).

(4) The procuring entity shall not incur any liability solely by virtue of its decision to cancel a procurement.

(5) Any procuring entity that cancels a procurement proceeding shall submit to the Board a written report with respect to such cancellation.

22. A procuring entity shall submit to the Board before the end of the prescribed deadline a report of all procurement contracts awarded within the prescribed period.

Report of
procuring
entities.

23.—(1) All public procurement under this Act may be undertaken using electronic processing system.

Use of electronic
processing
system.

(2) Nothing in sub-section (1) shall affect the validity of procurements effected by means that were lawful before the coming into force of this section.

(3) The Minister may make Regulations to give effect to the provisions of this section.

(4) In this section, “electronic processing system” means the online processing of data through a website.

24. Communications between the procuring entity and a person seeking to enter into a procurement contract shall be in writing or by electronic communication followed up by writing and shall be accessible so as to be usable for subsequent reference.

Form of
communications.

25. After the deadline for submissions—

Inappropriate
influence on
evaluations.

(a) no supplier, contractor, consultant or service provider making a submission shall make

any unsolicited communications to the procuring entity or any person involved in the procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of tenders, proposals or quotations; and

- (b) no person who is not officially involved in the evaluation and comparison of submissions shall attempt, in any way, to influence that evaluation and comparison.

Conflicts of
Interest and
Prohibited
Practices.

26.—(1) An employee or agent of the procuring entity or a member of a committee of the procuring entity who has a conflict of interest with respect to a procurement—

- (a) shall disclose the conflict of interest to the procuring entity.
- (b) shall not take part in the procurement proceedings; and
- (c) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or procurement contract.

(2) Without prejudice to any other legal remedy the procuring entity may have, any contract awarded in contravention of sub-section (1) shall be voidable at the option of the procuring entity.

(3) For the purpose of this section, a person has a conflict of interest with respect to a procurement if the person or relative of the person—

- (a) seeks, or has a direct or indirect pecuniary interest in a supplier, contractor or service

provider who seeks a contract for the procurement; or

- (b) owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

(4) In this section, “relative” means—

- (a) a spouse, child, parent, brother or sister;
- (b) a child, parent, brother or sister of a spouse;
- (c) any other prescribed relative.

(5) For the purpose of sub-section (3), the following are persons seeking a contract for procurement—

- (a) a supplier, contractor or service provider submitting a tender; or
- (b) if negotiated tendering is being used, a supplier, contractor or service provider with whom the procuring entity is negotiating.

(6) No supplier, contractor or service provider or any employee or agent thereof shall be involved in any corrupt or fraudulent practice in any procurement proceeding or shall collude or attempt to collude with any person to—

- (a) make any proposed price higher than would otherwise have been the case;
- (b) have that other person refrain from making a submission or withdraw or change a submission; or

- (c) make submission with a specified price or with any specified inclusions or exclusions.

(7) If a supplier, contractor or service provider or any employer or any employee or agent thereof contravenes sub-section (6) the following shall apply—

- (a) both the supplier, contractor or service provider and other person referred to in sub-section (6) shall be disqualified from entering into a contract for the procurement; or
- (b) if a contract has already been entered into with either of the supplier, contractor or service provider and other person referred to in sub-section (6), the contract shall be voidable at the option of the procuring entity.

Confidentiality.

27.—(1) During or after procurement proceedings, neither a procuring entity nor any employee or agent of the procuring entity or member of a committee of the procuring entity shall disclose the following—

- (a) information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;
- (b) information relating to a procurement whose disclosure would prejudice legitimate commercial interests or inhibit fair competition;
- (c) information relating to the evaluation, comparison or of tenders, proposals or quotations; or
- (d) the contents of tenders, proposals or quotations.

(2) Other than when providing or publishing information pursuant to this Act, the procuring entity shall treat applications to pre-qualify and submissions in such a manner as to avoid the disclosure of their contents to competing suppliers, contractors or service provider or to any other person not authorised to have access to this type of information.

(3) Any discussions, communications, negotiations or dialogue between the procuring entity and a supplier, contractor or service provider shall be confidential. Unless required by law, no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party.

(4) This section does not prevent the disclosure of information if any of the following circumstances apply—

- (a) disclosure is to an employee or agent of the procuring entity or a member of a committee of the procuring entity involved in the procurement proceedings;
- (b) disclosure is for the purpose of law enforcement;
- (c) disclosure is for the purpose of a review under Part VII;
- (d) the disclosure is pursuant to a court order; or
- (e) the disclosure is allowed under the Regulations.

28. A procuring entity shall keep records as prescribed for all procurement proceedings made within the financial

Procurement
records.

year and the procurement records shall be maintained for a period of at least six years after the resulting contract was entered into or, if no contract resulted, for a period of one (1) year after the procurement proceedings were terminated.

Amendments to
contracts.

29. An amendment to a contract resulting from the use of open competitive tendering or an alternative procurement procedure under Part VI is effective only if—

- (a) the amendment has been approved in writing by the tender committee of the procuring entity; and
- (b) any contract variations are based on the prescribed price or quantity variations for goods, works and services.

PART V

OPEN COMPETITIVE TENDERING REQUIREMENTS

Open
Competitive
Tendering.

30.—(1) Except as provided by this Act all public procurement by all procuring entities shall be conducted by open competitive tendering.

(2) Any reference to open competitive tendering in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested supplier, contractor or service provider equal simultaneous information and opportunity to offer the goods, works and services needed.

Requirements
and Procedures.

31.—(1) The procuring entities shall undertake open competitive tendering in accordance with the requirements and procedures as are prescribed in the Regulations.

(2) Open competitive tendering may be carried out in either a single stage or in two stages as prescribed.

32.—(1) Unless otherwise required by funding or other agreements, or as a matter of necessity, only national competitive tendering and local community competitive tendering where domestic suppliers, contractors, consultants or service providers are entitled to participate, shall be used.

Local
Competitive
Bidding.

(2) In applying any preference under this section, a prescribed margin of preference shall be given in the case of national competitive tendering to suppliers, contractors or service providers in the locality of the procurement.

33. Procedures to allow for Regional and International Tendering for the purposes of this Act, shall include the following:

Regional and
International
tendering.

- (a) the invitation to tender and the tender documents must be in English;
- (b) if the procuring entity is required to advertise the invitation to tender, the procuring entity shall also advertise the invitation to tender in one or more English-language newspapers or other publications that, together, have sufficient circulation outside Grenada to allow effective competition for the procurement;
- (c) the period of time between the advertisement under paragraph (b) and the deadline for submitting tenders must be not less than four (4) weeks;
- (d) the technical requirements must, to the extent compatible with requirements under the laws

of Grenada, be based on international standards or standards widely used in international trade;

- (e) a person submitting a tender may, in quoting prices or providing security, use a currency that is widely used in international trade and that the tender documents specifically allow to be used; and
- (f) any general and specific conditions to which the contract will be subject must be of a kind generally used in international tendering.

PART VI

ALTERNATIVE PROCUREMENT PROCEDURES

Selective
tendering.

34. A procuring entity may engage in procurement by means of selective tendering in accordance with this section when—

- (a) because of the complex or specialised nature of goods, works or services is limited to pre-qualified suppliers, contractors or service providers;
- (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured;
- (c) there are only a few known suppliers, contractors or service providers of the goods, works or services locally or internationally as may be prescribed in the Regulations; or

- (d) procurement from a category of pre-qualified suppliers, contractors or service providers is necessary in accordance with the provisions of section 18.

35.—(1) A procuring entity may use negotiated procurement as allowed under sub-section (2) or (3) as long as the purpose is not to avoid competition. Negotiated procurement.

(2) A procuring entity may use negotiated procurement when—

- (a) there is only one supplier, contractor or service provider who can supply the goods, works or services being procured or a supplier, contractor or service provider who has exclusive rights in respect of the subject matter of procurement and there is no reasonable alternative or substitute for the goods, works or services;
- (b) owing to a sudden unforeseen event there is an extremely urgent need for the goods, works or services being procured—
 - (i) because of the urgency the other available methods of procurement allowed by the provisions of this Act are impractical or would cause delay; and
 - (ii) the circumstances that gave rise to the urgency were not foreseeable and were not the result of dilatory conduct on the part of the procuring entity.

(3) The following procedure shall apply with respect to negotiated procurement—

- (a) the procuring entity shall negotiate with one or more suppliers, contractors or service providers as appropriate for the supply of the goods, works or services being procured to obtain a competitive price that is best in value for money using standard industry benchmarks;
- (b) the procuring entity shall not use negotiated procurement in a discriminatory manner; and
- (c) the resulting procurement contract must be in writing and signed by both parties.

Request for
quotations.

36.—(1) A procuring entity may engage in procurement by means of a request for quotations for a procurement provided—

- (a) the procurement is for goods and services that are not specially produced to the description of the procuring entity, that are readily available and for which there is an established market; and
- (b) the estimated value of the goods or services being procured is less than or equal to the prescribed maximum value for using requests for quotations.

(2) The procuring entity shall prepare a written request for quotations that sets out the following—

- (a) the name and address of the procuring entity;
- (b) the specific requirements prepared under section 19 relating to the goods or services being procured;
- (c) an explanation of where and when quotations must be submitted; and

- (d) anything else required under this Act or the Regulations to be set out in the request for quotations.

(3) The procuring entity shall deal with the request for quotations in accordance with the following—

- (a) the procuring entity shall send the written request to such persons as the procuring entity determines;
- (b) the request must be sent to as many persons as necessary to ensure effective competition and to at least three persons, unless that is not possible;
- (c) the procuring entity shall send the request to each person early enough so that the person has adequate time to prepare a quotation; and
- (d) each person shall be permitted to submit only one quotation and is not permitted to change its quotation.

(4) The successful quotation shall be the quotation with the lowest price that meets the requirements of the procuring entity as set out in the request for quotations.

(5) The procuring entity shall make its best efforts to check prices to ensure the reasonableness of quoted prices.

(6) The procuring entity shall not negotiate any of the quotations received.

(7) The following shall apply with respect to the procurement contract resulting from a request for quotations—

- (a) the procuring entity shall place a purchase order with the person submitting the successful quotation; and

- (b) the person submitting the successful quotation shall confirm the purchase order in writing.

Low value
procurements.

37.—(1) A procuring entity may engage in procuring by means of a low-value procurement procedure provided—

- (a) the estimated value of the goods, works or services being procured are less than or equal to the prescribed maximum value for that low-value procurement procedure; and
- (b) any other prescribed conditions for the use of the low-value procurement procedure are satisfied.

(2) A regulation prescribing a maximum value for a low-value procurement procedure or prescribing conditions for the use of such a procedure may prescribe different values or conditions for different classes of public entities or different classes of goods, works or services being procured.

(3) The procedure for low-value procurement shall be as prescribed.

Local
Community
Procurement.

38. In circumstances where procurement is conducted in local communities, where the competitive procedures described in this Act are not feasible, goods, works and services the value of which does not exceed such an amount as may be prescribed, may be procured, either—

- (a) in accordance with procedures that promote efficiency through participation of community organizations; or
- (b) through negotiated procurement from direct contracting of suppliers, contractors or ser-

vice providers located in or near the community.

39. Consultancy services shall be procured using the request for proposals method, the procedures for which shall be as prescribed in the Regulations.

Consultancy
Services
Procurement.

40.—(1) Individual consultants are employed on assignments for which (a) a team of experts is not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement.

Individual
Consultants
Procurement.

(2) The specific methods for selection of individual consultants will be as prescribed in the Regulations.

PART VII

CHALLENGE PROCEEDINGS

41.—(1) Subject to the provisions of this Part, any supplier, contractor, consultant or service provider that claims to have suffered or claims that it may have suffered, loss or damage due to the alleged non-compliance of a decision or action of a procuring entity with the provision of this Act or the Regulations, may at any time prior to the signature of a contract challenge the decision or action concerned.

Right to
challenge and
appeal.

(2) Challenge proceedings may be made by way of an application for reconsideration to the procuring entity under section 43, or an application for review to the Commission under section 44.

42.—(1) A procuring entity shall not take any step that would bring into force a procurement contract in the procurement proceedings concerned:

Effect of a
challenge.

- (a) where it receives an application for reconsideration under section 43; or
- (b) where it receives notice of an application for review from the Commission under section 44.

(2) The procuring entity may at any time request the Commission to authorize it to enter into the procurement contract or on the ground that urgent public interest considerations so justify.

(3) The Commission may authorize the procuring entity to enter into the procurement contract where it is satisfied that urgent public interest considerations so justify. The decision of the Commission and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant and to all other participants in the procurement proceedings.

Application for
reconsideration
by the procuring
entity.

43.—(1) A supplier, contractor, consultant or service provider may apply to the procuring entity for a reconsideration of a decision or an action taken by the procuring entity in the procurement proceedings.

(2) Applications for reconsideration shall be submitted to the procuring entity in writing within five (5) working days of the procuring entity's decision or action giving rise to such application by a supplier, contractor, consultant or service provider.

(3) The procuring entity shall, not later than five (5) working days after receipt of the application—

- (a) dismiss the application; or

- (b) remedy the alleged breaches; and
- (c) notify the applicant and all other participants in the procurement proceedings of its decision.

(4) All decisions of the procuring entity under this section shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the procurement proceedings, together with the application received by the procuring entity under this section.

44.—(1) A supplier, contractor, consultant or service provider may apply to the Commission for review of a decision or an action taken by the procuring entity in the procurement proceedings, or of the failure of the procuring entity to issue a decision under section 43 of this Act within the time limits so specified.

Application
for review
before the
Commission.

(2) Applications for review shall be submitted to the Commission in writing within the standstill period applied pursuant to this Act or within seven (7) working days after the time when the applicant became aware of the circumstances giving rise to the application or when the applicant should have become aware of those circumstances, whichever is earlier.

(3) Applications for review under section 44 of this Act shall be submitted to the Commission in writing within ten (10) working days after the decision of the procuring entity should have been communicated to the applicant in accordance with sub-section 43(3) of this Act.

(4) Promptly after receipt of the application for review, the Commission shall notify the procuring entity and all identified participants in the procurement proceedings to

which the application relates of the application and its substance.

(5) The procuring entity and all identified participants in the procurement proceedings shall provide the Commission with effective access to all documents relating to the procurement proceedings in its possession, in a manner appropriate to the circumstances.

(6) Following receipt of an application for review, the Commission may order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract for a period not to exceed the time given for the Commission to reach its decision

(7) The Commission may dismiss the application where it decides that:

- (a) the application is manifestly without merit or was not presented in compliance with the deadlines set out in sub-section (2); or
- (b) the applicant is without standing; or
- (c) urgent public interest considerations require the procurement proceedings or the procurement contract, to proceed.

(8) The Commission shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceedings of its decision to award a suspension or to dismiss the application and the reasons therefor and that any suspension in force is lifted.

(9) The decision with regard to suspension shall be given no later than five (5) working days after receipt of the application.

(10) In taking its decision on the substance of an application, the Commission may declare the legal rules or principles that govern the subject matter of the application, shall address any suspension in force and shall take one or more of the following actions, as appropriate:

- (a) prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Act;
- (b) require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Act to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Act;
- (c) overturn in whole or in part an act or a decision of the procuring entity that is not in compliance with the provisions of this Act;
- (d) confirm a decision of the procuring entity;
- (e) order that the procurement proceedings be terminated;
- (f) dismiss the application;
- (g) require the payment of compensation for any reasonable costs incurred by the supplier, contractor, consultant or service provider submitting an application as a result of an act or decision of, or procedure followed by, the procuring entity in the procurement proceedings that is not in compliance with

the provisions of this Act, and for any loss or damages suffered, which shall be limited to the costs of the preparation of the submission or the costs relating to the application, or both; or

- (h) take such alternative action as is appropriate in the circumstances.

(11) The decision of the Commission under subsection (10) shall be issued within twenty-one (21) working days after receipt of the application. The Commission shall immediately thereafter communicate the decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings.

(12) All decisions of the Commission under this section shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the Commission under this section.

Right to judicial
review.

45.—(1) A decision made by the Commission shall, be final and binding on the parties unless an appeal for judicial review thereof is made within fourteen days from the date of the Commission's decision.

(2) Any party to the review aggrieved by the decision of the Commission may appeal to the High Court, and the decision of the High Court shall be final.

(3) A party to the review which disobeys the decision of the Commission or the High Court, as applicable, shall be in breach of this Act and any action by such party contrary

to the decision of the Commission or the High Court, as applicable, shall be null and void.

PART VIII

DEBARMENT FROM PARTICIPATING IN PROCUREMENT PROCEEDINGS

46.—(1) The Board, may debar a person from participating Debarment. in procurement proceedings where it is proven that the person—

- (a) has committed a prescribed offence under this Act;
- (b) has committed a prescribed offence relating to procurement under any law of Grenada;
- (c) has breached a public procurement contract to which it is a party;
- (d) has, in procurement proceedings, given false information about his qualifications;
- (e) has refused to enter into a written procurement contract;
- (f) is unable to furnish a tax compliance or NIS compliance certificate;
- (g) is declared bankrupt; or
- (h) has committed any offence as may be prescribed in Regulations.

(2) Debarment under this section may be imposed by the Board only on the basis of the procedure set out in the prescribed Regulations which secures due process.

(3) A debarment under this section shall be for one or more periods of time, as may be specified by the Board.

Opportunity
to make
representations.

47. Before debarring a person under section 46, the Board shall give that person an opportunity to make representations to the Board.

Request for
review.

48.—(1) A person who is debarred under section 46 may request the Commission to review the debarment.

(2) A request for a review under subsection (1) may only be made within twenty-one days after the person was debarred.

Convening of
review.

49. The Commission shall meet to conduct a review within twenty-one (21) days after receiving the request for the review.

Completion of
review.

50. The Commission shall complete its review within thirty days after receiving the request for the review.

Powers of
Commission.

51. Upon completing a review the Commission may do any or both of the following—

- (a) confirm, vary or overturn the Board's debarment of the person; and
- (b) order the payment of costs as between parties to the review.

Appeals.

52. A party to the review may appeal from the decision of the Commission to the High Court within fourteen days after the decision is made.

List of debarred
persons.

53. The Board shall maintain and make available to public entities a list of persons debarred from participating in procurement proceedings under this Part.

PART IX**DISPOSAL OF STORES AND EQUIPMENT**

54. This Part applies with respect to the disposal of stores and equipment of a public entity that are unserviceable, obsolete or surplus.

Application of
Part.

55.—(1) A public entity shall ensure that this Act and the Regulations and Board are complied with in respect of each of its disposals to which this Part applies.

Responsibility
for complying
with Act.

(2) The chief accounting officer of a public entity shall be primarily responsible for ensuring that the public entity fulfills its obligations under sub-section (1).

(3) Each employee of a public entity and each member of a committee of the public entity shall ensure, within the areas of responsibility of the employee or member, that this Act and the Regulations are complied with.

(4) A public entity shall comply with—

- (a) such general procedures in relation to the retention and disposal of stores and equipment of a public entity as the Board may issue;
- (b) such special procedures in relation to the retention and disposal of stores and equipment of a public entity which is a state controlled enterprise or statutory body approved for that public entity by the Board and its Line Minister; and
- (c) such guidelines in relation to the retention and disposal of stores and equipment of a public entity which is a state controlled enterprise

or a statutory body approved for the public entity by the Board and its Line Minister for the purposes of ensuring compliance with this Act and guidelines under paragraphs (a) and (b).

(5) Special procedures under subsection (4) (b)–

- (a) shall be prepared by the public entity which is a state controlled enterprise or a statutory body and submitted to the Board and its Line Minister for its approval;
- (b) may provide that general procedures under subsection (4) (a) shall apply to a public entity which is a state controlled enterprise or a statutory body subject to such exemptions or amendments as are specified in the special procedures.

(6) Guidelines under subsection (4) (c) shall be prepared by the public entity which is a state controlled enterprise or a statutory body and submitted to the Board for its approval.

Disposal
committee.

56.—(1) A public entity shall establish a disposal committee in accordance with the Regulations for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus stores or equipment.

(2) The disposal committee shall meet within the prescribed period to report on the items and subject to a technical report, recommend the best method of disposal.

Disposal
procedure.

57.—(1) The employee in charge of unserviceable, obsolete or surplus stores or equipment shall bring the matter to the attention of the disposal committee.

(2) An employee shall comply with subsection (1) within a reasonable time after the stores or equipment become unserviceable, obsolete or surplus.

(3) The disposal committee shall recommend to the accountable officer a method of disposing of the stores and equipment which may include any of the following—

- (a) transfer to another public entity or part of a public entity, with or without financial adjustment;
- (b) sale by public tender;
- (c) sale by public auction;
- (d) destruction, dumping or burying; or
- (e) trade-in.

(4) Within the prescribed time period after receiving the recommendations of the disposal committee the chief accounting officer shall give the committee a written notice as to whether the accountable officer accepts or rejects the recommendations of the committee.

(5) If the chief accounting officer accepts the recommendations of the disposal committee, the stores and equipment shall be disposed of in accordance with those recommendations.

(6) If the chief accounting officer rejects the recommendations of the disposal committee he shall, within the time period referred to in sub-section (4)—

- (a) include, with the notice given to the committee under sub-section (4), written reasons for

rejecting the recommendations of the committee;

- (b) give the Board a copy of the notice under subsection (4) and the written reasons under paragraph (a); and
- (c) refer the matter back to the committee for further consideration.

Directions.

58. The Board may issue written directions to public entities with respect to the disposal of unserviceable, obsolete or surplus stores and equipment.

Restriction
on disposal to
employees.

59. A public entity shall not dispose of unserviceable, obsolete or surplus stores and equipment to an employee of the public entity or a member of a committee of the public entity except as expressly allowed under the Regulations.

Application
of Part VII to
disposals.

60. Part VII applies, with necessary modifications, with respect to disposals of unserviceable, obsolete or surplus stores and equipment in the same manner as that Part applies with respect to procurements.

PART X

MISCELLANEOUS

Consultation
meetings.

61.—(1) The Board shall ensure that meetings are convened at least annually for the purpose of consulting with persons in the public and private sectors who have an interest in the proper functioning of the public procurement system.

(2) The Permanent Secretary or a member of the staff of the ministry selected by the Permanent Secretary, shall chair each meeting convened under this section.

(3) The procedure for conducting a consultative meeting referred to in sub-section (1) shall be as prescribed.

62. All procurement and disposal shall be carried out in accordance with applicable law including but not limited to the Public Service Rules, the Integrity in Public Life Act and the Codes of Ethics that may from time to time be specified by the Board. Ethics applicable.

63.—(1) Any public officer found to be acting contrary to the provisions of this Act or the Regulations in the exercise of his or her duty in respect of any procurement proceedings shall be subject to the disciplinary procedures of the Public Service Commission, including demotion, dismissal and the payment of compensation. Consequence of breaches of this Act or the Regulations.

(2) Any private physical or legal person who has been contracted to carry out any functions by a procuring entity or the Board in respect of any procurement proceedings and who has been found to be acting contrary to the provisions of this Act or the Regulations in the exercise of those functions in respect of any such procurement proceedings shall—

- (a) have his or her contract terminated forthwith;
- (b) repay all fees, emoluments and benefits received from the date of the said breach;
- (c) be liable to pay compensation to the public entity or the Board for any damage suffered by them as a consequence of the unlawful behavior of that person, including the reimbursement of any compensation paid to an aggrieved tenderer in accordance with any order of the Commission under Part VIII; and
- (d) be debarred for a prescribed period.

(3) Where the public officers and persons referred to in sub-sections (2) and (3) are considered to have been in breach of applicable criminal laws relating to fraud and corruption, they shall be referred to the appropriate law enforcement agencies for investigation and prosecution.

Protection from
personal liability.

64. No person shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omissions done in good faith in the performance of his duties under this Act.

Prohibition of
victimization.

65. A person shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

- (a) he, acting in good faith and on the basis of a reasonable belief, has—
 - (i) notified the Director of Public Prosecutions, the Police, the Integrity Commission or the Board that his employer or any other person has contravened or is about to contravene this Act;
 - (ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or
 - (iii) refuse to do or stated the intention of refusing to do anything that is in contravention of this Act; or
- (b) his employer or any other person believes that he will do something described in paragraph (a).

66. All delegation of tasks and all staff shall be subject to all rules and procedures of the Department of Public Administration. Delegation of tasks and staff.

67. The Minister may make Regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations— Regulations.

- (a) governing how decisions relating to procurement are to be made on behalf of public entities, including requiring the creation of specified committees and the assignment of responsibilities and functions within a public entity;
- (b) governing pre-qualification procedures;
- (c) providing for and governing the use of electronic communications and documents in relation to procurement;
- (d) governing the procedures to be followed in reviews by the Commission, including the panels of the Commission to conduct reviews;
- (e) governing how decisions relating to disposals of stores and equipment that are unserviceable, obsolete or surplus are to be made on behalf of public entities, including requiring the creation of specified committees and the assignment of responsibilities and functions within a public entity; and
- (f) prescribing anything that this Act requires or allows to be prescribed.

Availability of
Act.

68. The Board shall ensure that this Act, the Regulations and any directions issued under this Act are accessible to the public.

Transitional
Provisions.

69.—(1) A procuring entity may continue any procurement proceedings in respect of the procurement of goods, services or works commenced before the coming into operation of this Act and which have not been determined, terminated or completed as if this Act were not enacted, but the provisions of this Act shall apply to any contract which is awarded or executed as a consequence of such proceedings.

(2) Where a procurement contract is executed before the commencement of this Act; and the procurement contract is still subsisting; this Act shall apply to the procurement contract as if that procurement contract were executed under this Act.

Public Finance
Management
Regulations to
apply.

70. The Public Finance Management Regulations shall apply to the procurement of goods, works, services and consultancy services under this Act with such modification, adaptations and qualifications as the circumstances require.

Repeal of Public
Procurement
and Contract
Administration
Act.

71. The Public Procurement and Contract Administration Act No. 25 of 2007 is hereby repealed.

SCHEDULE I

(Section 6)

PROVISIONS RELATING TO MEMBERS OF THE BOARD

1. Constitution of Board. (1) The Board shall consist of not less than five and not have more than seven members, and shall include the following as members—

- (a) the Permanent Secretary of the Ministry of Finance;

- (b) the Attorney General;
- (c) the Chief Technical Officer of the Ministry of Works;
- (d) an Attorney-at-law of significant standing experienced in commercial law;
- (e) a member with qualifications and experience in any other field relating to procurement; and
- (f) no more than two other persons.

(2) Members of the Board shall be appointed by the Minister by instrument in writing.

(3) The Minister may, in accordance with sub-section (1) appoint any person to act temporarily in the place of any member who is absent from Grenada or is unable to act.

(4) The Minister shall appoint Alternate members to the Permanent Secretary, the Attorney General and the Chief Technical Officer to—

- (a) exercise that member's powers, and
- (b) carry out that member's duties in relation to the taking of decisions by the members in the absence of the member.

(5) A person who is an alternate member but not a member may be counted as participating for the purposes of determining whether a quorum is participating.

(6) Alternate members shall receive all Board documents and be entitled to attend every meeting of the Board or Committee of the Board on which the related member sits and shall receive such remuneration as the Minister may decide.

2. Tenure. (1) A member shall hold office for a period not exceeding three years and shall be eligible for re-appointment, unless he or she resigns or his or her appointment is revoked before the end of that period.

(2) Subject to sub-section (1) every member is, on the expiration of the period of his or her appointment, eligible for re-appointment for a further period except that the appointment of members should be staggered in such a manner that only half of the Board be eligible for reappointment at any given time.

3. Remuneration. A member of the Board shall be entitled to be paid such remuneration and allowances as may be prescribed.

4. Disqualification from membership of the Board. (1) A person shall be disqualified from being a member of the Board and shall not become or continue to be appointed as a member of the Board if the person—

- (a) has been declared bankrupt pursuant to the provisions of the Bankruptcy Act;
- (b) has been declared by the Court to be physically and mentally incapacitated by reason of unsoundness of the mind;
- (c) has been convicted of a criminal offence except where the offence is a minor traffic offence;
- (d) has been convicted of an offence pursuant to the provisions of this Act;
- (e) has been absent from three consecutive meetings of the Board without reasonable excuse;
- (f) has become incapable, willful or otherwise of carrying out his functions pursuant to the provisions of the Act; or
- (g) is currently employed by the Board.

(2) Notwithstanding subsection 1(e), a person may be eligible for appointment to the Board after the expiry of three years from the date when he or she ceases to be a member.

(3) The appointment of a member shall not be terminated unless that member has been given a reasonable opportunity to make representation.

5. Vacation of office. (1) A member of the Board is taken to have vacated his or her office if the member—

- (a) resigns from his or her position on the Board pursuant to section 7 or 8;
- (b) cannot continue as a member pursuant to section 4; or
- (c) dies.

(2) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with section 1 to fill that vacancy.

6. Chairperson and Deputy Chairperson. (1) The Minister shall appoint a Chairperson and a Deputy Chairperson to the Board from amongst the membership of the Board.

(2) The Deputy Chairperson shall act as Chairperson of the Board—

- (a) during a vacancy in the office of the Chairperson;
- (b) during all periods when the Chairperson is absent from duty or, for any other reason is unable to perform the functions of his or her office.

7. Resignation of Chairperson and Deputy Chairperson. The Chairperson or Deputy Chairperson appointed in accordance with section 16 may at any time resign his or her office by instrument in writing addressed to the Minister and upon the receipt by the Minister of the instrument, from the date specified in the instrument of resignation, that person ceases to be Chairperson or Deputy Chairperson and, if the instrument so specifies, he or she also cannot be a member.

8. Resignation of Member. A member, other than the Chairperson or Deputy Chairperson may at any time resign his office by instrument in writing addressed to the Minister and transmit the instrument through the Chairperson and, from the date of the receipt by the Minister of the instrument, the member ceases to be a member.

9. Publication in the *Gazette*. The Minister shall by notice published in the *Gazette*, inform the public of the names of members of the Board as first constituted and every change in membership of the Board.

10. Liability of members of the Board. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done or any default of the Board made, in good faith in the course of the operation of the Board.

SCHEDULE II

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings of the Board. The Board shall meet at least once a month, and at such other times and place as may be necessary or expedient for the transaction of business of the Board.

2. Special Meetings. The Chairperson or, in the event of his or her absence from Grenada or inability to act as such, the Deputy Chairperson may at any time call a meeting of the Board and shall call a meeting within 7 days—

- (a) of the receipt by him or her of a request for the purpose addressed to him or her in writing and signed by 3 other members;
- b) of receiving a direction to that effect addressed to him or her in writing and signed by the Minister.

3. Presiding at meetings. The Chairperson, or in his or her absence the Deputy Chairperson, shall preside at all meetings of the Board and, in the case of the absence of both, the members present and constituting a quorum shall elect a temporary Chairperson from among their number who shall preside at the meeting.

4. Quorum. A simple majority of the members shall constitute a quorum.

5. Voting. All decisions of the Board shall be decided by a majority of members presiding and voting at the meeting, and in the event of an equality of votes, the Chairperson shall have a casting vote.

6. Additional person to attend meetings. (1) The Chairperson may invite any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in sub-section (1) may take part in the deliberations of the Board but shall not vote on any matter.

7. Minutes. (1) Minutes in proper form of each meeting shall be kept by the Secretary or such officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairperson or Deputy Chairperson.

(2) Confirmed minutes of meetings shall be submitted to the Minister within one month of the date of the meeting at which they were confirmed.

8. Validity of decisions of the Board. An act done or proceeding taken by the Board under this Act or the Regulations may not be questioned on the ground of—

- (a) the existence of any vacancy in the membership of or of any defect in the constitution of the Board; or
- (b) any omission, defect or irregularity that does not affect the merits of the case.

9. Appointment of Committees. (1) The Board shall appoint committees to assist with the proper discharge of its functions subject to such conditions or restrictions as the Board imposes.

(2) The number of members of a Committee appointed by the Board and the terms of office of the members shall be fixed by the Board.

(3) A Committee appointed by the Board under this section may include persons who are not members, but such persons shall not comprise more than one-third of the membership of the committee.

(4) Where a person other than a member is appointed to a committee under subsection (3), the Minister may determine the remuneration and allowances to be paid to that person.

10. Disclosure of Member's interest. (1) This section applies to a member of the Board or a member of a Committee of the Board if—

- (a) the member has direct or indirect interest in a matter being considered, or about to be considered, by the Board or a committee; and
- (b) the interest could conflict with the proper performance of the duties of the member with respect to the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the knowledge of a member, the member shall disclose the nature of the interest to the Board or a Committee meeting.

(3) Unless the Board or the Committee otherwise directs, the member shall not—

- (a) be present at the meeting when the Board or Committee considers the matter; or
- (b) take part in a decision of the Board or Committee with respect to the matter.

11. Financial arrangements. (1) The financial year of the Board shall be the period of twelve months ending on 31st December in each year.

(2) The funds of the Board shall consist of—

(a) money appropriated by Parliament for the purpose of running the Board; and

(b) any other funds as may lawfully accrue to the Board.

(3) The Board shall keep proper records of its accounts in accordance with generally accepted international accounting standards and principles, and such accounts shall be audited annually by the Director of Audit.

12. Annual reports. For each financial year, the Board shall submit an annual report to the Minister as prescribed.

Passed by the House of Representatives this 14th day of August, 2014.

WILLAN THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 25th day of August, 2014.

WILLAN THOMPSON
Clerk to the Senate.

GRENADA