

**THE GAMBIA PUBLIC PROCUREMENT AUTHORITY  
ACT, 2014**

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**THE GAMBIA PUBLIC PROCUREMENT AUTHORITY  
ACT, 2014.**

**AN ACT** to provide for the establishment, functions and powers of The Gambia Public Procurement Authority and for the basic principles and procedures to be applied in the public procurement of goods, works and services, and for connected matters.

[            ]

**ENACTED** by the President and the National Assembly.

**PART I- PRELIMINARY**

**1. Short title and commencement**

(1) This Act may be cited as The Gambia Public Procurement Act, 2014.

(2) This Act shall come into force on such date as the Minister appoints by notice published in the gazette and the Minister may appoint different dates for different parts of the Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

“**Authority**” means The Gambia Public Procurement Authority;

“**award**” means a decision by the procuring organisation to determine the successful bidder;

“**bid**” means a tender, an offer, a proposal or price quotation given in response to an invitation to supply goods, works or services;

“**bidder**” means a physical or juridical person submitting or seeking to submit a bid;

“**bidding documents**” means the tender solicitation documents or other documents for solicitation of bids, on the basis of which bidders are to prepare their bids;

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

**“Consultant”** means an individual or a company who or that gives expert advice on a particular subject which is paid for;

**“consultancy services”** means work carried out by a Consultant;

**“Complaints Review Board”** means the Board instituted to receive and administer procurement related complaints;

**“corrupt practice”** includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in the execution of a contract;

**“determination of qualifications”** means a review of a bidder’s formal and substantive status and resources affecting its capacity to sustain a contractual commitment to the procuring organisation;

**“direct procurement”** means single source procurement;

**“Director General”** means the Director General of the Authority;

**“fraudulent practice”** includes –

- a) a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the procuring organisation, and
- b) collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and deprive the procuring organisation of the benefits of free and open competition;

**“goods”** means objects of every kind and description, including raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity;

**“international tendering proceeding”** means a tendering proceeding in which the invitation to bid or to apply for pre-qualification, is published in the international media;

**“Minister”** means the Minister responsible for Finance, and

**“Ministry”** shall be construed accordingly;

**“procurement” or “public procurement”** means the acquisition by any means, of goods, works, services or consultancy services, funded in whole or in part by public funds;

**“procurement contract”** means the contract between a procuring organisation and a supplier resulting from procurement proceedings;

**“procuring organisation”** means a Ministry, Department, Agency or Organ of the State, Public Enterprise, Local Government Authority or other arm or unit of Government, subvented institution or any subdivision thereof, engaging in procurement;

**“procurement actors”** means staff of the Authority, members of the Complaints Review Board, Contracts Committees and specialized procurement units or any other person engaged in public procurement;

**“public enterprise”** means an enterprise which is wholly owned or controlled by the Government or a Government entity;

**“public funds”** means –

- (a) any monetary resources appropriated to procuring organisations through budgetary processes,
- (b) aid, grants and credits made available to procuring organisations by local and foreign donors, and
- (c) revenues of procuring organisations, including the Consolidated Revenue Fund, the Development Fund and general funds of Local Government Authorities;

**“Regulations”** means regulations made under this Act;

**“services”** means any object of procurement, other than goods works or consultancy service;

**“supplier”** means a natural or juridical person under contract with a procuring organisation to supply goods, works or services; and

**“works”** means all works associated with the construction, rehabilitation, demolition, maintenance or renovation of a building or structure, including –

- (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, and
- (b) services incidental to works comprising drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the work itself.

### **3. Objectives of this Act**

The objectives of this Act are to provide a system for ensuring-

- (a) transparent, efficient and economic public procurement;
- (b) accountability in public procurement;
- (c) a fair opportunity to all prospective suppliers of goods, works, services and consultancy services;
- (d) the prevention of fraud, corruption and other malpractices in public procurement; and
- (e) improvements in social and economic capacity in The Gambia, including facilitating the participation of local small and medium enterprises and individuals to participate in a competitive and economic manner, as suppliers, contractors and subcontractors in public procurement.

## **PART II - THE GAMBIA PUBLIC PROCUREMENT AUTHORITY**

### **4. Establishment of The Gambia Public Procurement Authority**

(1) There is established by this Act, the Gambia Public Procurement Authority.

(2) The Authority -

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and

- (c) may purchase and otherwise acquire and dispose of any property, movable and immovable.

(3) The application of the common seal of the Authority shall be authenticated by the signature of a person authorised by the Authority to sign on its behalf and every document bearing the imprint of the seal of the Authority shall be taken to be properly sealed unless the contrary is proved.

## **5. The Board of Directors**

(1) The affairs of the Authority shall be governed by the Board of Directors.

(2) The Board shall comprise -

- (a) a Chairperson;
- (b) the Permanent Secretary of the Ministry;
- (c) the Solicitor General;
- (d) the Auditor General;
- (e) two persons from the private sector; and
- (f) the Director General.

(3) The functions of the Board include the following-

- (a) determine the overall policy and strategy of the Authority, with particular regard to the financial, operational, organisational and administrative programmes and to ensure their implementation;
- (b) approve and adopt the internal rules of the Authority and its component parts, including its own rules of procedure;
- (c) adopt the Authority's procurement regulations entailing procurement best practices; and
- (d) do anything to ensure that the Authority carries out its functions and performs the tasks assigned to it under this Act.

(4) The Board shall appoint a Secretary to the Board from amongst the staff of the Authority.



(5) The members of the Board, other than ex-officio members shall –

- (a) be persons with high integrity and extensive experience in public procurement; and
- (b) have no direct or indirect involvement in public procurement functions during their tenure as members of the Board.

(6) The members of the Board, other than ex-officio members shall be appointed by the President after consultation with the Public Service Commission.

(7) A member of the Board other than an ex officio member shall hold office for three years and may be re-appointed for one further term.

(8) A member may at any time resign his or her office by a letter addressed to the President.

(9) A member shall cease to be a member of the Board if he or she -

- (a) is incapacitated by physical or mental illness, or is otherwise unable or unfit to discharge the functions of a member of the Board;
- (b) is adjudged a bankrupt;
- (c) is sentenced for a felony or an offence or involving financial impropriety;
- (d) is absent without the permission, from three successive meetings of the Board of which he or she has had notice;
- (e) resigns from office; or
- (f) contravenes section 7.

(10) Subject to section 6(4), the Board may act notwithstanding any vacancy in its membership.

## **6. Meetings of the Board**

(1) The Board shall meet at least once every three months at such place and time as the Chairperson may determine.

(2) A meeting of the Board shall be convened by the Secretary to the Board on the direction of the Chairperson by giving at least fourteen days written notice to the members.

(3) The Chairperson may at any time, and shall, if four other members request in writing, convene a special meeting of the Board to be held within seven days of the request.

(4) The Chairperson shall preside at the meetings of the Board, and in his or her absence, the members present at the meeting shall appoint one of their number to preside.

(5) The quorum at any meeting of the Board shall be five members.

(6) Subject to this Act, the Board and any of its committees may regulate its own proceedings.

(7) The Secretary shall keep minutes of Board meetings or a committee of the Board and shall be confirmed at the succeeding meeting.

(8) The Board shall arrive at a decision at a meeting on any matter by the majority votes of the members present and voting, and in the case of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(9) The Board may co-opt any person to act as an adviser at its meeting without the right to vote.

(10) The validity of a proceeding of the Board shall not be affected by a vacancy in the membership or by any defect in the appointment of a member.

## **7. Disclosure of interest**

A member who has a direct or indirect personal interest in the outcome of the deliberations of a Board meeting in relation to a matter shall –

- (a) disclose the nature of the interest, which shall be recorded in the minutes of the meeting; and
- (b) withdraw from any deliberations of the Board in respect of that matter and not vote on it.

## **8. Transaction of business without meeting**

A resolution is a valid resolution of the Board, even though it was not passed at a meeting of the Board, if -

- (a) it is signed or assented to by a majority of members of the Board; and
- (b) proper notice of the proposed resolution was given to each member.

## **9. Committees of the Board**

(1) For the better carrying into effect of the functions of the Authority, the Board shall establish-

- (a) a standing committee for Supplier and Donor Relations, with representation from the private sector and donors;
- (b) a standing committee for Procuring Organisations, with representation from all types of procuring organisations in The Gambia; and
- (c) such number of other committees consisting of persons who are members of the Board or employees of the Authority, as the Board deems appropriate to perform such functions and responsibilities as the Board determines.

(2) The Board shall appoint the chairperson of each committee from amongst its members.

(3) An officer of the Authority duly designated in writing by the Director-General shall be secretary to a committee of the Board, and shall on the direction of the chairperson of the committee, convene meetings of the committee.

(4) The provisions of section 6 relating to the meetings of the Board shall apply to the meetings of a committee, mutatis mutandis.

## **10. Remuneration and expenses of members**

(1) Members of the Board shall be paid such allowances as the Minister may determine.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connection with the business of the Board or the committee.

### **11. Powers of the Board**

In the discharge of its functions under this Act, the Board may -

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

## **PART III- FUNCTIONS AND POWERS OF THE AUTHORITY**

### **12. Functions of the Authority**

(1) The Authority shall be an autonomous agency of the Government responsible for the regulation and monitoring of public procurement in The Gambia.

(2) A procuring organisation shall not engage in a procurement above such amount as may be specified in the regulations, without obtaining the approval of the Authority at every stage of the procurement proceedings unless it has satisfied the following conditions –

- (a) the procuring organisation shall be authorised by the Authority, and in determining whether to grant such authorisation, the following criteria shall be considered-
  - (i) the expected volume and frequency of procurement requirements of the procuring organisation, and
  - (ii) the capacity of the procuring organisation to conduct procurement, which may be measured by such factors as the availability of trained and

experienced procurement officers, the availability of information technology and communication facilities in the organisation and the performance of the organisation as measured by the Authority's periodic public procurement reviews; and

- (b) the procuring organisation shall make an application in the prescribed form to the Authority by the deadline set in the Regulations;

(3) The Authority shall cause a capacity assessment to be made and completed of all procuring organisations seeking authorisation within six months of the deadline set in the regulations.

(4) The Authority shall authorise all procuring organisations which successfully complete the capacity assessment to carry out procurement in compliance with this Act without obtaining the approval of the Authority at every stage of the procurement proceedings for a period of two years from the date of the authorisation.

(5) A procuring organisation which has been authorised to carry out procurement without obtaining the approval of the Authority at every stage of the procurement proceedings shall benefit from such authorisation for consecutive and renewable periods of two years provided they-

- (a) successfully complete the capacity assessment foreseen in sub-section (3) whenever the first assessment takes place; or
- (b) successfully complete the subsequent review of capacity assessment which shall be undertaken every two years.

(6) Where the review of capacity assessment does not take place within any two year period, the authorisation shall be valid for the period between the initial capacity assessment and any subsequent review of capacity assessment.

(7) Without prejudice to the generality of sub-sections (1) to(6), the functions of the Authority shall be to-

- (a) provide guidance in developing and enhancing the efficiency and effectiveness of public procurement operations;

- (b) develop, in consultation with concerned professionals and official bodies for issuance by the relevant authorities for use throughout The Gambia-
  - (i) standardised and unified procurement regulations, to be published in the *Gazette*, or
  - (ii) instructions and bidding documents which shall be binding on all procuring organisations;
- (c) promote the development of a professional procurement workforce by ensuring the organisation and conduct of training programmes, and developing Government policies and programmes aimed at establishing procurement related positions, career paths and performance incentives and ensure adherence by trained persons to ethical standards;
- (d) collect data on public procurement and monitor the performance of procuring organisations in their conduct of procurement proceedings to ascertain efficiency and,

compliance with applicable legislation, regulations and instructions, including by way of procurement reviews;

- (e) provide annually to the Minister, a quantitative and qualitative assessment of procurement activities in The Gambia;
- (f) inspect records and activities of procuring organisations;
- (g) propose improvements in public procurement procedures;
- (h) provide secretariat support to the Complaints Review Board and assist in the development of its rules of procedure;
- (i) establish a data and information base concerning procurement terminology and legislation and set policy for and promote the application of modern information and communications technology to public procurement;
- (j) participate in discussions with donor and international organisations on public procurement issues affecting The Gambia;

- (k) consult with the Gambia Chamber of Commerce and Industry and other private sector bodies to obtain the views of the private sector on matters relating to public procurement;
- (l) publish a quarterly public procurement bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information;
- (m) maintain a data base of suppliers, contractors and consultants and a record of prices to assist in the work of procurement entities;
- (n) investigate and debar from procurement practice under this Act, suppliers, contractors and consultants who have seriously neglected their obligations under a public procurement contract, have provided false information about their qualifications or offered inducements of the kind referred to in sections 27 and 28 of this Act and in the regulations; and
- (o) investigate and refer to the Auditor General to take the required actions as defined in the regulations.

### **13. Powers of the Authority**

- (1) The Authority shall have such powers as are necessary to carry out its duties or which are incidental to the proper discharge of its duties.
- (2) In the exercise of its powers, the Authority shall not interfere in the award of any specific procurement contract.
- (3) Without prejudice to the generality of sub-section (1), the Authority may-
  - (a) require a contracts committee or procuring organisation to provide it with such information in relation to the procuring organisation as the Authority may require to carry out its functions under this Act;
  - (b) appoint, consult and seek the advice of such persons or bodies including Ministries and other agencies of Government whether inside or, with the prior consent of the Minister, outside The Gambia as it considers appropriate;

- (c) establish a committee or other body with the responsibility to make recommendations to the Authority on a specific matter in accordance with section 10 (1);
- (d) ensure the provision of training, technical assistance or advice to the procuring cadre and contracts committees of procuring organisations, and to the private sector, to prepare them for conducting and participating in procurement proceedings;
- (e) publish in such manner as it considers appropriate, such information relating to its functions and activities as it thinks fit;
- (f) prepare or cause to be prepared any relevant documentation (including drafts of any required legislation, regulations or instructions) necessary to implement this Act or to effect further development of public procurement in The Gambia; and
- (g) make an extract from or a copy of any document, book, voucher, stamp, newspaper, tape or data storage devices, in the possession or under the control of any procuring organisation.

(4) The Contracts Committee of a procuring organisation shall, when requested to do so by the Authority, provide it with such information as the Authority may require to carry out its functions under this Act.

#### **PART IV - STAFF OF THE AUTHORITY**

##### **14. Appointment of Director General**

(1) There shall be a Director-General of the Authority who shall be appointed by the President, after consultation with the Board and the Public Service Commission.

(2) The Director-General is the chief executive officer of the Authority and subject to the general supervision and control of the Board, shall be responsible for –

- (a) the day- to- day operations of the Authority;
- (b) the management of the funds, property and business of the Authority; and



- (c) the administration, organisation and control of the other officers and staff of the Authority.

(3) The Director-General shall devote his or her full time to the duties of his or her office and shall not hold any office of trust or profit, or engage in any other occupation for reward outside the office of Director-General, except that, the Board may grant specific and time-limited waivers to this sub-section if requested by the Director-General, and the Board makes a written determination that –

- (a) it is in the best interest of the Authority; and
- (b) there is no apparent or actual conflict of interest in such exceptional office or occupation.

(4) The Director-General may, subject to this Act and to any general or specific directions of the Board, delegate any of his or her functions to one or more officers of the Authority.

#### **15. Appointment of other staff**

The Director-General may on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority as may be required for the performance of the functions of the Authority.

### **PART V – FINANCIAL PROVISIONS**

#### **16. Funds of the Authority**

(1) The funds of the Authority shall comprise-

- (a) monies appropriated to it by the National Assembly;
- (b) monies received by way of grants gifts or donations from sources inside or outside The Gambia, provided that the terms and conditions of the grant, gift or donation are not inconsistent with the functions of the Authority;
- (c) subject to approval of the Minister, monies raised by way of loans, for the discharge of its functions;

- (d) Fees charged and collected in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority;
- (e) fees paid in respect of complaints filed or request for review with the Complaints Review Board; and
- (f) such other sources of income as approved by the Minister.

(2) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended, subject to the budget of the Authority, in the ensuring financial year.

(3) The Authority may subject to the approval of the Board, invest in such manner as it thinks fit, such of its funds as it does not immediately require for the performance of its functions.

#### **17. Accounts, audit and estimates**

(1) The Authority shall keep proper records and books of accounts of its income and expenditure.

(2) The Authority shall prepare a statement of accounts in respect of each financial year.

(3) The accounts of the Authority in respect of each financial year shall be subject to audit by the Auditor General.

#### **18. Annual reports**

(1) The Authority shall prepare and submit to the Minister within three months after the end of each financial year, a report on the activities of the Authority during the preceding year.

(2) The Minister shall cause the report to be laid before the National Assembly at the first reasonable opportunity.

#### **19. Financial year**

The financial year of the Authority shall commence on 1<sup>st</sup> January and end on 31<sup>st</sup> December in the same year.

## **PART VI - GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS**

### **20. Scope of application**

(1) Subject to sub-section (2), this Act applies to all public procurements as defined in section 2.

(2) The provisions of this Act may be modified where the Minister responsible for Defence, with the approval of the Minister responsible for Finance, determines that a procurement is related to national defence or national security.

(3) For the purposes of sub-section (2), procurement of general stores, uniforms, stationary, computers and standard vehicles shall not be classified as national defence or national security procurement.

(4) Where a provision of this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory pursuant to an obligation entered into by the Government, the requirements of the rules shall prevail.

(5) The President may by order published in the gazette, exempt any procuring organisation from requiring the approval of the Authority with respect to any procurement in whole or in part, and in such case the Cabinet shall be responsible for giving such approvals instead of the Authority.

### **21. De-aggregation of procurement**

A procuring organisation shall not divide its procurement artificially in order to avoid the monetary thresholds set in this Act or in any Regulations.

### **22. Qualifications of bidders**

(1) The principles and rules in this section apply to the determination by procuring organisations, of the qualifications of a bidder at all stages of the procurement proceedings, including pre-qualification proceedings.

(2) In order to enter into a procurement contract, a bidder shall demonstrate, and the procuring organisation shall positively determine that the bidder qualifies for the award of the procurement contract by having the necessary technical, financial and ethical capacity.

(3) In order to qualify for the award of a procurement contract, a bidder shall demonstrate to the satisfaction of the procuring organisation that -

- (a) it possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation and personnel to perform the contract;
- (b) it has the legal capacity to enter into the contract;
- (c) it is not insolvent, in receivership, bankrupt or being wound up, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;
- (d) it has fulfilled its obligations to pay taxes and social security contributions, if it applies; and
- (e) it, or any of its directors or officers have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings, and that it is not subject to debarment.

(4) A procuring organisation may require a bidder to provide such appropriate documentary evidence or other information as the procuring organisation may consider useful to satisfy itself that the bidder is qualified in accordance with the criteria.

(5) Qualification requirements and documentation required to be submitted in connection with the requirements shall be set out in the pre-qualification documents or bidding documents, and shall apply equally to all bidders.

(6) A procuring organisation shall evaluate the qualifications of prospective bidders only in accordance with the criteria and procedures set out in the pre-qualification or bidding documents.

(7) A procuring organisation shall disqualify a prospective bidder who submits a document containing false information.

(8) A procuring organisation shall disqualify a prospective bidder if it finds at any time that the information submitted concerning

the qualifications of the prospective bidder was materially inaccurate or incomplete.

### **23. Pre-qualification proceedings**

(1) Pre-qualification proceedings may be undertaken by a procuring organisation in order to limit the bidding process in accordance with the criteria set out in section 22(2) and (3), to bidders with the capability and resources to perform the particular contract satisfactorily, taking into account their-

- (a) experience and past performance on similar contracts;
- (b) capabilities with respect to personnel, equipment, works or manufacturing facilities; and
- (c) financial position.

(2) Pre-qualification proceedings may be required for contracts for large or complex works, custom-designed equipment, industrial plant, specialised services, and contracts to be let under turnkey, design and build or management contracting.

(3) The invitation to pre-qualify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as prescribed in the Regulations.

(4) The pre-qualification documents shall be sent to all bidders who responded to the invitation.

(5) A procuring organisation shall respond within the time prescribed by regulations to requests for clarification of the pre-qualification documents that are received within ten days prior to the deadline for submission of applications to pre-qualify, and the clarifications shall be provided to all bidders.

(6) Potential bidders who respond to the invitation and meet the specified criteria shall be allowed to bid and a procuring organisation shall inform all applicants of the result of the pre-qualification proceedings within the time prescribed by Regulations.

### **24. Eligibility**

(1) In order to be awarded a procurement contract, suppliers shall be registered with the Authority in accordance with Regulations made under this Act.

(2) Notwithstanding sub-section (1), a procurement contract may be awarded to a supplier who or which is not registered under the following conditions-

- (a) where only one supplier has the technical capability or capacity to fulfil the procurement requirement, or the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative exists;
- (b) where there is an emergency need for the goods, works, consultancy services or services, involving an imminent threat to the physical safety of the population, of damage to property, or in the case of other unforeseeable urgent circumstances not due to the dilatory conduct of the procuring organisation, and engaging in tendering proceedings or other procurement methods would therefore be impractical; or
- (c) where the procuring organisation, having procured goods, works, consultancy services or services from a supplier, determines that additional goods, works or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, works or services, taking into account -
  - (i) the effectiveness of the original procurement in meeting the needs of the procuring organisation,
  - (ii) the limited size of the proposed procurement in relation to the original procurement,
  - (iii) the reasonableness of the price, and
  - (iv) the unsuitability of alternatives to the goods or services in question.

## **25. Rules concerning description of goods, works, consultancy services and services**

(1) The technical specifications for goods, works, consultancy services and services shall clearly describe a procuring organisation's requirements with respect to quality, performance, safety, dimensions, symbols, terminology, packaging, marking

and labelling and requirements relating to conformity assessment procedures.

(2) In preparing the bidding and pre-qualification documents –

- (a) any specifications, plans, drawings and designs setting out the technical or quality characteristics of the goods, works or services to be procured; and
- (b) requirements concerning testing and test methods, packaging, marking, labelling, or conformity, certification, symbols and terminology, or description of services, and contract terms,

shall be drawn up in an objective manner.

(3) Descriptions and definitions of procurement requirements shall -

- (a) be formulated in terms of performance wherever possible rather than design or descriptive characteristics; and
- (b) take into account international and national standards,

so as to maximize competition and avoid creating unnecessary obstacles to participation by bidders in the procurement proceedings, while ensuring that applicable national and international standards and the requisite quality levels are met.

(4) A requirement or reference shall not be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless -

- (a) there is no sufficiently precise or intelligible way of describing the procurement requirements; and
- (b) words such as “or equivalent” are included in the specifications.

## **26. Form of communication**

(1) Subject to provisions of this Act and the Regulations, any document, notification, decision and other communication required to be submitted by a procuring organisation to a bidder or by a bidder to the procuring organisation shall be in writing.

(2) The use of other forms of communication may be authorised, provided that a record of the content of the communication is preserved and other requirements set out in this Act and in the Regulations are met.

## **27. Conduct of public officials and bidders**

(1) A public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of procurement contracts shall –

- (a) discharge his or her duties impartially so as to ensure fair competitive access to public procurement by suppliers;
- (b) act in the public interest, and in accordance with the objectives and procedures set out in this Act and in the Regulations;
- (c) avoid conflicts of interest and the appearance of impropriety in carrying out his or her duties and conducting himself or herself; and
- (d) not commit or abet corrupt or fraudulent practices, including the solicitation or acceptance of improper inducements.

(2) A bidder shall not engage in or abet corrupt practices, including the offering of improper inducements, fraudulent practices or the misrepresentation of facts, in order to influence -

- (a) a procurement process or the execution of a contract to the detriment of the procuring organisation; and
- (b) collusion amongst bidders, prior to or after bid submission, designed to establish bid prices at artificial non-competitive levels and to deprive the procuring organisation of the benefits of free and open competition.

(3) Any information concerning the planning or the occurrence of corrupt or fraudulent practice shall be reported promptly to the head of the procuring organisation, to the Authority and to the relevant law-enforcement authorities.

(4) A procuring organisation shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in sub-section (2) and promptly notify the rejection to the bidder concerned.



(5) A public officer shall keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information.

(6) The Authority may take punitive action as defined in the Regulations for a violation of any provision of this Act or the Regulations or refer it to the relevant authorities for the applicable administrative, civil and criminal sanctions.

(7) A procurement officer and member of a Contracts Committee shall on assuming his or her duties, subscribe the oath of office with specific reference to the obligation to -

- (a) adhere to rules of conduct set out in this Act, the Regulations, instructions and other applicable procedures; and
- (b) faithfully execute the duties and tasks properly assigned to him or her.

## **28. Debarment of bidders and suppliers**

(1) The Authority shall protect the Government from actual or potential harm by excluding a potential supplier or bidder from participation in public procurement for a minimum of one year and a maximum of five years, after -

- (a) giving ten working days' notice to the supplier or bidder involved, of the cause of the proposed action;
- (b) giving the potential supplier or bidder five working days to respond to the proposed action; and
- (c) consultation with the Complaints Review Board and the affected procuring organisation to consider all the facts of the case.

(2) A supplier or bidder shall not be excluded from participation in procurement except on the following grounds -

- (a) unjustified refusal by a successful bidder to -
  - (i) sign a procurement contract, or
  - (ii) furnish a performance security, if required to do so in accordance with the terms of the bidding documents;

- (b) provision of false information supplied in the process of submitting a bid;
- (c) where the Competition and Consumer Protection Commission establishes the fact of collusion between the bidders or a bidder and a public officer concerning the formulation of terms of reference or the bidding documents;
- (d) connivance to interfere with the participation of competing bidders;
- (e) misconduct relating to the submission of bids, including, corruption, price fixing, a pattern of under-pricing of bids, and breach of confidentiality;
- (f) breach of contractual obligations under a procurement contract deemed serious enough to warrant debarment, provided that the breach was not due to circumstances beyond the control of the supplier or bidder;
- (g) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or sub-contract; and
- (h) conviction for an economic crime.

## **29. Procurement planning**

(1) A procuring organisation shall engage in procurement planning, with a view to achieving maximum value for public expenditure and the other objectives set out in section 3, and in accordance with the applicable budgetary procedures.

(2) A procurement organisation shall prepare a procurement plan to support its approved programme with a view to achieving maximum value for public expenditure and the other objectives set out in section 3, and in accordance with the applicable budgetary procedures.

(3) The plan shall indicate-

- (a) contract packages;
- (b) estimated cost for each package;
- (c) the procurement method; and

(d) processing steps and times.

(4) A procurement organisation shall submit its procurement plan to the Authority as determined in the Regulations.

(5) After budget approval and at quarterly intervals, each procurement organisation shall submit an update of the procurement plan to the Authority.

### **30. Contract administration**

(1) A procuring organisation is responsible for the administration of procurement contracts into which it enters and shall establish procedures for contract administration and provide the necessary material and human resources for their implementation.

(2) A procuring organisation may agree to submit to arbitration, disputes relating to the performance of procurement contracts.

### **31. Rejection of all bids and termination for convenience**

(1) A bid may be rejected only in accordance with this Act and the Regulations.

(2) A procuring organisation may-

(a) reject all bids at any time prior to the acceptance of a bid;

(b) cancel the procurement proceedings in the public interest; and

(c) terminate a procurement contract for convenience, in the public interest.

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

(4) A procuring organisation shall not be liable to a bidder by reason only of cancellation of procurement proceedings under sub-section (2)(b).

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

### **32. Debriefing**

A procuring organisation shall on request, communicate to a bidder the grounds for the rejection of its application to pre-qualify, or of its bid.

### **33. Entry into force of procurement contract**

The manner of entry into force of a procurement contract shall be indicated in the bidding documents.

### **34. Public notice of procurement contract awards**

(1) A procuring organisation shall promptly publish a notice of procurement contract awards when the price of the contract exceeds the level set by the Regulations.

(2) A procuring organisation shall allow a period of ten days between the award of a contract and its conclusion.

(3) The notice, which shall indicate the contract price and the name and address of the successful bidder, shall be published in the local media, the Authority's website and in such other medium as provided in the Regulations.

### **35. Record of procurement proceedings and archiving requirement**

(1) A procuring organisation shall maintain a record and preserve documentation of the procurement proceedings.

(2) Information to be included in the record shall to the extent applicable, include -

- (a) a description of the object of the procurement;
- (b) a list of the participating bidders, their names and addresses, and their qualifications or lack of qualifications;
- (c) names of bidders that express interest or a request to be short listed;
- (d) the name and address of the successful bidder;
- (e) bid prices, including that of the winning bid;

- (f) the evaluation criteria stipulated and applied, including their relative weight;
- (g) a summary of the evaluation of bids;
- (h) a summary of any review proceedings and decisions on the proceedings;
- (i) a summary of requests for clarification of pre-qualification documents and bidding documents, and responses to those clarifications;
- (j) statement of grounds for rejection of bids or cancellation of procurement proceedings;
- (k) statement of grounds for choice of a procurement method, other than tendering or request for proposals for services;
- (l) statement of grounds for reduction of bid-preparation periods;
- (m) information concerning rejection of bids pursuant to sections 27(4) and 31(2);
- (n) summary of requests for proposals by members of the Contracts Committee; and
- (o) such other information as may be required by the Regulations.

(3) The record shall on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed at an earlier or later point in time pursuant to the Regulations or by order of a competent court.

(4) The documents required to be preserved pursuant to subsection (1) include -

- (a) a copy of the invitation to bid actually made available to bidders;
- (b) pre-qualification documents, if any;
- (c) bidding documents and any amendments made to the documents as issued to the bidders;

- (d) requests for clarification of bidding and pre-qualification documents, and responses thereto;
- (e) minutes of -
  - (i) pre-bid conference, if any,
  - (ii) bid opening proceedings,
  - (iii) bid evaluation meetings,
  - (iv) any negotiations with bidders, where applicable;  
and
  - (v) all other meetings related to the procurement;
- (f) the time the bids are submitted;
- (g) correspondence between the procuring organisation and the bidders;
- (h) bid evaluation reports;
- (i) the procurement contract; and
- (j) correspondence and documents relating to the performance of the procurement contract.

(5) A procuring organisation shall maintain the documents referred to in sub-section (4) for a period of five years from the date of a decision to cancel or terminate the procurement proceedings, the date of contract award, or the date of contract completion, whichever comes later.

(6) A procuring organisation shall not, except when ordered to do so by a court, disclose any information –

- (a) if the disclosure would -
  - (i) be contrary to law,
  - (ii) impede law enforcement,
  - (iii) not be in the public interest,
  - (iv) prejudice legitimate commercial interest of the parties,

- (v) would inhibit fair competition; or
- (b) relating to the examination, evaluation and content of bids, other than in the summary form referred to in sub-section (2).

### **36. Small and medium local businesses**

(1) The Authority shall in collaboration with the heads of procuring organisations, establish a programme to facilitate participation by small and medium local enterprises and individuals in public procurement.

(2) The head of a procuring organisation shall –

- (a) be responsible for effectively implementing the programme within its activities, and achieving programme goals;
- (b) ensure that procurement personnel maintain knowledge of the programme requirements; and
- (c) take all reasonable action to increase participation in the organisation's procurement by those enterprises.

### **37. Responsibility for supply management**

(1) A Permanent Secretary or head of a procuring organisation and the members of the Contracts Committee shall be -

- (a) personally responsible for any lapses in the general supervision and control of stores and stores accounts in the procuring organisation and ensure that the members of the store-keeping staff perform their duties satisfactorily; and
- (b) liable for any financial loss incurred through failure to meet those responsibilities.

(2) In formulating and updating procedures for supply management, modern information and communications technology shall be applied to the maximum practical extent to supply management.

## **PART VII – METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE**

### **38. Preference for open tendering**

Except as otherwise provided in this Part, public procurement shall be through the use of open tender proceedings.

### **39. Conditions for use of restricted tendering**

Restricted tender proceedings may be used only where –

- (a) the goods, works, consultancy services or services are only available from a limited number of bidders, known to the procuring organisation;
- (b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement; or
- (c) the requirement is of a specialised nature or has requirements of public safety or public security which make an open tender method inappropriate.

### **40. Conditions for use of two-stage tendering**

A tendering proceeding may be conducted in two stages where–

- (a) it is not feasible to fully define the technical or contractual aspects of the procurement; and
- (b) because of the complex nature of the goods, works, consultancy services or services to be procured, the procuring organisation wishes to consider various technical or contractual solutions, and to negotiate with bidders about the relative merits of those variants and possible amendments thereto, before deciding on the final technical specifications and contractual terms.

### **41. Conditions for use of international competitive tendering**

(1) An international competitive tendering proceeding shall be held where-

- (a) the estimated value of the contract exceeds an amount set by the Regulations;



- (b) the goods, works, consultancy services or services are not available at competitive prices and conditions from at least three suppliers in The Gambia; and
- (c) a supplier was not revealed by national tender proceedings.

(2) A foreign bidder shall be permitted to participate in tendering proceedings without regard to whether or not the invitation to tender or to apply for pre-qualification is published in the international media.

#### **42. Conditions for use of request for proposals**

Request for proposals may be used for the procurement of consultancy services and other types of intellectual services.

#### **43. Conditions for use of request for quotations**

(1) Request for quotations may be used for the procurement of-

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

where the estimated value of the procurement does not exceed the amount set in the Regulations.

(2) Local requests for quotation proceedings shall be used when the desired goods, works, consultancy services or services are ordinarily available from three or more sources in The Gambia at competitive prices and conditions.

#### **44. Conditions for use of single-source procurement**

(1) The single-source procurement method may be used only in the following circumstances -

- (a) where the estimated value of the procurement does not exceed the amount set in the Regulations;
- (b) where only one supplier has the technical capability or capacity to fulfil the procurement requirement, or the exclusive right to manufacture the goods, carry out the

works, or perform the services to be procured, and no suitable alternative exists;

- (c) where there is an emergency need for the goods, works, consultancy services or services, involving an imminent threat to the physical safety of the population, of damage to property, or in the case of other unforeseeable urgent circumstances not due to the dilatory conduct of the procuring organisation, and engaging in tendering proceedings or other procurement methods would therefore be impractical; and
- (d) where the procuring organisation, having procured goods, works, consultancy services or services from a supplier, determines that additional goods, works or services must be procured from the same source for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology, works or services, taking into account -
  - (i) the effectiveness of the original procurement in meeting the needs of the procuring organisation,
  - (ii) the limited size of the proposed procurement in relation to the original procurement,
  - (iii) the reasonableness of the price, and
  - (iv) the unsuitability of alternatives to the goods or services in question;
- (e) for purchase of perishable commodities such as fresh fruits, vegetables or other similar items which are purchased on competitive market terms.

(2) A single-source procurement on the grounds referred to in sub-sections (1)(b), (c) and (d) shall be subject to approval by the Authority, which shall act on requests for approval without delay.

#### **45. Grounds for choice of procurement method used to be noted in record of proceedings**

Where a procuring organisation uses a method of procurement other than open tender or, in the case of procurement of consultants' services, a method other than request for proposals, it shall note in the record of the procurement proceedings, the grounds for the choice of the procurement method used.

#### **46. Procurement of privately financed infrastructure and services**

(1) A contract for privately financed infrastructure projects such as “build-operate-transfer” and related forms of private sector involvement in providing public services may be awarded on a competitive basis.

(2) Any Regulations and Instructions issued pursuant to this Act shall set out specific procedures to be followed in the application of one or more of the procurement methods set out in this Part to procurement of works and services carried out on the basis of private financing.

### **PART VIII - CONTRACTS COMMITTEES, SPECIALISED PROCUREMENT UNITS AND THE MAJOR TENDER BOARD**

#### **47. Establishment of Contracts Committees**

(1) A Contracts Committee shall be established in every procuring organisation in The Gambia supported by specialised procurement units to be established in the organisation, and procuring organisations with low levels of procurement may jointly establish a shared procurement unit.

(2) The composition of a Contracts Committee shall be in accordance with section 48.

(3) A procuring organisation is responsible, and accounting officers and other officials concerned are accountable for public procurement in accordance with this Act and any Regulations issued by the Authority, and other applicable laws, regulations, and Financial Instructions applicable in The Gambia.

(4) The accounting officer or the head of a procuring organisation where there is no designated accounting officer, shall appoint the head of the procuring unit or any senior staff member of the organisation to act as Secretary to the Contracts Committee.

(5) The Secretary of the Contracts Committee shall take minutes of meetings of the Contracts Committee and maintain a file of all matters considered by the Contracts Committee.

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

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

(8) A decision by a procuring organisation to proceed with direct procurement in accordance with this Act shall be subject to review and approval by the relevant Contracts Committee.

(9) The minutes and other records of a Contracts Committee shall be open to inspection by representatives of the Authority at any time and shall be made public to the extent provided for in section 35 (3).

(10) A Contracts Committee shall submit to the Authority for review, monthly reports on all the evaluations done by the Contracts Committee.

(11) A Contracts Committee shall make necessary arrangements to ensure that timely information on the conclusion and execution of contracts by a department or unit of a procuring organisation, as well as on supplier performance, is reported to the Contracts Committee.

(12) All contracts committees shall submit to periodic reviews of the Authority for the purpose of its capacity assessment.

#### **48. Composition of Contracts Committees**

(1) A Contracts Committee shall be staffed with personnel who are well informed concerning public procurement, and whose professional qualifications meet the requirements that may be established by the head of the procuring organisation, in accordance with guidelines to be issued by the Authority.

(2) The head of the procuring organisation or head of the accounting unit, or where there is no designated accounting officer, or his or her representative shall chair the Contracts Committee.

(3) Appointment of other members and staff to a Contracts Committee shall be in accordance with the guidelines established by the Authority.

(4) A Contracts Committee shall consist of at least three members and shall include in addition to the chairperson, an accounts officer or any budget professional, a secretary (head of

the procurement unit), and any other person familiar with the substance of the procurement, if available.

(5) Ad hoc members who provide necessary technical and business expertise to the Contracts Committee shall be drawn from the relevant Ministry or unit.

#### **49. Functions of Contracts Committees**

The functions of a Contracts Committee shall include –

- (a) verification of proper procurement planning and availability of funds;
- (b) approval of the invitation to bid and the bidding documents;
- (c) approval of the use of single-source procurement in accordance with the Regulations;
- (d) the opening of bids;
- (e) comparing and evaluating the bids, and selecting the winning bid, subject to paragraph (f);
- (f) submitting the recommendations resulting from the evaluation of bids to the accounting officer of the procurement organisation concerned or other official designated in the Regulations, in case the value of the procurement exceeds the authority of the Contracts Committee;
- (g) ensure that stores and equipment are disposed of in compliance with this Act; and
- (h) considering applications for the variations.

#### **50. Establishment of Specialised Procurement Units**

The Permanent Secretary or head of a procurement organisation shall establish Specialised Procurement Units and assign to the heads of those Units, authority to conduct procurement activities in accordance with this Act and the Regulations.

#### **51. Staffing of Specialised Procurement Units**

A Specialised Procurement Unit shall be staffed with personnel who are well trained in public procurement, and whose

professional qualifications meet the requirements that may be established in accordance with guidelines to be issued by the Authority.

## **52. Establishment of the Major Tender Board**

There is established by this Act, the Major Tender Board which shall handle procurements beyond a certain threshold as specified in the Regulations.

## **53. Career development and management of procurement officers**

(1) The Ministry shall be responsible for the career development and management of procurement officers.

(2) The Authority shall develop and recommend to the Permanent Secretary or head of a procuring organisation, a career development and management programme, and a system for selection, appointment and termination of appointment of procurement officers.

## **PART IX –CHALLENGES, RECONSIDERATION AND REVIEW**

### **54.The Complaints Review Board and the right to reconsideration and review**

(1) There is established by this Act, a Complaints Review Board consisting of seven members to review decisions made by procuring organisations at any stage of the procurement proceedings.

(2) Subject to sub-section (3), a bidder who claims to have suffered, or who is likely to suffer loss or injury due to a breach of a duty imposed on the procuring organisation by the procurement laws may seek a reconsideration and review in accordance with this Part.

(3) Sub-section (2) shall not apply to-

- (a) a decision by the procuring organisation under section 32(2) to reject all bids or to cancel the procurement proceedings; and
- (b) a refusal by the procuring organisation to respond to an expression of interest in participating in request for proposals for services proceedings set out in the Regulations.

(4) An application for reconsideration or review shall not be entertained unless it identifies the specific act of omission or commission alleged to violate the procurement laws.

## **55. Challenge procedures**

(1) The first step in instituting challenge proceedings is by filing a written application for reconsideration to the head of a procuring organisation prior to the entry into force of a procurement contract.

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

(3) The head of a procuring organisation shall render a decision within ten working days of the submission of the application for reconsideration.

(4) A person may file an application for review before the Complaints Review Board -

- (a) against a decision by the head of the procuring organisation, provided that the appeal is submitted within ten working days of the date of the decision;
- (b) where the head of a procuring organisation fails to issue a decision within the required time frame, provided that the application for review is filed within ten working days of the expiry of the time for the decision by the head of the procuring organisation referred to in sub-section (3); and
- (c) in the case of an application for review submitted in the first instance to the procuring organisation, and the procurement has already entered into force, the application shall not be entertained unless it is submitted to the procuring organisation within ten working days of when the bidder submitting it became aware of the circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.

(5) The Complaints Review Board shall make a decision under this Part within ten working days after receiving the complaint.

(6) Unless a complaint is dismissed, the Complaints Review Board may take one or more of the following actions, as appropriate—

- (a) prohibit the procuring organisation from acting, taking a decision or following a procedure that is not in compliance with the provisions of the procurement laws;
- (b) require the procuring organisation that has acted or proceeded in a manner that is not in compliance with the provisions of the procurement laws to act, take a decision or proceed in a manner that is in compliance with the laws;
- (c) overturn in whole or in part an act or a decision of the procuring organisation that is not in compliance with the provisions of the procurement laws, other than an act or decision bringing the procurement contract into force;
- (d) confirm a decision of the procuring organisation;
- (e) overturn the award of a procurement contract that has entered into force in a manner that is not in compliance with the provisions of the procurement laws and, if notice of the award of the procurement contract has been published, order the publication of notice of the overturning of the award;
- (f) order that the procurement proceedings be terminated;
- (g) dismiss the application;
- (h) require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting an application as a result of an act or a decision of, or procedure followed by, the procuring organisation in the procurement proceedings that is not in compliance with the provisions of the procurement laws; or
- (i) take such alternative action as is appropriate in the circumstances.



(7) The timely submission of a challenge in accordance with deadlines set in this section suspends the procurement proceedings for a period of ten working days, and the suspension shall take effect on the filing of the application for review.

(8) The head of the procuring organisation or the Director General of the Authority may extend the period provided in subsection (7) in order to preserve the rights of the bidder submitting the application for review, provided that the total period of suspension shall not exceed thirty days.

(9) The suspension provided by this section shall not apply if the procuring organisation certifies that urgent public interest considerations require the procurement to proceed.

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

## **PART X - AUDITING**

### **56. Regular auditing of procurement activity**

(1) Procurement activity shall be subject to regular auditing by the Auditor General to ensure that public funds are expended for their intended purpose, and with a view to maximizing value received by the public purchaser, ensuring that proper and accountable systems are in place and adhered to, and identifying any weaknesses in procurement.

(2) The Auditor-General shall conduct annual audits of the procurement activities of entities and shall furnish copies of reports on the audits to the Authority upon request from the Authority.

(3) The Auditor-General shall also carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants with the procurement requirements in this Act and regulations made under this Act at the request of the Authority.

(4) The statutory audit of procurement activities may be relied upon by the Authority to institute measures to improve the procurement system.

### **57. Bodies to co-operate with the Authority**

All public entities, individuals and officials involved in public procurement shall, in accordance with this Act and other applicable legislation, provide full cooperation and disclosure to the Authority, the Auditor General, and other authorities exercising monitoring and supervisory jurisdiction over public procurement pursuant to the laws of The Gambia.

## **PART XI - DISPOSAL OF STORES, PLANT AND EQUIPMENT**

### **58. Disposal of obsolete and surplus items**

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

(2) The Board of Survey's recommendations shall be approved by the head of the procurement entity and the items shall be disposed of as approved.

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

### **59. Disposal methods**

Disposal of obsolete and surplus items may be by-

- (a) transfer to government departments or other public entities, with or without financial adjustment;
- (b) sale by public tender to the highest tenderer, subject to reserve price;
- (c) sale by public auction, subject to a reserve price; or
- (d) destruction, dumping, or burying as appropriate.

### **60. Disposal committee**

A procurement organisation 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.

## **61. Disposal Procedures**

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

(2) An employee shall comply with sub-section (1) within thirty days after the stores or equipment become unserviceable, obsolete or surplus

(3) The disposal committee shall recommend to the head of the procuring organisation, a method of disposing of the stores and equipment which may include any of the following-

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

(4) Within the prescribed time period after receiving the recommendations of the disposal committee, the head of the procuring organisation shall give the committee a written notice as to whether he or she accepts or rejects the recommendations of the committee.

(5) If the head of the procuring organisation accepts the recommendations of the disposal committee, the stores and equipment shall be disposed of in accordance with those recommendations.

(6) If the head of the procuring organisation rejects the recommendations of the disposal committee, he or she shall within the time frame referred to sub-section (4)-

- (a) include, with the notice given to the committee as referred to above, written reasons for rejecting the recommendations of the committee;
- (b) give the Authority a copy of the notice referred to in sub-section (4) and the written reasons under paragraph (a); and

- (c) refer the matter back to the committee for further consideration.

## **62. Disposal by public auction**

For the sale, lease or disposal of surplus supplies by public auction, tendering with seal bids or other appropriate method designated by regulation shall be used, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies.

## **63. Disposal to employees or Board members**

(1) A procuring organisation may, pursuant to section 61 (1) of the Act, dispose its unserviceable, obsolete or surplus stores and equipment to an employee of the procuring organisation or a member of the board or committee of the procuring organisation where-

- (a) the time and cost required to dispose to any other person would be disproportionate to the value of the unserviceable, obsolete or surplus stores and equipment to be disposed; and
- (b) the employee is in possession of the stores or equipment to be disposed and may be given the first priority to purchase the same.

(2) Every disposal made by a procuring organisation under subsection (1) shall be reported by the accounting officer or head of the procuring organisation to the Authority within fourteen days of the disposal.

## **PART XII - MISCELLANEOUS PROVISIONS**

### **64. Exemption from personal liability**

Subject to this Act, a person shall not, in his or her personal capacity, be liable in civil proceedings in respect of anything done or omitted to be done in good faith in the performance of his or her duties or functions under this Act.

### **65. Regulations**

(1) The Authority may with the approval of the Minister, make regulations for the better implementation of this Act.

- (2) In particular, the Authority may make regulations -
- (a) for the management of supplies;
  - (b) for the transfer of excess supplies;
  - (c) for the sale, lease or disposal of surplus supplies by public auction, tendering with sealed bids or other appropriate method designated by regulation, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and
  - (d) to prescribe the principles and procedure for the different methods of procurement set out in this Act.

#### **66. Request for information by the Authority**

Every procuring organisation shall provide the Authority with such information as the Authority may require in writing, regarding procurement engaged in by the procuring organisation.

#### **67. Investigation of procurement proceedings**

(1) A law enforcement agency may, at the request of the Authority conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring organisation, or the conclusion or operation of a procurement where an investigation is necessary or desirable to prevent, or detect a contravention of this Act.

(2) The investigators may, subject to sub-section (3)-

- (a) at any time during normal office hours, enter the premises of the procuring organisation tenderer, supplier, contractor, or consultant concerned with the procurement proceedings under investigation;
- (b) require an officer, employee or agent of the procuring organisation or tenderer, supplier, contractor or consultant to produce any books, records, accounts or documents;
- (c) search premises for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of books, records, accounts or documents of the procuring

organisation, tenderer, supplier, contractor or consultant;

- (e) remove books, records, accounts or documents of the procuring organisation, tenderer, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them;
- (f) require an officer, employee or agent of the procuring organisation or tenderer, supplier, or contractor or consultant-
  - (i) to explain an entry in the books, records, accounts or documents, or
  - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or tenderers as may be reasonably required.

(3) The powers of entry and search conferred by sub-section (2) shall not be exercised except with the consent of the procuring organisation or tenderer, supplier, contractor, or consultant concerned or of the person in charge of the premises unless there are reasonable grounds to believe that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or to obtain evidence relating to an offence.

(4) A person who, without just cause, hinders or obstructs an investigator in the exercise of a function under this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or a term of imprisonment not exceeding two years or both.

#### **68. Procedures on completion of investigation**

- (1) The investigators shall-
  - (a) forward a copy of the investigation report to the Authority; and
  - (b) the Authority shall send a summary of the findings and recommendations to the procurement entity and to any tenderer, supplier, contractor or consultant whose conduct was the subject of the investigation.

(2) Where it is proved that there has been a contravention of this Act or any other law in relation to procurement proceedings, the Authority may take any of the following action to rectify the contravention -

- (a) annul the procurement proceedings;
- (b) cancel of the procurement contract;
- (c) ratify anything done in relation to the proceedings; or
- (d) make a declaration consistent with any relevant provisions of this Act.

(3) The Authority shall afford a person adequate opportunity to make representations in a matter, before taking any action in terms of sub-section (2) which may adversely affect the rights or property of that person.

#### **69. Offences relating to procurement**

(1) A person who contravenes a provision of this Act commits an offence and where no penalty has been provided for the offence, is liable on conviction to a fine not exceeding one million dalasis or a term of imprisonment not exceeding five years or to both.

(2) The following shall also constitute an offence under this Act-

- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with any other supplier or contractor where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
- (b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
- (c) altering any procurement document with intent to influence the outcome of a tender proceeding and this includes but is not limited to-
  - (i) forged arithmetical correction,

- (ii) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
- (iii) request for clarification in a manner not permitted under this Act.

## **70. Repeal and savings**

(1) The Gambia Public Procurement Act is repealed and the Authority established under it is dissolved.

[Cap. 78:01]

(2) Notwithstanding the repeal of the above Act-

- (a) the rights, obligations, assets, funds and liabilities of the dissolved Authority are transferred to the Authority established under this Act;
- (b) an action, a proceedings, judgement or an order pending immediately before the commencement of this Act to which the dissolved Authority was a party, may be continued and enforced by or against the Authority established under this Act;
- (c) the purchases and acquisitions made by the dissolved Authority are considered to have been made under this Act; and
- (d) all persons employed by the dissolved Authority immediately before the commencement of this Act, shall continue to be employed by the Authority established under this Act..

## **OBJECTS AND REASONS**

This Bill is a modern, state-of-the-art procurement law which was inspired from the UNCITRAL Model Law for Public Procurement which has been subject to series of amendments up to 2011. Therefore, the 2001 Procurement Act has been revised to ensure that our procurement law meets standards of international best practices, as well as to-

- a) strengthen the Gambia Public Procurement institutions;



- b) Improve the efficiency and transparency of the country's public procurement system from a compliance based regime to one based on procurement competence focused on achieving value for money for The Gambia and its citizens;
- c) enhance the compliance of the national procurement system with international quality standard;
- d) address the current conflict in responsibilities, which may be removed progressively by effectively decentralizing operational procurement responsibilities to the procuring organizations as these acquire the capacity to carry out their duties;
- e) create an independent Complaints Review Board which shall be supported by a secretariat within GPPA or otherwise;
- f) provide a mechanism for disposal of Government assets, both locally and abroad.

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**HON. KEBBA S TOURAY**  
**MINISTER OF FINANCE AND ECONOMIC AFFAIRS**