THE GAMBIA PUBLIC PROCUREMENT BILL, 2022

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THE GAMBIA PUBLIC PROCUREMENT BILL, 2022

A BILL ENTITLED

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

This Act may be cited as The Gambia Public Procurement Bill, 2022.

2. Interpretation

In this Act, unless the context otherwise requires-

"**addendum**" means the document through which significant modification to the terms and conditions of a document or contract are introduced

"Authority" means the Gambia Public Procurement Authority;

"award" means a decision by the Procuring Organisation by which it is determined the successful bidder in a tender procedure;

"best value for money" means going beyond the price to get the best available outcome when all relevant costs and benefits over the procurement cycle are considered;

"**bid documents**" means the file containing all the documents needed to prepare and properly submit a bid;

"bid" means a written and formal offer to supply goods, works or services for a specified price;

"bid security" means a security provided by the bidder that he would accept and sign the contract in case he is awarded it and, in case he does not, the bid security is forfeited;

"**bidder**" means an economic operator submitting a bid, proposal or quotation; willing to conclude a contract with the Procuring Organisation;

"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;

"coercive practices" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

"**collusive practice**" means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

"**competitive bidding**" means a procurement method for acquisition of goods, works and services which involves an invitation to submit a bid in a competitive bidding process to all interested economic operators;

"Complaints Review Board" means the Board established under section 79 of this Act;

"**conflict of interest**", means an economic operator or procurement actor shall not be allowed to get engaged in any procurement process for delivery of any kind of services, goods or works that would be in conflict with their prior or current obligations to the Procuring Organisation or other clients, or that may place them in the position of being unable to carry out the contract in the best interest of the Procuring Organisation;

"Consortium" means a group of eligible natural and legal persons or public entities that submit a tender or a grant application, under a tender procedure or in response to a call for proposals. It may be a permanent, legally established grouping or a grouping which has been constituted informally for a specific tender procedure or call for proposals. All members of a consortium are jointly and severally liable to the Procuring Organisation;

"consultant" means an individual or a company that gives expert advice on a particular subject which is paid for;

"**consultancy services**" means services of an intellectual, technical or advisory nature, and includes services offered by all professionals;

"**contract**" means an agreement between the Procuring Organisation and an economic operator resulting from the application of the appropriate and approved procurement procedures or proceedings and shall be concluded in the pursuance of a bid award decision;

"**contractor**" means an economic operator entering into a contract with the contracting authority following a procurement procedure. The term applies irrespective of the category of procurement which is subject of the contract;

"**corrupt practice**" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

"cross debarment" means an agreement amongst Multi-lateral Banking Development Banking Institutions to mutually enforce debarment actions for one another;

"debarment" means the act of excluding contractors from future contractual dealings with the Procuring Organisation for a fixed period of time;

"development partner" means an organisation or country that has availed resources, either in the form of cash or in kind to The Gambia for purposes of assisting the public authorities in its programs and operations;

"Director General" means the Director General of the Authority;

"**domestic preference**" means an evaluation method through which the Procuring Organisation grants bidders that are offering services, goods and works originating from The Gambia an evaluation advantage over the bidders offering similar services, goods and works originating from outside The Gambia;

"**economic operator**" means, according to the context, any natural person, legal person, public entity or joint venture or consortium of such persons or bodies, wishing to enter into a contract with the procuring organisation following a procurement procedure;

"e-procurement" means the use of a dedicated electronic system, especially the internet, by Procuring Organisations to conduct their

procurement and consultancy and non-consultancy services required by them;

"e-procurement portal" means the web-based system through which various procurement operations are electronically conducted and which provides bidder information on tender opportunities advertised by Procuring Organisations;

"evaluation committee" means committee made up of a non-voting secretary and an odd number (at least three) of voting members (the evaluators) with the technical and administrative expertise capacities necessary to give an informed opinion on tenders. Other non-voting members of the evaluation committee may be the observers and the advisors;

"fee based contracts," means a service contract under which the services are provided on the basis of fixed fee rates for each day worked by consultants. These are activity-based contracts which might be used for technical assistance and supervision;

"**force majeure**" means –

(1) An exceptional event or circumstance –

(a) which is beyond the control of the parties involved;

(b) which could not have been reasonably foreseen or avoided; and

(c) not substantially attributable to the parties involved.

(2) Force majeure may include exceptional events or circumstances of the kind listed below, so long as conditions (a) to (c) above are satisfied –

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

(b) rebellion, terrorism, sabotage by persons other than the Procuring Organisation's or economic operator's personnel, revolution, insurrection, military or usurped power, or civil war;

(c) riot, commotion, disorder, strike or lockout by persons other than the Procuring Organisation;

(d) presence of munitions of war, explosive materials, ionising radiation or contamination by radio-activity, explosives; and

(e) natural catastrophes such as floods, earthquake, hurricane, typhoon or volcanic activity.

"fraudulent practice" means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefits or to avoid an obligation;

"**framework contract**" means an agreement between the Procuring Organisation and one or more contractors, which sets out terms and conditions under which specific procurements or call-offs can be made throughout the term of the agreement;

"goods contract" means a contract covering the purchase, leasing, rental or hire purchase of products, with or without option to buy. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract;

"Government" means the Government of The Gambia;

"global price service contract" means a service contract under which the services provided are paid on the basis of the delivery of the specified outputs or result based contracts. These are commonly used for public relations contracts, studies, communications and campaigns;

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

"grants" means a direct payment of a non-commercial nature by the Procuring Organisation to a specific beneficiary in order to implement an operation or in some cases to finance part of its budget in order to promote a Gambian government policy;

"Guidelines" means the content of the Gambia Public Procurement Authority Regulations which shall be issued by the Gambia Public Procurement Authority in order to guide in the procurement of goods, services and works;

"integrity" means soundness of moral character, having sense of honesty and truthfulness in regards to the motivation for personal and

organisational behaviour or adherence to commonly accepted moral and ethical principles, impartiality and incorruptibility;

"international competitive bid or bidding" means a competitive procurement method which the invitation to bid is published in the international media;

"**international pre-qualification bidding**" means a competitive procurement method which entails a pre-qualification process open to all economic operators as the first step as well as published in the international media, and an invitation to bid, open only to the prequalified bidders, as the second step;

"**local restricted tendering**" means a procurement method open to participation on equal terms by all providers through advertisement of the procurement on the website of the Procuring Organisation and in a newspaper of wide circulation in the specific area where services, works or goods will be rendered or consumed;

"lump sum contract" means a contract under which the Procuring Organisation agrees to pay the contractor a specified amount for completing the work without requiring a cost breakdown;

"Minister" means the Minister responsible for Finance and **"Ministry"** shall be construed accordingly;

"**negotiated procedure**" means a procurement method for acquisition of goods, works and services in which one or several economic operators are invited to submit a technical and financial proposal and negotiate the technical, financial and commercial conditions of a contract;

"obstructive practice" means –

(a) deliberately destroying, falsifying, altering or concealing evidence to the investigation or making false statements to investigators in order to impede the Procuring Organisation's, governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(b) acts intended to impede the exercise of the Procuring Organisation's or governmental inspection audit rights.

“originating unit” means a Unit, Division, Directorate, Department, Project or Programme with responsibility to initiate procurement;

“petty cash” means a small amount of discretionary funds in the form of cash used for expenses where it is not sensible to make any disbursement by cheque because of the inconvenience and associated costs of writing, signing and the cashing of the cheque;

“**pre-qualification** b**idding**” means a procurement method whereby the first step is pre-qualification and the second step an invitation to bid to pre-qualified bidders only;

"**procurement**" means the legal acquisition by any means of goods, works or services funded in whole or in part by public funds required to satisfy the needs of a given Procuring Organisation;

“procurement guidelines” means the Guidelines developing the content of the Gambia Public Procurement Authority Regulations which shall be issued by the Gambia Public Procurement Authority in order to guide in the procurement of goods, services and works;

“**procurement method**” means the procedures through which the Procuring Organisation purchases services, goods and works;

“**procurement procedure under multiple framework contracts**” means a limited bidding procedure to be used with contractors with whom the Procuring Organisation has signed a framework contract;

“Procuring Organisation” means the entity in charge of procuring and signing the contract agreements for goods, supplies and works. The Procuring Organisation may be the Government of the Gambia, a Ministry, Local Government Authority, Government Agencies, Administrations and Entities, Public Enterprises and any other entity engaged in public procurement in The Gambia using public funds;

“procurement unit” means the unit, division, directorate or department within the Procuring Organisation bearing responsibility for the procurement function;

"price" means the amount of money asked for or given in exchange for goods and services;

“**proposal**” means an offer by an economic operator in response to a request for proposal;

"public contracts" means those contracts concluded in writing between one or more legal entities and one or more Procuring Organisations in order to obtain, against the payment of price paid in whole or in part, the supply of goods, the implementation of works, the provision of services or the attribution of grants for Government benefits;

"public enterprise" means any body corporate or other body or institution, wholly owned or controlled by the Government;

"public funds" means –

(a) any monetary resources appropriated to the Procuring Organisation through budgetary processes;

(b) aid, grants and loans made available to Procuring Organisations by local and international donors;

(c) revenues of Procuring Organisations including the Consolidated Revenue Fund, the Development Fund and general funds of Local Government authorities and Public Enterprises,

includes all loans grants, and other sources of monies appropriated to or by the Procuring Organisation.

"Regulations" means regulations made under this Act;

"**restricted tendering"** means a variation of restricted bidding whereby the list of companies to be invited to submit bids is not determined by pre-qualification but through market research;

"**solicitation document**" means the documents issued by the Procuring Organisation to inform potential bidders about its procurement requirements. It includes bidding documents, requests for proposals, request for quotations, request for services and request for expression of interest;

"sub-delegation" means that the government organisations in The Gambia may trust the implementation of donor funds to third parties, such as Ministries; Government Organs; Local Governments; public enterprises or other public or private institutions through a sub-delegation instrument in agreement with the donor;

"sub-delegation instrument" means the legal agreement signed between the Government of The Gambia and the sub-delegated

Procuring Organisation, and endorsed by the donor of the funds which contains the rules and regulations through which the Procuring Organisation should implement a programme or project. The sub-delegation instrument shall specify the applicable procurement rules;

"successor in interest" means a new or reorganised entity created from an original company which has been acquired, merged or has a significant change in its ownership;

"supplier's database" means a database of the economic operators that supply goods, works or services to the community;

"technical specifications" means the document approved by the Procuring Organisation setting out the requirements or objectives in respect of the provision of goods or works, specifying the methods and resources to be used or results to be achieved;

"tender" means a formal written offer to carry out works, supply goods, services, or buy land, shares, or another asset for a stated fixed price;

"tenderer" means a person who puts in a bid in a procurement contract;

"tendering" means the process of putting in a tender;

"terms of reference" means the document drawn up by the Procuring Organisation setting out its requirements or objectives in respect of the provision of services, specifying the methods and resources to be used or results to be achieved;

"technical assistance contract" means a fee-based contract between a service provider and the Procuring Organisation, under which the service provider exercises an advisory role, manages or supervises a project, provides the experts specified in the contract;

"**threshold**" means a monetary value which is set in order to determine the procurement method allowed and determine the required approvals at different stages of the procurement procedure;

"transparency" means a principle of being clear, obvious and understandable without doubt or ambiguity and is one of the basic principles of good governance, and implies the public insight of the work of the Procuring Organisation by bidders and citizens that should be enabled to inspect the work of the Procuring Organisation as well as the availability of instruments for monitoring the decision

making process in the procurement awarding process and the regulations applied in this procedure, in order to be able to exercise their rights, in a clear and understandable way according to due process;

"unit price contract" means a work contract in which the price is based on estimated quantities of items included in the project and their unit prices;

"**variation order**" means a simplified form of addendum through which minor modifications to the terms and conditions of a contract are introduced or through which administrative instructions are given to the contractor; and

"**works**" means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or construction, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to works such as 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 works itself.

3. Objectives

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 Micro, Small and Medium Enterprises and individuals to participate in a competitive and economic manner, as contractors and sub-contractors 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 composition and functions of 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) Accountant General
(e) two persons from the private sector; and

(f) the Director General.

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

(a) determining 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) approving and adopting the internal rules of the Authority and its component parts, including its own rules of procedure;

(c) adopting the Authority`s Procurement Regulations entailing procurement best practices; and

(d) ensuring 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 office by a letter addressed to the President.

(9) A member shall cease to be a member of the Board if he –

(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 involving financial impropriety;

(d) is absent without the permission of the Chairperson, from three successive meetings of the Board of which he or she has had notice;

(e) resigns from office; or

(f) contravenes section 7 of this Act.

(10) Subject to section 6(5**),** the Board may act notwithstanding any vacancy in its membership provided that it has sufficient members to form a quorum.

6. Meetings of the Board of Directors

(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 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) 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

(1) 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

(1) 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 Regulations shall specify the number of members of each of the committees, the qualifications of its members and the appointing authorities and the procedures for its meetings.

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

(4) 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.

10. Remuneration and expenses of members

Members of the Board and the committees of the board shall be paid such allowances as the Minister may determine.

11. Powers of the Board

(1) 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.

12. Functions of the Authority

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

(2) The Authority shall be responsible for the monitoring of public procurement in The Gambia.

(3) A Procuring Organisation shall not engage in a procurement above such amount as may be specified in the regulations 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,

(ii) the capacity of the Procuring Organisation to conduct procurement, which may be measured by such factors as the procurement procedures used by the Procuring Organisation to meet the objectives of the Act such as accountability, transparency, fairness, value for money and prevention of fraud and corruption in public procurement;

(b) the Procuring Organisation shall make an application in the prescribed form to the Authority by the deadline set in the Regulations.

(4) 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.

(5) The Authority shall authorise all Procuring Organisations which successfully complete the capacity assessment to carry out procurement in compliance with this Act for a period of two years from the date of the authorisation.

(6) A Procuring Organisation which has been authorised to carry out procurement without obtaining the approval of the Authority shall benefit from such authorisation for consecutive and renewable periods of two years provided they –

(a) successfully complete the capacity assessment provided for in subsection (3); or

(b) successfully complete the subsequent review of capacity assessment which shall be undertaken every two years.

(7) 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 for a maximum period of six months.

(8) Without prejudice to the generality of subsections (1) to (7), 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) 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;

(i) participate in discussions with donor and international organisations on public procurement issues affecting The Gambia including during project appraisals;

(j) consult with the Gambia Chamber of Commerce and Industry and other private sector bodies to obtain the views of the private sector on matters related to public procurement;

(k) publish a quarterly public procurement bulletin which shall contain information relevant to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information;

(l) request Procuring Organisations to publish all contract award information as and when they occur;

(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, consultants and Procuring Organisation staff who have seriously neglected their obligations under a public procurement contract, have provided false information about their qualifications or have offered inducements of the kind referred to in sections 81 and 92 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 subsection (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 9 (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.

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 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 subsection 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

(1) 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.

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, sale of bidding 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 are 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, some of its funds it does not immediately require for the performance of its functions.

17. Accounts, audits 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 not later than six months of report submission to the Minister.

19. Financial year

(1) The financial year of the Authority shall commence on 1st January and end on 31st December in the same year.

PART III - GENERAL PROVISIONS ON PROCUREMENT

20. Procurement principles

(1) The procurement principles that shall govern all public procurement processes in The Gambia are the following –

(a) maximise economy and efficiency in procurement to achieve value for money;

(b) foster and promote competition by encouraging participation in procurement proceedings by economic operators regardless of nationality;

(c) promote transparency, accountability and ethical standards among stakeholders in following the Gambian public procurement rules and regulations;

(d) provide for the fair and equitable treatment of all economic operators to promote the integrity of, and fairness and public confidence in the procurement process; and

(e) Implement segregation of duties in all procurement processes.

(2) Any procurement procedure or regulation that is in conflict with these principles shall be declared null and void.

21. Application

(1) This Act shall apply to all public procurement contracts financed by the Government; Ministries; Local Government Authorities; Government Agencies, Administrations and Entities; Public Enterprises and any other entity engaged in procurement funded wholly or partially by public funds, except as otherwise provided by subsection (2).

(2) This Act shall not apply to –

(a) contracts of procurement the Minister responsible for national defence determines is related to national defence or national security. Procurement of general stores, uniforms, stationary, computers and standard vehicles shall not be classified as national defence or national security procurement;

(b) public utilities services as far as they are provided under a national monopoly e.g. water, electricity, gas, and waste water disposal;

(c) public transportation for persons as far as they are provided under a national monopoly;

(d) landline communication services if the provider is a national monopoly;

(e) national postal services as far as they are provided under a national monopoly: stamps, telex, registered mail, etc;

(f) any other service provided under a national monopoly;

(g) acquisition of land, buildings or similar facilities;

(h) direct acquisition of commodities through the stock exchange mechanism;

(i) employment contracts that are part time, temporary or of permanent duration;

(j) procurement of any employment benefit related services which include pension fund, rental of house, etc.;

(k) education services other than training services;

(l) banking services;

(m) Procurement of trade-related products of some State-Owned Enterprises; and

(n) petty cash transactions which include-

(i) car fuel, parking tickets and toll fees,

(ii) visa fees and passport fees,

(iii) fees for various licenses,

(iv) fiscal and judicial charges, or

(v) any purchase of services and good which are defined in the relevant Financial Regulation as petty cash transactions.

(3) The Government shall adopt appropriate specific procedures for the acquisition of the services, goods and works which are exempt from this Act in pursuant of subsection (2). These procedures shall be set out in the regulations.

(4) Cabinet shall determine the exemption of the trade-related products specified under subsection 2(m)

22. Application in relation to International obligations of the Gambia

(1) To the extent that this Act conflicts with an obligation of The Gambia under or arising out of any –

(a) treaty or other form of agreement to which The Gambia is a party, and

(b) agreement entered into by the Government, Local Governments, Government Agencies, Administration and Entities; Public Enterprises or any other public institutions with an intergovernmental international financing institution or international donor in line with the laws of The Gambia,

the requirements of the treaty or agreement shall prevail; but in all other respects, the procurement shall be governed by this Act.

(2) The Government shall work in close cooperation with various intergovernmental international financing institutions, international donors or development partners to implement jointly financed programmes, projects or activities.

(3) Whenever the Government, Local Government Authorities or any public owned entity jointly co-finance programmes or projects or activities with other international organisations or development partners it may allow the application of alternative procurement rules provided the Government is satisfied that those alternative procurement, financial management and monitoring procedures are acceptable.

(4) Such exemption to the application of the national procurement rules shall not prevent the relevant bodies of the Government from conducting financial and procurement audits of the programme or project or activity.

(5) Whenever the financial or procurement audit identifies deviation from core principles of this Act, the National Audit Office or any other competent institution shall take the necessary remedy actions to protect government's financial interest and safeguard the principles laid down in this Act.

(6) The Government may sub-delegate the implementation of its programmes or projects or activities to implementation structures through a sub-delegation instrument. In such cases, the procurement responsibility may be delegated to the respective implementation structure under the obligation of observing in full the provisions of this Act.

23. Conduct of Officials of Procuring Organisations

(1) The Procuring Organisation staff engaged in procurement activities such as, but not limited to requisitioning, planning, preparing, and conducting procurement proceedings, and administering the implementation of procurement contracts, authorizing or effecting payments under the contracts shall –

(a) discharge their duties impartially so as to assure fair competitive access to procurement by bidders;

(b) always act in the public interest, and in accordance with the objectives and procedures set forth in this Act and its Regulations;

(c) at all times avoid conflicts of interest and the appearance of impropriety, in carrying out their duties and conducting themselves, and shall not interfere in the work of internal oversight bodies; and

(d) not commit or abet corrupt or fraudulent practices, including the solicitation or acceptance of improper inducements.

(2) If a Procuring Organisation staff engaged in the procurement activities, in any matter to be determined by him or her or any committee to which he or she is a member, has any interest, direct or indirect with economic operators that may be involved in the procurement process, he or she is required to declare the interest in accordance with the procedures set forth in the Act and the Regulations, and is required to recuse himself or herself from acting in any way in that matter and cannot take part in the consideration, discussion of, or vote on any question with respect to the matter.

(3) Any infringement of the provisions of this Act by the Procuring Organisation staff caused by misconduct or gross negligence shall be sanctioned by the Procuring Organisation according to relevant rules and regulations relating to conduct and discipline of staff. The sanctions may include initiating civil or criminal proceedings for recuperating damages caused by the staff where necessary.

(4) A staff of the Procuring Organisation who wilfully purchases or causes to be purchased any goods, works and services contrary to the provisions of this Act shall be personally liable for the cost of the purchase.

24. Fraud, Corruption and Conflict of Interest

(1) Procurement processes and the award of contracts shall be free of fraud, corruption, collusive practices, coercive practices, obstructive practises and conflict of interest –

(a) corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly of anything of value to influence improperly the actions of another party;

(b) fraudulent practice is any act or omission, including misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party to obtain financial or other benefits or to avoid an obligation;

(c) collusive practices is the arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(d) coercive practice is the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and

(e) coercive practices include –

(i) deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede the Procuring Organisation, governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(ii) acts intended to materially impede the exercise of the Procuring Organisation or governmental or inspection and audit rights.

(2) Without limitation, economic operators shall not be hired under the circumstances of conflict of interest set forth below –

(a) If the conflict of interest is between consulting activities and procurement of goods, works or services where –

(i) a contractor has been engaged by the Procuring Organisation to provide goods, works, or services for the organisation, or any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services, or

(ii) a bidder or a contractor hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services;

(b) If the conflict is among consulting assignments where–

(i) The economic operators or their personnel and sub-consultants or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the bidder or contractor,

(ii) a contractor assisting the Procuring Organisation to implement a project shall not be engaged to prepare an independent assessment for the implementation of the same project, or

(iii) contractors hired to prepare Terms of Reference for an assignment shall not be hired for the assignment in question;

(c) the conflict of interest is in the relationship with the Procuring Organisation's staff where economic operators including their personnel and sub-contractors having business or family relationship with a member of the Procuring Organisation's staff directly or indirectly involved in any part of –

(i) the preparation of the Terms of References or Technical Specification of a contract;

(ii) the selection process for such contract, or

(iii) the supervision of the contract, may not be awarded the contract,

unless the conflict stemming from these relationships has been resolved in a manner acceptable to the Procuring Organisation.

25. Conduct of Economic Operators

(1) Economic operators in relation with the Procuring Organisation are required to act in a professional, objective and impartial manner in the mutual interest of the contracting parties.

(2) An attempt by an economic operator to obtain confidential information, enter into unlawful agreements with competitors or influence the members of the evaluation committee or the Procuring Organisation staff during the process of examining, clarifying, evaluating and comparing bids, applications or proposals shall lead to the rejection of its candidacy, proposal or bid.

(3) A contractor and its staff or any other economic operator associated or linked with the contractor shall not, even on an ancillary or subcontracting basis, bid or be allowed to provide services, goods or works if this will raise a conflict of interest as defined in section 24.

(4) When submitting a bid or application, the economic operator or individual shall declare that he or she is not affected by any potential conflict of interest, and has no relationship with other bidders, applicants, the Procuring Organisation staff or contractors involved in the same procurement process. In the event of any potential conflict of interest, the contractor shall immediately inform the Procuring Organisation.

(5) Civil servants or other officials of the public administration, regardless of their administrative situation, shall not be engaged as experts by bidders or contractors or employed as individual consultants by any Procuring Organisation using government funding.

(6) The contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of his or her profession. He or she may not commit or compromise the Procuring Organisation in any way without its prior and written consent.

(7) For the duration of the contract, the contractor and his or her staff shall respect human rights and not offend the political, cultural and religious morals of The Gambia. In particular, the contractor shall respect labour standards as provided under the laws of the Gambia.

(8) The contractor shall not accept any payment connected to the contract other than that provided for therein. The contractor and its staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Procuring Organisation as laid down in their contract with the organisation.

(9) The contractor and its staff are bound to maintain confidentiality for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor during the performance of the contract are confidential and remain the property of the Procuring Organisation.

(10) The contractor shall refrain from any relationship likely to compromise his or her independence or of his or her staff. If the contractor ceases to be independent, the Procuring Organisation may, regardless of any damage claims, terminate the contract without further notice and without the contractor having any right to claim for compensation.

(11) All bidding documents and contracts for works, goods and services shall include a clause stipulating that bidders will be rejected, or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses include commissions –

(a) not stated in the main contract or in the subcontracts stemming from the main contract;

(b) paid in return for no actual or legitimate service;

(c) remitted to a tax haven;

(d) paid to a recipient who is not clearly identified;

(e) paid to a company having every appearance of being a “shell company”; or

(f) paid for lobbyist services.

(12) Upon request of the Procuring Organisation or any other relevant national authority or investigator representing the Procuring Organisation or the Government of The Gambia, the contractor shall supply all supporting documents related to the conditions of the contract's execution.

(13) The Procuring Organisation or the competent authorities may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected or unusual commercial expenses.

(14) Contractors found to have paid unusual commercial expenses on projects funded by the Procuring Organisation are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from participating in public tenders in accordance with section 92**.**

26. Language

(1) All the information pertaining to the procurement processes, including but not limited to this Act and the Regulations, the Guidelines, procurement notices, solicitation documents, procurement plans, etc, shall be advertised by the Procuring Organisation in English.

(2) However, for practical reasons, the Procuring Organisation will be allowed to conduct the procurement activities in the other national languages widely used in The Gambia.

27. Form of communications

(1) Subject to other provisions of this Act, all communication between the Procuring Organisation and Economic Operators shall be in written form, providing a record of the content of the communication by mail, email or facsimile.

(2) When the communications between the Procuring Organisation and the applicant, bidder or contractor are, under exceptional circumstances held verbally, the summary of discussions of the meeting shall be recorded in minutes by the Procuring Organisation, and a copy of the minutes made available to the applicant, bidder or contractor.

(3) Whatever the means of communication are, the transmitting party shall be responsible for the confidentiality, completeness, integrity and timeliness of the data and the information being transmitted.

28. Disclosure of procurement related information

(1) The Regulations, the Procurement Guidelines and all administrative rulings and directives of general application in

connection with procurement covered by this Act, as well as all amendments thereof, shall be promptly made accessible to the public and systematically maintained.

(2) The Authority shall develop and maintain a website to publish rules and regulations related to procurement.

(3) The Procuring Organisations shall develop and maintain a website to advertise all procurement opportunities as well as any subsequent solicitation documents related to procurement opportunities.

(4) All procurement subject to open bidding or restricted bidding procedure shall be advertised as specified in the Regulations.

(5) With the exceptions specified in subsection (6), all the contract award notices, irrespective of the procurement method used or the value of the awarded contract, shall also be published on the website of the relevant Procuring Organisation and the website of the Authority as specified in the Regulations.

(6) The period for which the procurement information referred to in subsections (1), (2) and (3) above shall be made accessible to the public shall be a minimum period of five years from the date of releasing the procurement information to the public.

(7) The disclosure requirements provided for in subsections (1) to (5) may be restricted in case of defence or security related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment as set forth in the Regulations.

29. Procurement Planning

(1) The Procuring Organisations shall develop annual procurement plans, aligned to the business plans and the budget provisions of the Procuring Organisation, with a view to achieving maximum value for expenditure and the other objectives set forth in this Act.

(2) The specific procedures, the role and responsibilities of various departments in the elaboration of the procurement plans shall be detailed in the Regulations.

(3) The Procuring Organisations shall submit its procurement plan to the Authority as determined in the Regulations.

(4) The procurement plan shall present information about contracts the Procuring Organisation expects to launch or sign in a fiscal year. At minimum, the procurement plan shall contain the following information –

(a) a brief description of the contracts;

(b) the estimated value of the contracts;

(c) the category of procurement;

(d) the procurement method;

(e) number of lots;

(f) the main milestones in the procurement procedures and the estimated dates when they are expected to be attained;

(g) the estimated date when the contracts are expected to be signed; and

(h) the duration of the contracts.

(5) The procurement plans shall be subject to annual review and be updated as and when required.

(6) The Authority shall publish a simplified version of the procurement plan in the web page of the Authority. The rest of the Procuring Organisations shall also publish their procurement plans in their relevant websites.

30. Rules concerning the description of goods, works or services

(1) This Act and its Regulations shall regulate the procurement of goods, works and services. The definition of each type of contract shall be stated in the glossary of terms set out in the Regulations.

(2) The Technical Specifications or Terms of Reference for goods, works or services whether fee based or global price shall clearly describe the Procuring Organisation's requirements with respect to aspects such as quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labelling and requirements relating to conformity assessment procedures.

(3) 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.

(4) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based only on the relevant and objective technical and quality characteristics of the goods, works or services to be procured.

(5) There shall be no requirement of, or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as "or substantially equivalent" are included.

(6) 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.

(7) International or national standards shall be used, where available, for describing the features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured, as well as in formulating specifications, making plans, drawings and designs to be included in the solicitation documents;

(8) Due regard shall be given to the use of standardized trade terms, where available, in formulating the terms and conditions of contracts and other documents.

31. Participation by economic operators

(1) Unless they fall under the exceptions specified in subsection (3), economic operators are permitted to participate in procurement process for award of procurement contracts without regard to their nationality or form of association.

(2) The Procuring Organisation may establish a supplier's register with the economic operators suitable for supplying goods, services and works to contracts financed through public funds.

(3) The following economic operators are not allowed to participate in procurement processes for award of Government financed contracts –

(a) economic operators or goods manufactured in certain countries may be excluded if,

(i) as a matter of law or official regulation, The Gambia prohibits commercial relations with those countries, or

(ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Gambia prohibits any import of goods from, or payments to, a particular country, person, or entity from those countries;

(b) Government-owned enterprises and organisations, unless it can be clearly established that they –

(i) are legally and financially autonomous,

(ii) operate under commercial law, and

(iii) are not dependent agencies of the government; and

(c) Political organisations;

(d) economic operators banned, pursuant to sections 24 and 25; and

(e) Cross Debarment

32. Eligibility and qualifications of economic operators

(1) Notwithstanding section 31 and unless otherwise specified in the solicitation documents, participation in the invitations to bid and in award of contracts shall be open on equal terms to –

(a) natural persons, Companies or firms, associations or public or semi -public agencies;

(b) cooperative societies and other legal entities governed by public or private law; and

(c) joint ventures, consortium or association of firms,

who shall be registered with the Authority in accordance with Regulations made under this Act.

(2) Notwithstanding subsection (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.

(3) An Economic operator shall not be eligible for the award of contracts when -

(a) he or she is bankrupt;

(b) payments to him or her have been suspended in accordance with the judgment of a court of law and resulting in the total or partial loss of the right to administer and dispose of his or her property;

(c) legal proceedings have been instituted against him or her, which may result, in a declaration of bankruptcy, suspension of payments, or the total or partial loss of the right to administer and dispose of his or her property as described in subsections 3 (a) and (b);

(d) he or she has been convicted, by a final judgment, of any crime or offence concerning his or her professional conduct;

(e) he or she is guilty of serious misrepresentation with regard to information required for participation in an invitation to bid; and

(f) he or she has been sanctioned by the Procuring Organisation pursuant to sections 92 or 94;

(4) The Procuring Organisation may also restrict the award of a contract to an economic operator that cannot demonstrate, to the satisfaction of the Procuring Organisation that he or she has the legal,

financial and technical capabilities required to successfully implement the contract. Such restrictions shall not be of a nature to unduly restrict the competition or favour certain economic operators. He or she shall be disclosed in the bidding document or in the pre-qualification documents as part of the pre or post qualification criteria.

(5) To be eligible for participation in a tender and award of contracts, a bidder shall provide evidence of his or her eligibility under this Act, satisfactory to the Procuring Organisation, and proof of compliance with the necessary legal, technical and financial requirements as well as of his or her capability, capacity and adequacy of resources to carry out the contract effectively.

33. Domestic Preference

(1) The Procuring Organisation may grant a margin of preference for the benefit of tenders for goods, services and works by domestic economic operators or any other preference authorised in the Regulations or of any other enactment such as for marginalised groups particularly the youth, women and physically challenged.

(2) In such cases, bidding documents shall clearly indicate the preference to be granted and the information required to establish the eligibility of a bid for such preference.

(3) The margin of preference shall be authorised by the Authority in line with the Regulations or other relevant enactments.

(4) In the cases of procurement funded by a development partner –

(a) this preference clause may not apply to procurement funded in whole by a developing partner, in which case, preference may be governed by the relevant binding cooperating policy instrument;

(b) in case of procurement funded in part by a development partner preference shall be governed by the relevant policy instrument or criteria agreed upon following negotiations between the Government and the cooperating partner; or

(c) in case the agreement with the cooperating partner does not provide for application of specific procurement regulations these preferences shall apply.

(5) The specific methodology for the application of the domestic preference will be specified in the Regulations.

34. Rules concerning documentary evidence provided by economic operators

(1) If the Procuring Organisation requires documentary evidence to be provided by an economic operator to demonstrate his or her qualifications in a procurement process, the Procuring Organisation shall not impose any other requirement other than those provided for in the laws of The Gambia.

35. Cancellation of procurement processes

(1) The Procuring Organisation may, before the contract is signed, abandon the procurement exercise and cancel the procurement procedure without the bidders being entitled to claim any compensation provided that the bidders shall be entitled to a refund of the cost of the bidding documents. If the procedure is divided into lots, a single lot may be cancelled. Cancellation may occur when –

(a) the bidding procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile bids have been received or there is no response at all;

(b) the economic or technical data for the contract have been fundamentally altered;

(c) exceptional circumstances or Force Majeure render the normal performance of the contract impossible;

(d) all technically compliant bids or applications substantially exceed the available financial resources;

(e) there have been noted flaws in the application of procurement procedures;

(f) the procurement is no longer required; or

(g) the financial allocation becomes unavailable.

(2) If a procurement procedure is cancelled, all bidders shall be notified in writing of the reasons for the cancellation at the earliest time.

(3) A cancellation notice shall be published on the Procuring Organisation website with the reasons for cancellation.

(4) Under no circumstances shall the Procuring Organisation be liable for any damages whatsoever including, but without limitation, damages for loss of profits in any way connected with the cancellation of a procurement process.

(5) The publication of a procurement notice does not commit the Procuring Organisation to award the contract announced or accept any application or bid received.

36. Records of procurement process

(1) The Procuring Organisation shall maintain and preserve records of the procurement process containing, at a minimum, the following information –

(d) a brief description of the goods, works or services to be procured, or of the procurement need for which the Procuring Organisation requested proposals or offers;

(e) the complete solicitation documents sent to the economic operators including the qualification, evaluation and award criteria and the approval of these documents by relevant authorities;

(f) the requests for clarification from or to the economic operators on the pre-qualification, solicitation, bidding documents and bids as well as the responses thereto, and any modification of those documents;

(g) the names and addresses of economic operators that submitted bids, proposals, offers or quotations, the name and address of the economic operator with whom the procurement contract is entered into and the contract price;

(h) information relative to the qualifications, or lack thereof, of economic operators that submitted bids, proposals, offers or quotations;

(i) the price, or the basis for determining the price, and a summary of other principal terms and conditions of each bid, proposal, offer or quotation as well as the contract;

(j) the records of the evaluation and comparison of bids, proposals, offers or quotations and the approval of these documents by the relevant authorities;

(k) if the procurement process is cancelled pursuant to section 35**,** a statement to that effect and the grounds therefore, in accordance with section 35(2**)**;

(l) if, in procurement process involving methods of procurement other than a tender, those process did not result in a contract, a statement to that effect and the grounds thereof; and

(m) the information required by section 31(2**)**, if a bid, proposal, offer or quotation was rejected pursuant to that provision.

(2) Subject to section 64**,** the portion of the records referred to in subsection (1) (a) to (c) of this section shall, on request, be made available to any person after a bid, proposal, offer or quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

(3) Subject to Section 64, the portion of the record referred to in subsections (1) (a) to (j) of this section shall, on request, be made available to economic operators that submitted bids, proposals, offers or quotations, or applied for pre-qualification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract. Disclosure of the portion of the record referred to in subsection (1) (a) to (g), may be ordered at an earlier stage by a court of competent jurisdiction. However, except when ordered to do so by a court of competent jurisdiction, and subject to the conditions of such an order, the Procuring Organisation shall not disclose –

(a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition; and

(b) information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, and bid, proposal, offer or quotation prices, other than the summary referred to in subsection (1) (f) of this section.

(4) The Procuring Organisation shall not be liable to economic operators for damages due solely as a result of a failure to maintain a record of the procurement proceedings in accordance with the provisions of this Act.

(5) The Procuring Organisation shall on request, communicate to a bidder the grounds for the rejection of its application to pre-qualify or of its bid.

37. Procurement Agents

(1) This applies where the Procuring Organisation lacks the necessary organisation, resources, and experience, they may employ, as their, agent, a firm specialising in handling procurement and possibly project management. The agent shall follow all the procurement procedures provided by the Act including the use of the Standard Bidding Documents, procedures and documentation.

38. Procurement of Second-hand Goods

Second- hand goods may be procured under conditions specified in the Regulations.

39. Sustainability in Procurement

(1) Products and services purchased under this Act shall be as sustainable as possible, with the lowest environmental impact and most positive social results.

(2) The manner in which the sustainability of products and services shall be achieved shall be set out in the Regulations.

40. Establishment of a Procurement Directorate

(1) There shall be established under the Ministry responsible for Finance and Economic Affairs, a Procurement Directorate who shall be responsible for the implementation of procurement policies.

(2) The Procurement Directorate shall be headed by a person with appropriate professional qualification and not less than ten years' experience in procurement and procurement related functions.

(3) The Functions of the Procurement Directorate shall be:

(a) monitor the implementation of procurement policies;
(b) advise Central Government and statutory bodies on procurement policies;
(c) develop and maintain a functional procurement cadre;
(d) develop and maintain database for procurement, the cadre and its staff;
(e) facilitate appointments of heads of procurement management units and transfer of procurement Cadre staff;
(f) manage the establishment of procurement management units;
(g) monitor, evaluate and review procurement processes;
(h) analyse procurement issues and challenges;
(i) advise and provide guidance on the implementation of procurement systems; and
(j) conduct research on public procurement to advise government on best procurement practices;

PART IV - METHODS OF PROCUREMENT AND CONDITIONS FOR USE

41. Methods of procurement and thresholds

(1) The Procuring Organisation shall engage in procurement of services, goods or works only by means of procurement methods provided for under this Act**.**

(2) There shall be a single e-portal that shall serve as the primary source of information on all Procurement. The Authority shall approve changes in the procurement process to adapt to improvements in modern technology, provided that such changes shall be consistent with the provisions of this Act.

(3) All Procurement shall be done using e-procurement through the e-procurement portal provided that the Authority may authorise the Procuring Organisation to conduct Procurement without using the e-procurement portal if justifiable reasons are provided by the Procuring Organisation.

(4) Unless duly justified by specific circumstances, the competitive procurement method described in the section 41 shall be the preferred method used for the award of the Government financed procurement contracts. Where a Procuring Organisation uses a

different procurement method it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method used.

(5) The thresholds for application of each method shall be defined in the Regulations as well as the persons invested with the powers to grant derogations to the methods and thresholds. These derogations will be justified and for specific tenders or programmes.

(6) The detailed description on how the methods are implemented shall be indicated in the Regulations and the Guidelines.

(7) The Procuring Organisation shall not divide its procurement artificially in order to avoid the monetary thresholds set in this Act or in any Regulations.

(8) Subject to the approval of the Ministers in charge of national defence and finance, the application of these methods may be waived in the case of defence or security-related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment set forth in the laws of The Gambia.

42. Competitive Bidding

(1) The open tendering procedure is a procurement method which involves an open invitation to submit a bid in a competitive bidding process to all interested economic operators.

(2) Under the open tendering procedure, any economic operator wishing to bid for the advertised contract receives, upon request, the Bidding Documents which might have to be paid for at reasonable cost depending on the cost estimate of the activity, in accordance with the procedures laid down in the procurement notice.

(3) A short listing or other form of pre-selection shall not be conducted in the application of the method specified under subsection (2).

(4) An economic operator and its affiliates shall submit only one bid for the same contract on its own or as member of a joint venture or consortium.

(5) For the purpose of this section –

(a) “affiliates” means any natural person or legal

entity or group thereof in which the economic operator or any of the major shareholders of the economic operator owns at least twenty percent of the shares or the share capital; and

(b) "major shareholder" means any legal or physical person who owns no less than twenty percent of the shares or the share capital of the economic operator.

(6) Where an economic operator deliberately or inadvertently submits more than one application per contract, it shall be automatically disqualified from any public funded procurement processes for a period indicated in the Regulations.

(7) All bids received are examined by conducting a comparison of technical and financial proposal against the evaluation and award criteria. The award criteria must address compliance with contractual terms, technical merit of the goods or services, life-cycle costs, risks associated with the tender and wider social benefits such as environmental considerations. These shall all be developed before the invitation to tender is published.

(8) For the bid recommended to be awarded the contract, an additional assessment of the bidder compliance with the post qualification criteria shall be conducted. No recommendation shall be made for award before applying the qualification criteria, which shall be the most responsive bid satisfying the conditions of qualification.

(9) The contract shall be awarded to the bidder whose bid, after the application of the evaluation and award criteria, was recommended for the award of the contract, if it satisfies the post qualification criteria.

(10) The open bidding shall have the following methods for application –

(a) International Competitive Bidding; which method shall be applied whenever an effective competition cannot be obtained unless foreign firms are invited to tender. In these cases, the tender shall be published internationally;

(b) National Competitive Bidding; for locally registered

providers of services, goods and works may participate in this procurement proceedings without regard to nationality except where the provisions of section 33 apply; and

(c) the following requirements shall be applicable to Competitive bidding –

(i) open advertisement of the procurement opportunities at the international or national levels;

(ii) the procurements are open to eligible firms from any country;

(iii) the request for bids and request for proposals document shall require that bidders and proposers submitting bids and proposals present a signed acceptance at the time of bidding, to be incorporated in any resulting contracts confirming application of Authority's Anti-corruption Guidelines, including without limitation the Authority's right to sanction and the Authority's inspection and audit rights; and

(iv) publication of contract award information.

(11) The Procuring Organisation, when first calling for participation in procurement proceedings, shall notify prospective bidders whether the tender is limited to domestic bidders only and the declaration shall not be altered later.

(12) The Procuring Organisation that decides to limit the participation of providers of goods, services and works shall include in the records of procurement proceedings a statement for reasons and circumstances on which it relied and shall make available to any person, on request, for limiting participation.

43. Pre-qualification Bidding

(1) There shall be a pre-qualification bidding which is a competitive procurement procedure divided into two stages, namely –

(a) a pre-qualification; and

(b) a final selection.

(2) In a pre-qualification procedure, all economic operators may be asked to take part but only applicants satisfying the eligibility and qualification criteria may submit a bid.

(3) The first stage of the procedures shall be the pre-qualification during which, the Procuring Organisation issues an invitation for pre-qualification, open to all interested economic operators.

(4) The Invitation for Pre-qualification shall indicate the eligibility and qualification criteria to be mandatorily fulfilled by an economic operator in order to be shortlisted for participating in the bidding procedure.

(5) The purpose of the pre-qualification shall be to draw up a shortlist of applicants based on compliance of the bidders with the evaluation and qualification criteria, before launching the bidding procedure.

(6) The selection procedure, where the long list is reduced to a shortlist, shall consist of examining the responses to the requirements established in the pre-qualification documents.

(7) An economic operator and its affiliates shall submit only one application for the same contract on its own or as member of a joint venture or consortium.

(8) An economic operator that deliberately or inadvertently submits more than one application per contract, shall be automatically disqualified from any public funded procurement processes for a period indicated in the relevant Regulations.

(9) A successful pre-qualification shall entail that three to six economic operators are shortlisted and where the minimum number of qualified economic operators is not be attained, the pre-qualification process shall be declared unsuccessful and cancelled.

(10) The pre-qualification process shall only be re-launched after –

(a) the conditions leading to the failure of the previous pre-qualification have been identified and corrected; or

(b) the time elapsed between the decision with regard to the list of prequalified firms and the issuance of bid invitations is longer than 12 months.

(11) In the second stage of the pre-qualification procedure, the Procuring Organisation shall invite and send the shortlisted applicants the Invitation to Bid and the Bidding Documents free of charge.

(12) In order to ensure fair competition, bids shall be submitted by the same economic operator or consortium shortlisted that has submitted the application form.

(13) A change whatsoever in the identity or composition of the bidder shall not be permitted unless the Procuring Organisation has given its prior approval in writing.

(14) Notwithstanding subsection (13), an approval may be given where a merger has taken place between a shortlisted applicant or member of a consortium with another company and where the new company is found to meet the eligibility and qualification criteria and does not raise any conflict of interest or unfair competition.

(15) Once the bids have been evaluated, the successful bidder shall be selected by applying the evaluation and award criteria stated in the bidding document and a verification of the information upon which bidders were prequalified, including current commitments, shall be carried out at the time of the award of contract, along with their capability with respect to personnel and equipment.

(16) The restricted bidding procedure shall have the following methods for applications –

(a) international pre-qualification bidding, which shall be applied whenever an effective competition cannot be obtained unless foreign firms are invited to tender and in which case, the tender shall be published internationally; and

(b) national pre-qualification bidding when only locally registered providers of services, goods and works may participate in this procurement proceedings without regard to nationality except where the provisions of section 33 apply.

(17) The Procuring Organisation, when first calling for participation in procurement proceedings, shall notify prospective bidders whether the tender is limited to domestic bidders only and the declaration shall not be altered later.

(18) The Procuring Organisation that decides to limit the participation of providers of goods, services and works shall include in the records of procurement proceedings a statement for reasons and circumstances on which it relied and shall make available to any person, on request, for limiting participation.

(19) For the purpose of this section –

(a) **"affiliates"** means any legal entity where the economic operator or any of the major shareholders in the economic operator owns at least twenty percent of the shares or the share capital; and

(b) **"major shareholder"** means any legal or physical person who owns not less than twenty percent of the shares or the share capital of the economic operator.

44. Restricted Tendering

(1) The Restricted Tendering method is essentially the pre-qualification method with the exception that the shortlist is established by the Procuring Organisation without pre-qualification or open advertisement.

(2) Under this method, the Procuring Organisation restricts the issue of bidding documents to a limited number of specified economic operators when –

(a) the goods, works, or services required are of a specialised nature or can only be obtained from a limited number of specialised economic operators or reputable sources, all of whom are 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;

(c) there is an urgent need for the goods, works or services so that there would be insufficient time for the Procuring Organisation to engage in open bidding, provided that the circumstances giving rise to the urgency could not have been foreseen by the Procuring Organisation and have not been caused by dilatory conduct on its part; or

(d) it falls within the thresholds established for it in the Regulations.

(3) Unless the tender falls within the thresholds contemplated for it in the Regulations this method shall be deployed with prior approval of the Head of the Procuring Organisation and upon the approval of the Authority if it has been fully demonstrated that any of the conditions as laid out in subsection 2 (a) to (c) have been met.

(4) Under this method, the shortlist shall consist of a minimum of five economic operators and the Procuring Organisation shall receive at least three responsive bids or quotations or proposals.

(5) The Procuring Organisation must justify the choice of the economic operators invited to participate.

(6) The lowest evaluated bid which is the bid complying with all criteria stated in the bidding documents shall be subjected to post qualification.

45. Negotiated Procedure

(1) The Negotiated Procedure has two methods of application as follows –

(a) the negotiated procedure with publication method where the Procuring Organisation launches an open invitation to all interested economic operators to participate in a two-stage bidding process –

(i) the first stage, where the interested economic operators are invited to submit un-priced technical proposals on the basis of a conceptual or preliminary design or performance specifications;

(ii) upon review of the first stage proposals, the Procuring Organisation shall invite bidders to negotiate improved technical proposal, discuss commercial conditions of contract and provide any other clarification as necessary, and may involve the participation of a third-party assurance provider to ensure better determination of requirements;

(iii) subject to specific request for improvement of their proposals as well as general amendments of the bidding documents, the bidders may be further invited to summit final technical and financial proposals at the second stage;

and

(iv) following the second stage evaluation, the Procuring Organisation shall invite the successful bidder to negotiate the contract.

(b) The negotiated procedure without publication method where the Procuring Organisation invites several potential economic operators to submit and negotiate technical and financial proposals and the application of this method may take place in successive stages of negotiation where –

(i) the Procuring Organisation is satisfied with the technical and commercial offer of the invited economic operators; and
(ii) the contract is awarded to the bidder that has submitted a technical compliant offer at the lowest negotiated price.

(2) The Negotiated Procedure with Publication shall only be used in the case of contracts for –

(a) large complex facilities awarded as single responsibility including as turnkey contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant;

(b) works of a complex and special nature;

(c) complex design and build contracts; or

(d) complex equipment and information and technologies that are subject to rapid technology advances where it may be undesirable or impractical to prepare complete technical specifications in advance.

(3) Unless the tender falls within the thresholds contemplated for in the Regulations, the Negotiated Procedure without Publication shall only be used in the following situations –

(a) following an unsuccessful open or restricted procedure, if the Procuring Organisation cannot launch a new procurement process due to force majeure reasons or adverse market conditions which prevents an open competition;

(b) where the goods involved are manufactured purely for the purpose of research, experimentation, study or development and the contracts awarded pursuant to this point do not include quantity production to establish commercial viability or to recover research and development costs;

(c) for the purchase of goods or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations;

(d) for goods and services which due to safety and security reason can only be procured from limited reputable sources which include drugs and medicines, financial services, legal services, medical services, etc., or where, for technical reasons, or reasons involving the protection of exclusive rights, proprietary goods, works or services, the contract can only be awarded to a limited number or a single economic operator;

(e) for reasons of urgency, need or force majeure or the nature of the tender, the Procuring Organisation or the person delegated decides to follow this procedure;

(f) where the time and cost of considering a large number of tenders is disproportionate to the value of the procurement; and

(g) where the Regulations allow the Procuring Organisation to pursue this procedure under certain thresholds, in which case the Negotiated Procedure is not an exceptional procedure and can be applied by the Procuring Organisation without any special authorisation.

(4) Unless the tender falls within the thresholds contemplated for it in the Regulations, the method shall only be deployed with prior approval of the Head of the Procuring Organisation and upon the approval of the Authority in case the attribution has been delegated to it and if it has been fully demonstrated that the conditions for application of these methods have been met.

(5) When the negotiation is done with a single contractor it is known

as single source.

46. Single Source procedure

(1) This is an exceptional non-competitive procurement method that can only be used under the following conditions, irrespective of the estimated value of the contract –

(a) where, due to exceptional circumstances that the Procuring Organisation could not have foreseen and that can in no way be attributed to them, the time limits for the competitive procedures cannot be met, the circumstances invoked to justify extreme urgency shall in no way be attributable to the any department or staff of the Procuring Organisation.

(b) where, for technical reasons, or reasons involving the protection of exclusive rights or proprietary goods, services, the contract can be awarded only to a particular economic operator; standardisation of equipment or spare parts, to be compatible with existing equipment, may justify additional procurement from the original supplier.

(c) for such to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to the Authority;

(d) an existing contract for goods, works and non-consulting services, awarded through a competitive process, may be extended for additional goods, works, and non-consulting services of a similar nature; and

(e) the Authority shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable; and provisions for such an extension, if considered likely in advance, shall be included in the original contract;

(2) For the purpose of this section, exceptional circumstances situations shall be one of the following situations –

(a) where there is likely to be injury or loss of life;

(b) where there is likely to be damage to property; or

(c) where there is a situation arising from “Force Majeure”.

(3) Unless the tender falls within the thresholds contemplated for it in the Regulations, the Single Source procedure shall only be deployed with the prior approval of the Head of the Procuring Organisation and the approval of the Authority and if it has been fully demonstrated that the conditions for application of these methods have been met.

47. 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.

48. 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.

49. Force Account

(1) This is a construction by the use of the Procuring Organisation’s own personnel and equipment.

(2) The use of force account may be justified when -

(a) work is required to be carried out without disrupting ongoing operations;

(b) risks of unavoidable work interruption are better borne by a procurement entity or public authority than a contractor; or

(c) there are emergencies needing prompt attention.

(3) Where a procuring entity uses the force account, the inputs to be used in the works shall be procured using the procurement methods provided for in this Act and the full costs of all inputs procured.

50. Engineering, Procurement and Construction

(1) This is not only a procurement method, but a nature of a contract under which the contractor takes the full responsibility for design and construction as well as commercial risks with other service providers.

(2) An Engineering, Procurement and Construction contract, being a turnkey contract, may be used where the Procuring Organisation reallocates risks given the uncertainty in regard to the price and duration of the contract

51. Selection of Individual Consultants

(1) Individual Consultants are employed on assignments where –

(a) teams of experts are not required;

(b) no additional outside professional support is required; and

(c) when the experience and professional qualifications of the individual are the main requirement.

(2) The Procuring Organisation shall not misuse this method of selection for an assignment normally carried out through an employment contract as established by the Labour Laws of The Gambia. Similarly, the method shall not be used for artificially splitting a consulting service assignment.

(3) The use of this procurement method is not limited by the estimated value of the contract.

(4) The duration of the contract awarded through this method shall not exceed two years and no Individual Consultant shall be awarded more than two successive individual consultant contracts for the same consulting services.

(5) The award criteria applicable to Individual Consultants shall be based on the highest score by the evaluated Individual Consultant who has submitted a financial offer within the available budget.

(6) Only natural persons/individuals are eligible to submit an application under this procurement method.

52. Procurement procedure under Multiple Framework Contracts

(1) Procurement under the Multiple Framework Contract is a simplified competitive procurement procedure to be used for the acquisition of simple, routine services, standardized or “off the shelf” goods and simple or low value works contracts, required by the Procuring Organisation on a recurrent basis.

(2) A Multiple Framework Contract is an agreement between the Procuring Organisation and several contractors, with the purpose of establishing the terms governing specific contracts which may be awarded during a given period.

(3) The terms and conditions of the Multiple Framework contract are mainly related to the duration, subject, price, implementation rules, quantities, delivery time, scope of services and payment rules.

(4) The Multiple Framework Contract shall take the form of separate contracts with a number of economic operators but concluded in identical terms, specifically the same general conditions, terms of delivery, type of services, goods or works to be delivered possibly the maximum cumulative contract value.

(5) In a rapidly changing market economy, the duration of such contracts shall not exceed two calendar years except under exceptional circumstance.

(6) The value of each Multiple Framework Contract shall be determined based on the estimated annual value of the specific group of recurrent services, goods and works needed by the organisation as reflected in the specific annual budgetary allocation.

(7) In a multiple framework contract, the contract will be awarded to a minimum of two framework contractors, who will be invited to participate every time the Procuring Organisation has a need covered by the contract.

(8) The framework contractors invited to submit offers will do so through a simple procedure and the Procuring Organisation will award the contract to the best bidder.

(9) The Procuring Organisation may, depending on the framework agreed, either invite all the framework contractors to submit an offer or randomly pick a minimum of three.

(10) The aggregated total sum of the awarded Multiple Framework Contract shall not exceed the total budget foreseen.

(11) Where the Procuring Organisation has entered into a framework agreement, it shall be mandatory to use that framework agreement.

53. Procurement procedure under Single Framework Contracts

(1) The principle is the same as for Multiple Framework Contracts but only one contract is awarded to the best bidder according to award criteria previously established.

(2) This type of contract is used when the specifications are well defined and will not change for the duration of the contract.

(3) The aggregated total sum of the awarded Single Framework Contract shall not exceed the total budget foreseen.

(4) The duration of Single Framework contracts shall be no longer than two years except under exceptional circumstances.

(5) Where the Procuring Organisation has entered into a framework agreement, it shall be mandatory to use that framework agreement.

PART V - PROCUREMENT PROCEEDINGS

54. Publication

(1) The Procuring Organisation shall advertise all the contracts by appropriate means respecting the principles of transparency and open competition.

(2) Procurement notices must be advertised in advance and a decision to award a contract must be published before contracting.

(3) In addition to other approved publication methods, the publication shall be on the E-Procurement Portal.

(4) The publication may be international, national or local depending on the procurement method and the thresholds established in the Regulations.

(5) The advertising period shall start on the date the bid notice is first published in a newspaper of wide circulation and that date shall not be included in the calculation of the bidding period.

(6) Where different publications are made, the last date of publication shall be considered.

(7) The Regulations will specify the publication requisites.

55. Invitation to bid and access to bidding documents

(1) When the open procedure is used, all interested economic operators shall have unrestricted access to the bidding documents.

(2) In the case of restricted bidding, only the shortlisted economic operators are entitled to receive the bidding documents.

(3) In accordance with subsection (2), when the shortlisted economic operator is a joint venture or consortium, the composition of the joint venture or consortium shall not be changed after pre-qualification or during the implementation of the contract awarded to the joint venture or consortium without prior approval of the Procuring Organisation.

(4) The Procuring Organisation may approve the change in the composition of the joint venture or consortium composition only if the modification –

(a) is supported by solid and objective arguments;

(b) does not alter the competition;

(c) is not generating a conflict; and

(d) is not invalidating the criteria and conditions in place when the joint venture or consortium was prequalified or awarded the contract.

(5) The invitation to bid shall contain, at a minimum, the following information –

(a) the name and address of the Procuring Organisation;

(b) the nature, the location and main requirements for the services to be provided; the nature, quantity, and place of delivery of the goods to be supplied, or the nature and location of the works to be executed;

(c) the procurement method used and a reference to the applicable procurement policies and rules;

(d) the means of obtaining the biding documents and the place from which they may be obtained;

(e) the place, deadline and procedures for the submission of bids;

(f) the amount of bid security, if required; and

(g) details of how further information or clarifications can be obtained.

(6) As far as possible the bidding documents shall be distributed to economic operators in electronic version, free of charge, in a format to avoid modification.

(7) In a situation where electronic version is not a recommended means of distribution, and when the cost of reproduction and distribution of the bidding documents is high, the Procuring Organisation may ask the economic operators to pay for having access to the hard copy of the bidding documents.

(8) The price that the Procuring Organisation may charge for the bidding documents shall reflect only the cost of printing them and delivering them to the economic operators.

(9) When bid documents are distributed in hard copies, all economic operators who choose to be sent the documents may be charged the cost of making the documents available to them.

56. Contents of bidding documents

(1) The use of bidding documents shall be mandatory and no changes in the standard paragraphs of the standard bidding documents published by the Procuring Organisation, including the annexes shall be made without the relevant approval as established in the Regulations.

(2) The bidding documents shall include the following information –

(a) the Invitation to bid;

(b) instructions to bidders for preparing the bid including the standard forms which the bidder needs to fill out;

(c) instruction to bidders explaining the evaluation processes, the evaluation and award criteria;

(d) the detailed description of the technical requirements (in the form of Technical Specifications or Terms of References);

(e) The payment methods, structure, documentation, currency of the contract and payment deadlines;

(f) the General and Specific Conditions of Contract; and

(g) the draft contract including, the contract annexes.

57. Evaluation and award criteria

(1) Evaluation criteria are meant to determine the compliance of the services, goods and works offered by the bidders with the Procuring Organisation's requirements stated in the Terms of References or Technical Specifications.

(2) Award criteria shall describe the methodology which will establish the successful bid among those complying with the evaluation criteria. Usually there are two main types of award criteria as follows –

(a) price, in this case the contract is awarded to the bidder which, while satisfying the eligibility, qualification and evaluation criteria, quotes the lowest price; and

(b) quality and cost, this award criterion entails that the successful bid is determined by applying a formula including the evaluation points and the offered price.

(3) When defining the evaluation and award criteria, the Procuring Organisation shall ensure that the evaluation and award criteria are precise, non-discriminatory and not prejudicial to fair competition.

(4) The evaluation and award criteria shall not be changed during the evaluation process.

58. Technical requirements

(1) The technical requirements shall be set in the Technical Specifications or the Terms of Reference.

(2) These documents shall set out the requirements and objectives in respect of services, supplies or works and specify, where relevant, the methods and resources to be used and results to be achieved.

(3) The Technical Specifications or Terms of Reference shall provide all the necessary information in a clear and precise manner to allow a bidder to easily identify all the Procuring Organisation's needs and determine the cost of such needs to respond realistically and competitively to the requirements.

(4) The economy, efficiency and fairness in procurement processes shall always be considered when drafting the technical requirements.

(5) Unless the negotiated procedure is used, the technical requirements shall be prepared to permit the widest possible competition, and at the same time, make a clear statement of the required standards of workmanship to be provided, standards of supplies and performance of the services or works to be procured.

(6) For goods and works, the technical requirements shall indicate that all supplies be new subject to section 46, unused, and of the most recent or current models, and they have to incorporate all recent improvements in design and materials.

(7) Any reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible and where unavoidable, such item description should always be followed by the words "or substantially equivalent".

59. Clarifications and modifications of bidding documents

(1) An economic operator may request a clarification of the bidding documents from the Procuring Organisation.

(2) The Procuring Organisation shall respond to any request by an economic operator for clarification of the bidding documents that is received within a reasonable time prior to the deadline for the submission of applications; and shall, without identifying the source of the request, communicate the clarification to all economic operators to which the Procuring Organisation has provided the bidding documents.

(3) At any time prior to the deadline for submission of bids, the Procuring Organisation may, for any reason, whether on its own initiative or as a result of a request for clarification by an economic operator, modify the bidding documents by issuing an addendum to the bidding documents.

(4) The addendum to the bidding documents shall be communicated promptly to all shortlisted economic operators to which the Procuring Organisation has provided the solicitation documents and shall be binding on those economic operators.

(5) In the case of an open tender it shall be communicated to the community of suppliers through publication in the website or other method specified in the Regulations or the Guidelines.

(6) If the Procuring Organisation convenes a pre-bid meeting or site visit of economic operators, it shall prepare minutes containing the questions submitted at the meeting or site visit, and its responses to those questions, without identifying the sources of the questions.

(7) The minutes shall be provided promptly to all economic operators to which the Procuring Organisation provided the bidding documents, so as to enable them to take the minutes into account in preparing their bids.

(8) The cost and expenses related to attending pre-bid meetings or site visits shall be borne by the economic operator.

60. Submission of bids

(1) The Procuring Organisation shall fix the place, and the deadline for submission of the bids.

(2) If, pursuant to Section 59, the Procuring Organisation issues a clarification or modification of the bidding documents, or if a meeting of economic operators is held, it shall, prior to the deadline for the submission of bids, extend the deadline if necessary to afford economic operators reasonable time to take the clarifications, modification or the minutes of the meeting, into account in their bids.

(3) The Procuring Organisation may, in its absolute discretion, prior to the deadline for the submission of bids, extend the deadline for submitting the bids.

(4) Notice of any extension of the deadline shall be given promptly to each economic operator to which the Procuring Organisation provided the solicitation documents in case of Restricted Tendering, Limited Tendering or Negotiated procedures; or published in line with the Regulations in case of an Open Tender.

(5) The potential contractors shall submit their bids in the following manner -

(a) subject to subsection 5 (b) and (c), a bid shall be submitted in writing, signed and in sealed envelopes;

(b) when quality and cost award criteria are applied, the Procuring Organisation shall employ the principle of double envelop system, whereby the technical proposal shall be separated from the financial proposal;

(c) without prejudice to the rights of an economic operator to submit a bid in the form referred to in paragraph (a) of this subsection bids may be submitted, only in exceptional cases and if stated in the bidding documents, by e-mail or fax; and

(d) upon request, the Procuring Organisation shall provide the economic operator a receipt showing the date and time when its bid was received.

(6) A bid received by the Procuring Organisation after the deadline for the submission of bids shall not be opened and shall be returned to the economic operator that submitted it. Similarly, pursuant to subsection (5) (b), unopened financial proposals shall be returned to the bidders who did not qualify following the technical evaluation.

61. Validity period; modification and withdrawal of bids

(1) Bids shall be valid for the period of time specified in the bidding documents.

(2) Prior to the expiry of the validity period of the bids, the Procuring Organisation may request bidders to extend it for an additional specified period of time.

(3) A bidder may refuse the request without forfeiting his bid security. In that case the validity period of its bid will terminate upon the expiry of the un-extended validity period.

(4) Bidders who agree to an extension of the validity period of their bids shall submit proof of the extension of the bid security or provide new bid securities to cover the extended validity.

(5) A bidder whose bid security is not extended or has not provided a new bid security is considered to have refused the request to extend the validity period of his bid.

(6) An economic operator may modify or withdraw its bid prior to the deadline for the submission of bids without forfeiting its bid security.

(7) The modification or notice of withdrawal is effective if it is received by the Procuring Organisation prior to the deadline for the submissions of bids.

62. Bid securities

(1) When the Procuring Organisation requires economic operators submitting bids, to provide a bid security -

(a) the requirement shall apply to all such economic operators;

(b) the bidding documents shall stipulate that the issuer of the bid security and the confirmer, if any, as well as the form and terms it, shall be acceptable to the Procuring Organisation;

(c) the bidding documents may impose the obligation of providing bid securities issued or backed by institutions legally established in The Gambia;

(d) notwithstanding the provisions of subsection 1(b), a bid security shall not be rejected by the Procuring Organisation on the grounds that the bid security was

not issued by an issuer accepted by the Procuring Organisation unless such issuer was clearly identified in the bidding document as an unacceptable issuer;

(e) prior to submitting a bid, an economic operator may request the Procuring Organisation to confirm the acceptability of a proposed issuer of a bid security, or of a proposed confirmer; the Procuring Organisation shall respond promptly to such a request; and all relevant information shall be provided in the Bidding Documents;

(f) confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the Procuring Organisation from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness; and

(g) the Procuring Organisation shall specify in the bidding documents all requirements with respect to the nature, format, amount and other principal terms and conditions of the required bid security; any requirement that refers directly or indirectly to the conduct of the shortlisted economic operator submitting the bid shall be limited to–

(i) withdrawal or modification of the bid after the deadline for submission of bids,

(ii) failure to sign the procurement contract if required by the Procuring Organisation to do so; and

(iii) failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition specified in the bidding documents, precedent to signing the procurement contract.

(2) The Procuring Organisation shall make no claim to the amount of the bid security, and shall promptly return, the bid security document, after whichever of the following that occurs earliest -

(a) the expiry of the bid security;

(b) the entry into force of a procurement contract and the provision of a security for the performance of the

contract, if such a security is required by the bidding documents;

(c) the termination of the bidding process without the entry into force of a procurement contract; or

(d) the withdrawal of the bid prior to the deadline for the submission of bids.

63. Opening of bids

(1) Bids shall be opened at the time specified in the bidding documents as the deadline for submission of bids, or, at the deadline specified in any extension of the deadline and shall be opened at the place and in accordance with the procedures specified in the bidding documents.

(2) The bids shall be opened by an officially appointed Bid Opening Panel which shall have the required competencies to proceed and shall produce a bid opening report**.**

(3) All economic operators that have submitted bids, or their representatives, shall be permitted to be present at the opening of bids.

(4) When open procedures are used, the name and address of each economic operator whose bid is opened as well as the bid price shall be announced to those present at the opening of bids and communicated upon request to economic operators that have submitted bids but were not present or represented at the opening of bids.

(5) A Bid Opening Report, in the format determined in the Regulations, shall be made during the Bid Opening Session and signed by all persons being present and shared with all bidders by e-mail.

(6) The Bid opening panel shall do opening sessions in the presence of the bidders who wish to be present or their representatives in accordance with the Regulations and the bidding documents.

64. Examination, evaluation and comparison of bids

(1) The evaluation of bids or proposals shall be conducted by an officially appointed Evaluation Committee which shall have the

required competences to give an informed opinion on the submitted bids or proposals.

(2) The Evaluation Committee shall consist of minimum three voting members and a Secretary who shall be a non-voting member. The number of voting members shall always be an odd number. The committee will be presided by a Chairperson appointed by the voting members.

(3) The Secretary of the Evaluation Committee shall be a procurement expert and shall have responsibility to take record of meetings and provide technical guidance to the members of the Evaluation Committee on matters relating to this Act and the Regulations, whilst the voting members shall be entrusted with the responsibility of evaluating the bids and issue recommendations for the award of the contract.

(4) The Secretary shall be the only authorised representative of the Evaluation Committee entitled to communicate with third parties in relation with the decisions of the Evaluation Committee following the instructions of the Chairperson.

(5) The Evaluation Committee shall be independent and impartial, and all voting members shall have equal rights.

(6) All members of the Evaluation Committee shall be individually and collectively responsible for observing the principles of these Regulations.

(7) The members of the Evaluation Committee shall sign a statement of impartiality and confidentiality acknowledging that they are not in a conflict of interest and will not disclose any information to economic operators or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted, except as provided for in section 36.

(8) The Procuring Organisation may appoint other non-voting members to the Evaluation Committee, called Observers, to observe the way the evaluation proceedings are conducted.

(9) The Observers shall be subject to the same obligation about confidentiality as the members of the Evaluation Committee and shall not be permitted to interfere in the evaluation process.

(10) In case none of the members of the Evaluation Committee have sufficient knowledge to evaluate certain aspects of a bid, they can invite an external expert to guide them. This shall not relieve members of the Evaluation Committee from the responsibility of the evaluation.

(11) During the evaluation process, the Procuring Organisation, at the request of Evaluation Committee may ask economic operators for clarifications of their bids in order to assist in the examination, evaluation and comparison of bids.

(12) A change in a matter of substance in the bid, including changes in price and changes aimed at making an unresponsive bid responsive, shall not be sought, offered or permitted.

(13) Notwithstanding subsection (10), the Procuring Organisation, at the Evaluation Committee's recommendation, shall correct purely arithmetical errors that are discovered during the examination of bids.

(14) The Procuring Organisation shall give prompt notice of any such correction to the economic operator that submitted the bid, for concurrence and acceptance or about any other corrections and/or clarifications resulting from the correspondence with the bidder during the tendering process.

(15) Subject to subsection (16), the Procuring Organisation may regard a bid as responsive only if it complies with all requirements set forth in the bidding documents.

(16) The Procuring Organisation may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the bid.

(17) Any such deviations shall be quantified, to the extent possible, and appropriately taken account of, in the evaluation and comparison of bids.

(18) The Procuring Organisation shall not accept a bid –

(a) if the bid is not substantially responsive, technically and financially; or

(b) if the economic operator that submitted the bid does not accept a correction of an arithmetical error made pursuant to subsection (10) or any other corrections or clarifications which have been specified in the Procuring Organisation notice of acceptance of the bid;

(c) the Evaluation Committee shall evaluate and compare the bids that have been accepted in order to determine the successful bid as defined in subsection (11); and

(d) the evaluation process shall be conducted in accordance with the procedures and criteria set forth in the bidding documents,

no other criteria than those stated in the bidding documents shall be used.

(19) A bid shall be considered successful only if it is has been determined to be –

(a) substantially responsive in terms of the specific evaluation criteria set forth in the bidding documents;

(b) having the lowest evaluated bid price or, in case of Quality and Cost Based Selection for Consultancy contracts, having the highest combined score; and

(c) substantially conforms with the qualification criteria set forth in the bidding documents or pre-qualification document, as appropriate.

(20) The successful bidder shall not be allowed or asked to change its bid or required to accept new conditions during evaluation or as a condition of award except those specified in the subsection (9).

(21) Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to economic operators or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in section 36.

65. Prohibition of negotiations with bidders

(1) No negotiation between the Procuring Organisation and the bidders shall be permitted prior to issuance of the notice of acceptance of bid, unless the procurement is conducted in

accordance with the procurement methods described in sections 44 and 45.

(2) The provisions of this Act shall not prevent a Procuring Organisation from inviting the successful bidder to agree on the final format of the contract including any correction of an arithmetical error made or any other corrections or clarifications which have been specified in the Procuring Organisation notice of acceptance pursuant section 64(13).

66. Award and entry into force of the contract

(1) Subject to sections 32, 34 and 63 the bid that has been determined to be the successful shall be accepted and notice of acceptance of the bid shall be given to the economic operator who submitted the successful bid.

(2) The Procuring Organisation shall, before issuing the notice of acceptance of the successful bid, issue a notice of intention to award the contract to all bidders who participated in the tender in question by giving them ten working days within which to submit a complaint, if any.

(3) The notice in subsection (2) shall contain the name of successful economic bidder, contract sum, and completion or delivery period.

(4) The requirement in subsection (2) shall not apply to –

(b) cases of force majeure procurement if the circumstances do not allow issuance of notice of intention to award the contract; and

(c) Small procurement transactions where no written contract is required.

(5) Upon receipt of a complaint from an economic operator served with the notice of intention to award contract in subsection (2) the Procuring Organisation shall proceed to determine the matter in accordance with section 70.

(6) The Procuring Organisation shall on request communicate to all the bidders the grounds for the rejection of their bids and a statement of the reasons why the bid or proposal was unsuccessful shall be included unless the price information suffices.

(7) A commercial, private, manufacturing processes and techniques or confidential business or financial information shall not be divulged.

(8) If there is no complaint from any of the economic operators notified pursuant to subsection (2) the Procuring Organisation shall issue a notice of acceptance of bid in line with subsection (1).

(9) Between the time when the notice of acceptance of bid referred to in subsection (1) is dispatched to the economic operator and the entry into force of the procurement contract, subject to subsection (5), neither the Procuring Organisation nor the economic operator shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(10) The economic operator whose bid that has been determined the successful shall enter into a contract with the Procuring Organisation according to the contents of the tender.

(11) Unless otherwise provided in the Special Conditions, the contract will enter into force when signed by the last of the parties.

(12) The Authority shall establish standard general contract conditions for goods, services and works and Government institutions shall use these standard general conditions unless there is a derogation approved by the relevant authority.

(13) Government institutions such as Local Governments, Government Agencies or Public Enterprises may issue their own standard general contract conditions together with their own procurement manuals in line with the provisions of this Act and the Regulations.

(14) A written contract shall be issued for every procurement.

(15) Services or works shall not commence, or goods ordered, until a contractual obligation between the Procuring Organisation and the contractor has been established by signature of both parties to the contract.

(16) All contracts shall be signed by the relevant Procuring Organisation official who is the accounting officer or his or her designate.

(17) The contract shall at least specify the following –

(a) the name and address of the contracting parties;

(b) the name and address of the person authorised to act on behalf of the contracting party;

(c) the terms of reference or technical specifications;

(d) the quantity in the case of procurement of goods;

(e) the terms of delivery;

(f) the overall contract or unit price;

(g) the terms of payment;

(h) the duration of the contract;

(i) the conditions to by fulfilled by the Procuring Organisation and the Contractor, including general conditions of the contract;

(j) the procedure of settlement of disputes; and

(k) any other mandatory requirements for doing business with the Government.

(18) If the economic operator whose bid has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the contract, the Procuring Organisation shall forfeit the bid security if any and select the second listed successful bid in accordance with section 64(19) of this Act from the remaining bids, subject to section 35 to reject all remaining bids.

(19) The manner of entry into force of the contract shall be indicated in the bidding documents.

(20) In small transactions where no written contract is required, the contract will enter into force once the Procuring Organisation duly dispatches a Purchase Order for the services, goods and works to the economic operator who submitted a bid provided the dispatch is done within bid's validity period.

(21) The Procuring Organisation shall publish all the contracts awarded through public funds and the award notice shall indicate the contract price, the name and the address of the successful bidder and shall be published in the local media, the Procuring Organisation's

website, the Authority's website and in such other medium as provided in the Regulations.

67. Contract Administration

(1) The 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) The Procuring Organisation may agree to submit to arbitration, disputes relating to the performance of procurement contracts according to contract clauses.

68. Modifying contracts and contract termination

(1) Contracts may be subject to modification during implementation provided that the following principles are observed –

(a) contract modifications shall be formalized through an administrative order or an addendum to the contract in accordance with the provisions of the General Conditions of the Contract and accepted by the contracting parties;

(b) a modification to the contract may not alter the award conditions prevailing at the time the contract was awarded;

(c) a modification of the contract value shall not exceed an aggregate amount of up to fifty percent of the original contract amount except in the circumstances detailed in subsection (2);

(d) any modification of the duration of the contract shall not exceed an aggregate of maximum of one hundred percent of the duration of the initial contract; and

(e) all modification shall be signed by contracting parties prior to the expiration of the contract.

(2) The restrictions of subsection (1) (c) and (d) are not applicable when existing contracts are amended for –

(a) complementary services not included in the main contract but which, due to unforeseen circumstances,

have become necessary to perform the contract, provided that–

(i) the complementary services are technically and economically inseparable from the main contract, without bringing serious inconveniences for the Procuring Organisation additional services consisting of the repetition of similar services entrusted to the contractor furnishing the services under the initial contract, and

(ii) a procurement notice has been published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost, were clearly indicated in the Bidding Documents or the Terms of Reference for the initial contract;

(b) additional deliveries by the original contractor intended either as a partial replacement of normal goods or installations or as the extension of existing contracts for goods or works, where a change of contractor would oblige the Procuring Organisation to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance; and

(c) additional works not included in the initial contract which due to unforeseen circumstances, became necessary for carrying out the works described therein and have been awarded to the contractor already carrying out the work –

(i) where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary; and

(ii) where such works, although separable from the performance of the original contract, are strictly necessary to its completion.

(3) All contract variations under this section shall be approved by the relevant authority in the Procuring Organisation or the person delegated by it.

(4) The procedures for initiating and approving any modification to the contract shall be detailed in the Regulations and the Guidelines.

(5) Where the Procuring Organisation estimates that a contract should be terminated in line with the contract conditions, the relevant Procurement Department shall submit a recommendation for termination with a copy of the contract.

69. Pre-qualification Processes

(1) Prior to the invitation to bid, request for proposals or offers, the Procuring Organisation may engage in pre-qualification processes with the purpose to identify, economic operators that are eligible and qualified. The provisions of section 32 shall apply to pre-qualification proceedings.

(2) If the Procuring Organisation engages in pre-qualification processes, it shall provide a set of pre-qualification documents to each economic operator that requests them in accordance with the invitation to prequalify and who pays the price, if any, charged for those documents.

(3) The price that the Procuring Organisation may charge for pre-qualification documents shall reflect only the cost of printing and providing them to economic operators.

(4) The Procuring Organisation shall solicit applications to prequalify by publishing an invitation to prequalify on its website or any other means established in the Regulations.

(5) The pre-qualification documents shall include, at a minimum the following information -

(a) instructions for preparing the application, including the standard forms which the applicant needs to fill out;

(b) the criteria and procedures, in conformity with the provisions of section 32 relative to the evaluation of the eligibility and qualifications of economic operators;

(c) the requirements regarding all documentary evidence or other information that needs to be submitted to demonstrate eligibility and qualifications;

(d) a brief description of the scope of the contract;

(e) the language, in which application shall be prepared;

(f) the way, place and deadline for the submission of the application;

(g) the means by which, economic operators may seek clarifications of the solicitation documents;

(h) the period of time during which application shall remain valid;

(i) the place, date and time for the opening of applications;

(j) references to the relevant Procurement Guidelines or Manual, which apply to the respective procurement proceedings;

(k) the name, functional title and address of one or more officers or employees of the Procuring Organisation who are authorized to communicate directly with, and to receive communications directly from economic operators in connection with the procurement proceedings;

(l) the reference to the procurement Act, Regulations and Guidelines which allows the economic operator to appeal a procurement decision;

(m) a statement that the Procuring Organisation reserves the right to cancel the procurement processes pursuant to section 35; and

(n) any other requirements that may be established by the Procuring Organisation in conformity with this Act and the Regulations relating to the preparation, submission of applications or proceedings to prequalify.

(6) The economic operators are allowed to seek clarifications with regards to the pre-qualification documents, prior to the deadline for submission of the application.

(7) The evaluation shall be conducted in accordance with the procedures set in the pre-qualification documents and against the eligibility and qualification criteria already announced in the invitation to pre-qualification.

(8) A deviation from the pre-disclosed procedures and criteria shall not be allowed during the assessment of the applications.

(9) The evaluation shall determine the short list of economic operators that have satisfied the eligibility and qualification criteria, whom shall be further invited to participate in the bidding proceedings.

(10) The evaluation process shall be documented in a report which shall be signed by all members of the Evaluation Committee.

(11) The report will be subject to the approval of the authorised representative of the Procuring Organisation.

(12) The Procuring Organisation shall promptly notify each economic operator whether or not it has been prequalified and shall make the names of all economic operators that have been prequalified available to any member of the general public upon request.

(13) Only economic operators that have been prequalified are entitled to participate further in the procurement proceedings.

(14) The Procuring Organisation shall communicate the reasons leading to the exclusion from the short list to unsuccessful economic operators.

(15) When pre-qualification is used, prior to contract award, the Procuring Organisation may require the economic operator recommended for award of the contract, to demonstrate again its eligibility and qualifications in accordance with the same criteria used to prequalify the economic operator.

(16) The Procuring Organisation shall disqualify any economic operator that fails to demonstrate again its eligibility and qualifications if requested to do so.

PART VI - APPEAL OF PROCUREMENT DECISIONS

70. Right to appeal a procurement decision

(1) Subject to subsection (2), any economic operator that claims to have suffered, or that may suffer, loss or injury due to a breach of duty imposed on the Procuring Organisation by this Act or any Regulations developed for the implementation of this Act, may appeal the procurement decision to the Complaints Review Board according

to the procedure for handling appeals contained in sections 79 and 80.

(2) The following shall not be subject to the review provided for in subsection (1) -

(a) the selection of a method of procurement pursuant to sections 40 to 52;

(b) the choice of qualification and eligibility criteria pursuant to section 32, if they have not been contested prior to submission of an application;

(c) the contractual requirements as specified in the Terms or Reference or Technical Specifications, if they have not been contested prior to the submission of the application or the bid; and

(d) the content of standard solicitation documents including the general terms of the contracts, purchase orders, templates, etc., issued by the Procuring Organisation.

71. Procedures for handling appeals

(1) The Complaints Review Board shall develop procedures for procurement appeals that are fair, clear and transparent.

(2) The procedures to be followed by economic operators in appealing a procurement decision as well as the proceedings for handling the appeals shall be detailed in the Regulations.

PART VII - PROCUREMENT IMPLEMENTATION STRUCTURE

72. Establishment of procurement implementation structures

(1) To implement the provisions of this Act and its Regulations, the Procuring Organisations shall set out appropriate procurement implementation structures that promote –

(a) accountability of the Procuring Organisation's staff engaged in procurement activities, by defining clear roles and responsibilities among the staff and organisational structures involved in the procurement activities;

(b) segregation of duties between various department and functions within the Procuring Organisation organisation, by ensuring that procurement responsibilities are cascaded among various structures within the organisation;

(c) quality control over the procurement activities, by ensuring that all procurement documents are subject to prior approval;

(d) absence of conflict of interest, by ensuring that the structure has adequate checks and balances and no player is at the same time referee; and

(e) efficiency in the implementation of procurement activities, by ensuring that the implementation structure will not require unnecessary resources and/or promote redundant processes that are costly and/or time consuming for the organisation.

(2) The Procuring Organisations, in line with sections 73 to 77 shall establish the following –

(a) Contract committees; and

(b) Procurement units;

73. Establishment of Contract 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 74.

(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 pursuant to the Act, 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 procurement 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 36.

(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.

74. Composition of Contract 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 who shall be the head of the procurement unit and any other person familiar with the substance of the procurement if available.

(5) The list of contract committee members shall be shared with the Authority, including alternates.

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

75. Functions of Contract Committees

(1) 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 subsection 1(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.

76. The Establishment of Procurement Units

(1) The head of a Procuring 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.

(2) The Procurement Units shall be directly answering to the head of a Procuring Organisation.

(3) The Procurement Units, in accordance with the delegation received from the Contracts Committee, shall maintain the following records –

(a) Procurement action file in line with section 36; and

(b) Contract management file.

(4) The procurement Unit shall in accordance with the delegation received from the Contracts Committee –

(a) receive the procurement requisition from the originating departments and ensure that there are enough funds available to meet the obligation through consulting the relevant finance department;

(b) ensure that the requisition, including the Terms of Reference or Technical Specifications are in line with this Act and Regulations;

(c) prepare and submit regular reports to the relevant Contract Committee including reports on micro-procurement;

(d) carry out all the duties related to procurement of goods, services and works in line with this Act, its Regulations and the internal structure of the Procuring Organisation;

(e) provide procedural and technical guidance and assistance to all the departments of the Procuring Organisation on procurement related matters; and

(f) keep the procurement records of each procedure for at least seven years after the resulting contract was entered into or, if no contract resulted, after the procurement procedures were terminated.

77. Staffing of the Procurement Units

A Specialised Procurement Unit shall be staffed with personnel who are well trained in procurement, and whose professional qualifications meet the requirements that may be established in accordance with Guidelines to be issued by the Authority.

78. Career development and management of procurement officers

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

(2) The Authority shall develop and recommend to the head of a procurement organisation, a career development and management programme.

PART VIII- THE COMPLAINTS REVIEW BOARD

79. The Complaints Review Board and the right to consideration and review

(1) There is established by this Act, a Complaints Review Board to review decisions made by Procuring Organisations at any stage of the procurement proceedings.

(2) Notwithstanding subsection (1), the Complaints Review Board shall not review decisions made by Procuring Organisations in respect of donor funded projects unless it is provided for in the Financing Agreement between Government of The Gambia and the donor agency.

(3) The members of the Complaints Review Board shall be appointed by the Minister in consultation with the Public Service Commission.

(4) The Complaints Review Board shall consist of –

(a) a Chairperson who shall be a legal practitioner;

(b) Permanent Secretary of the Ministry;

(c) three procurement experts; and

(d) two other persons with the relevant legal, procurement and financial management expertise, one of whom shall be the Vice-Chairperson.

(5) At any meeting of the Complaints Review Board, four members shall constitute a quorum.

(6) The Complaints Review Board may sit in one or two divisions where it is expedient to do so, and-

(a) a division shall consist of a Chairperson and two other members selected by the Chairperson;

(b) a decision of a division shall be considered to be a decision of the Complaints Review Board;

(c) at any meeting of the division, the Chairperson and two other members shall constitute a quorum; and

(d) in the absence of the Chairperson, at a meeting of the Board, the members present shall elect a member to act as Chairperson of the meeting.

(7) There shall be a Secretary of the Board who shall be a public procurement professional.

(8) The Secretary of the Board shall be under the administrative control of the Chairperson.

(9) Every member of the Complaints Review Board shall hold office for a period not exceeding three years and shall be eligible for reappointment for one further term.

(10) An appointment of a member may be terminated if he or she is guilty of any misconduct, default or breach of trust in the discharge of his or her duties or has committed an offence of such nature as renders it desirable that his or her appointment be terminated.

(11) Subject to subsection (11), 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.

(12) Subsection (5) shall not apply to the decisions mentioned in section 70(1).

(13) 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.

(14) The decision of the Complaints Review Board shall be binding on Procuring Organisations and enforceable under the law.

80. 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 Bidder 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 subsection (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 for review;

(h) require the payment of compensation for any reasonable costs incurred by the Bidder submitting an application for review 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.

(11) A certificate issued by the Procuring Organisation under subsection (9) shall be binding on the Complaints Review Board and the procurement proceedings notwithstanding shall proceed.

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

(13) Where the Board does not determine the application for review with the period referred to in subsection (5) -

(a) the suspension of the procurement proceedings under subsection (7) shall lapse;

(b) the Procuring Organisation shall proceed with the award of the contract; and

(c) the Board shall continue with the application for review

81. Regular auditing of procurement activity

(1) Public 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.

82. Bodies to cooperate with the Authority

(1) 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.

83. Request for information by the Authority

A Procuring Organisation shall provide the Authority with such information as the Authority may require in writing, regarding procurement engaged in by the Procuring Organisation.

84. 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 subsection (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; or

(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 Procuring Organisation or tenderers as may be reasonably required.

(3) The powers of entry and search conferred by subsection (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 dalasi or a term of imprisonment not exceeding two years or both.

85. Procedures of 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 subsection (2) which may adversely affect the rights or property of that person.

PART VIII - DISPOSAL OF STORES, PLANT AND EQUIPMENT

86. Disposal of obsolete and surplus items

(1) The head of a Procuring Organisation 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.

87. 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.

88. Disposal committee

A Procuring 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.

89. 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) The employee in charge of the unserviceable, obsolete or surplus stores or equipment shall comply with subsection (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 subsection (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 subsection (4) and the written reasons under paragraph (a); and

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

90. Disposal by public auction

(1) 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.

91. Disposal to employees and Board members

(1) A Procuring Organisation may, pursuant to section 89 (1), 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 IX - MISCELLANEOUS PROVISIONS

92. Debarment of economic operators

(1) The Authority shall protect the Government from actual or potential harm by excluding a potential bidder or contractor 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) The grounds for suspension or removal shall include –

(a) failure to perform in accordance with the terms and conditions of the contract;

(b) where the economic operators is known to have engaged in criminal activity, abusive, unethical or unprofessional conduct, including corrupt practices or any other practice contemplated in sections 9 and 10.

(c) genuine concern about the economic operator's ability to satisfactorily perform contractual obligations such as filing for bankruptcy or where the company is or has recently been in receivership;

(d) where an economic operator has refused to sign a procurement contract or furnish a performance security if required to do so in accordance with the terms of the bidding documents;

(e) where an economic operator has provided false information supplied in the process of submitting a bid;

(f) where the Competition and Consumer Protection Commission establishes the fact of collusion between the bidders or a bidder and public officer concerning the formulation of terms of reference, technical specifications or bidding documents;

(g) where there was connivance to interfere with the participation of competing bidders;

(h) where an economic operator has acted in 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 economic operator;

(i) failure to comply with the mandatory conditions of doing business with the Government or the relevant Procuring Organisation; and

(j) conviction for an economic crime or offences involving fraud or dishonesty.

(3) Where the Procuring Organisation inadvertently contracts with a debarred economic operator, immediately upon discovery of the debarment, the Procuring Organisation shall terminate the contract, having due regard for the operational consequences.

(4) Where an economic operator has been debarred by one Government institution, the debarment shall extend to all other public Procuring Organisations in The Gambia.

(5) The period of the suspension shall depend on –

(a) the nature and severity of the offence;

(b) any mitigating circumstances;

(c) any previous suspensions; and

(d) the period of suspension imposed in comparable cases.

(6) The suspension shall be communicated to the provider in writing and shall state –

(a) that the provider is excluded from participating in any procurement or disposal proceedings by the Government for the period of the suspension;

(b) the reason for the suspension and the period of the suspension;

(c) that the suspension applies to any "successor in interest" which shall include any entity that is substantial similar to a suspended entity or which employs, or is associated with any partner, member, officer, director, responsible managing officer, or responsible managing employee, of a suspended business entity; and

(d) that the suspension does not relieve the provider of responsibility for obligations under any existing contracts placed prior to the suspension.

(7) The list of de-barred economic operators including the titles of all "successors in interest" shall be circulated to all Government institutions in The Gambia.

(8) A suspended economic operator may, after the expiry of the period of the suspension re-apply for re-qualification.

93. Gambia Public Procurement Guidelines and Regulations

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

(2) All the Procuring Organisations tendering and managing public funds shall follow the Regulations developed for the purpose of the implementation of this Act.

(3) Whenever a conflict between this Act and the Regulations occur, the provisions of this Act shall take precedence over the Regulations.

(4) In particular, the Authority may make regulations for –

(a) the management of supplies;

(b) for the transfer of excess supplies;

(c) for the sale, lease or disposal or 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 develop the rules for the procurement methods established in this Act.

(5) To fulfil the objectives and to carry out the provisions of this Act and the Procurement Regulations, the Authority shall produce a set of procurement Guidelines including standardized procurement documents in order to support the public procurement for the Government, Ministries, Government Agencies, Administrations and entities; Local Governments, State Owned Enterprises or any other owned public entities.

(6) The use of these Guidelines shall be compulsory for all central government institutions and for Local Governments, Government Agencies, State Owned Enterprises or any other public entities unless those public entities with legal personality which have produced their own procurement manuals in accordance with subsection (7).

(7) Public Procuring Organisations such as Local Governments, Government Agencies, Public Enterprises or any other public entities with legal personality other than the Government may produce customized procurement manuals in line with this Act and Regulations made under this Act.

(8) The Authority shall approve the use of these manuals before entering into force.

(9) Whenever a conflict between the Guidelines or Manuals and this Act or the Regulations occur, the provisions of this Act and the Regulations shall take precedence over the Guidelines or Manuals.

94. Offences and sanctions related 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 dalasi or a term of imprisonment not exceeding five years or 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 contractor where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case has 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; and

(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 corrections;

(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.

(3) When an economic operator is found in one of the situations described in sections 24 and 25, the Procuring Organisation may take the following measures against the economic operator –

(a) reject his bid;

(b) declare the economic operator, including his affiliates, ineligible for the award of public contracts, either indefinitely or for a stated period of time including the debarment as defined in section 92;

(c) cancel or terminate any on-going contract with the contractor;

(d) request the relevant authorities to conduct a joint investigation with the Procuring Organisation to inspect or carry out audits of the economic operator's records and financial statements in connection with the contract in question for which the economic operator is suspected of engaging in corrupt, fraudulent, collusive, coercive, or obstructive practices;

(e) forfeit the bid or performance securities of the economic operator;

(f) suspend any payments due to the economical operator, under the contract in question or any other contract it might have with the contracting organisation, until the extent of damage caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Government contract are determined and recovered;

(g) sue the economic operator to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the economic operator; or

(h) take any other measures provided for in the contract.

95. Micro Small and Medium Local Businesses

(1) The Authority shall in collaboration with the heads of the main Procuring Organisations, establish a programme to facilitate participation by Micro Small and Medium 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.

96. Responsibility for supply management

(1) A head of a Procuring Organisation and according to relevant Regulations 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.

97. Record keeping obligations for Contractors

(1) Contractors shall keep the records, supporting documents, reports and other records of a procurement contract for a period of seven years following the payment of the final balance.

(2) Records pertaining to audits, appeals, litigation or the pursuit of claims arising out to the performance of a project shall be retained till such audits, appeals, litigation or claims have been disposed of.

(3) All records referring to Procurement activities shall be kept in accordance with the relevant records management regulations.

98. Emergency procurement

Emergency procurement may be allowed under special conditions as specified in the Regulations.

99.Repeal and savings

(1) The Gambia Public Procurement Authority Act, 2014 is repealed and the Authority established by it is consequently dissolved.

(2) As from the commencement of this Act –

(a) the rights, assets, funds and liabilities of the dissolved Authority are transferred to the Authority established under this Act;

(b) any action, proceedings, judgment 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;

(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; and

(e) nothing in this Act affects any order, rule, regulations, appointment or thing done under the former Act, but the order, rule, regulations, appointment or thing if in force immediately before the commencement of this Act shall, on the commencement of this Act, continue in force, and shall, as far as it could have been made, passed, given, taken, issued or done under this Act, have effect as if so made, passed, given, taken, issued or done.

OBJECTS AND REASONS

This Bill is a more modern procurement law which addresses the weakness of the Gambia Public Procurement Act, 2014, specifically, the improvements in this Bill focuses on the areas of e-government procurement, open-contracting initiatives and disfavoured groups in procurement.

This Bill seeks to create guidelines in the procurement of big infrastructure projects and to eliminate the abuse of emergency in the application of single source procurements and ensure it is only used when there is danger to life, damage to property or force majeure.

This Bill also seeks to consider the procurement of second-hand goods, cancellation of existing exemptions and the power of the Minister to come up with different Regulations creating rules of procurement for Central Government, Local Government, parastatals, state-owned enterprises, private bodies and other entities managing public funds.

In essence, this Bill seeks to address key issues that will bring it in line with international best standards which includes, institutional reforms, separation of regulation and control, control of directives and to promote the independence of the Gambia Public Procurement Authority.

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HON. SEEDY K.M. KEITA
MINISTER OF FINANCE AND ECONOMIC AFFAIRS