ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P161

PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 6/2012, in force 31 December 2012
Act 8/2016, in force 12 July 2016
Act 19/2021, in force 1 October 2021

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PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT

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PUBLIC PROCUREMENT AND CONTRACT ADMINISTRATION ACT

PART 1
PRELIMINARY

Interpretation

1. (1) In this Act—

"Board" means the Procurement Board;

"cohabitant" means a person who lives in a domestic relationship which is similar to the relationship between husband and wife;

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

(a) other governments; or

(b) statutory bodies inside or outside Anguilla;

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

"entity" means an entity referred to in section 2(b);
(Act 19/2021, s. 3(a))

"financial interest" includes a financial liability;

"minister" means the minister responsible for Finance;

"ministry" means the ministry responsible for Finance;

"partnership" includes a limited partnership;

"permanent secretary" means the permanent secretary responsible for Finance;

"person" means a corporation, individual, sole proprietorship, partnership or joint venture and includes its assigns and heirs, executors and administrators or other legal representatives;

"procurement" means the acquisition of works, goods or services using purchasing, leasing, renting or other similar arrangements made by the Government and an entity;
(Act 19/2021, s. 3(b))

"procuring entity" means a Ministry, Department or entity specified in section 2;
(Act 19/2021, s. 3(c))

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"specified professional services" means the professional services of—

(a) an accountant;

(b) an actuary;

(c) clinical specialists;

(Act 19/2021, s. 3(d))

(d) a dentist;

(e) a land surveyor;

(f) a lawyer;

(g) a physician; or

(h) a prescribed professional other than an architect or engineer;

"spouse" does not include a person from whom a public officer or officer of an entity is separated if all support obligations and family property have been dealt with by a separation agreement or a court order.

(Act 19/2021, s. 3(e))

(2) For the purposes of this Act, the following persons are family members of a public officer or an officer of an entity—

(a) his or her spouse or cohabitant;

(b) his or her children and the children of his or her spouse or cohabitant;

(c) his or her parents;

(d) his or her brothers or sisters including half-brothers and half-sisters and brothers and sisters by adoption.

(Act 19/2021, s. 3(f))

(3) A person has a financial interest in an entity where that person—

(a) is a director, officer or employee of a company;

(b) is a partner in a partnership or an employee of the partnership;

(c) is a shareholder in a company;

(d) is a trustee under a trust or an employee of a trust;

(e) is a party to a joint venture; or

(f) is a creditor or debtor of a company, partnership or trust.

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(4) Notwithstanding subsection (3), regulations may provide for further circumstances that constitute a financial interest or class of financial interests.

(Act 8/2016, s. 2)

Application of Act

2. This Act applies to—

(a) the Government; and

(b) the following entities—

(i) Anguilla Air and Sea Ports Authority,

(ii) Anguilla Community College,

(iii) Anguilla Development Board,

(iv) Anguilla Electricity Company Limited,

(v) Anguilla Financial Services Commission,

(vi) Anguilla National Trust,

(vii) Anguilla Social Security Board,

(viii) Anguilla Tourist Board,

(ix) Health Authority of Anguilla,

(x) Public Service Pension Fund,

(xi) Public Utilities Commission,

(xii) Water Corporation of Anguilla, and

(xiii) Select Anguilla.

(Act 19/2021, s. 4)

Objectives of Act

3. (1) The objectives of public procurement are—

(a) to simplify, clarify and modernise public procurement;

(b) to make procurement by the Government or an entity more transparent, fair and equitable; and

(Act 19/2021, s. 2(2)(a))

(c) to award timely and cost-effective contracts to qualified contractors, suppliers and service providers in accordance with principles and procedures established in this Act.

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(2) The objective of contract administration is to ensure proper mechanisms are in place to monitor and evaluate the performance of contractors, suppliers and service providers in the fulfilment of their contractual obligations, and to ensure appropriate action is taken to promptly remedy any deficiencies observed in the execution of the contract.

(3) To fulfil the objectives of this Act, public procurement and contract administration shall—

(a) encourage public competition in the procurement process except to the extent that the circumstances or size of the procurement make it impracticable;

(b) foster and encourage broad participation in the procurement process by persons in Anguilla;

(c) provide for increased public confidence in the public procurement process by maintaining safeguards to ensure its fairness, openness and transparency;

(Act 19/2021, s. 2(1))

(d) ensure fair treatment of all persons who participate in the procurement process;

(e) ensure the best value is obtained for the procurement dollar; and

(f) ensure that contractors, suppliers and service providers deliver what was procured in a timely, effective and efficient manner which respects contractual principles and the procurement dollar.

(Act 8/2016, s. 2)

Ethical behaviour

4. (1) Ethical behaviour relates to acting with honesty, integrity, probity, diligence, fairness and consistency.

(2) To fulfil the objectives of this Act, public officers, officers of an entity and any person engaged in public procurement and contract administration on behalf of the Government or an entity shall act ethically throughout the procurement including—

(a) recognising and dealing with actual, potential and perceived conflicts of interest;

(b) carefully considering the use of public resources;

(c) dealing with bidders, offerors, potential suppliers and suppliers equitably by—

(i) seeking appropriate internal or external advice when probity issues arise, and

(ii) not accepting inappropriate gifts or hospitality.

(Act 19/2021, s. 2(2)(a) and s. 5)

(3) Where a complaint about procurement is received, the Board shall apply equitable and non-discriminatory complaint-handling procedures and shall manage the complaint process internally, when possible, through communication and conciliation.

(Act 8/2016, s. 2)

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Matters procured

5. In public procurement the following general matters are procured—

(a) "goods", meaning tangible personal property or physical products, purchased or manufactured on request, and including software, hardware, equipment, office supplies, furniture, vehicles and other commodities and the services incidental to the supply of those goods;

(b) "works" meaning—

(i) civil works, including construction of structures of all kinds such as roads, buildings, highways, bridges and renovations, extensions, installations, demolitions, repairs and the services incidental to the supply of those works, or

(ii) other general works; and

(c) "services", meaning—

(i) consulting services which are usually intellectual in nature and are considered technical services such as advisory and project related services including: feasibility studies, project management, engineering services, public financial and accounting services, training and development and usually culminating in the provision of a report, or

(ii) non-consulting services which usually involve the use of equipment and specific methodologies to achieve their objectives, including: equipment maintenance and repair, operation and maintenance services, utility management, installation and maintenance services, surveys and field investigations, and other similar services,

but not including the employment of public officers, officers of an entity and specified professional services or other services exempted by regulation.

(Act 8/2016, s. 2 and Act 19/2021, s. 6)

Artificial division of solicitations prohibited

6. (1) No solicitation shall be artificially divided, including artificially divided so as to be solicited—

(a) as an exempted procurement under section 28(i);

(b) so as to avoid the effect of the amount of money stated for large procurements, small procurements or micro procurements by any means including—

(i) 2 or more quotations rather than a bid or proposal,

(ii) 2 or more small or micro emergency procurements rather than a large emergency procurement, or

(iii) 2 or more direct solicitations rather than a sole source solicitation.

(Act 19/2021, s. 7)

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(2) A procurement shall be considered to be artificially divided if its only or primary purpose is to avoid competitive procurement or to achieve one of the objectives set out in subsection (1).

(Act 8/2016, s. 2)

Delegation

7. The permanent secretary may delegate the performance of the duties of the Chief Procurement Officer to another public officer in the ministry in order to ensure the efficient administration of this Act.

(Act 8/2016, s. 2 and Act 19/2021, s. 8)

PART 2

ORGANISATION OF PUBLIC PROCUREMENT

Procurement Unit

8. (1) There is established a Procurement Unit in the ministry.

(2) The Procurement Unit shall comprise of the following—

(a) the Procurement Office;

(b) the Procurement Committees; and

(c) the Procurement Board.

(Act 8/2016, s. 2)

Procurement Office

9. There shall be a Procurement Office established in the ministry and managed by a Chief Procurement Officer.

(Act 8/2016, s. 2)

General duties of Chief Procurement Officer

10. (1) The Chief Procurement Officer shall—

(a) provide advice to departments, the Board and any other relevant stakeholder on public procurement policies and practices;

(b) oversee and assist in coordinating the work of the Procurement Committees;

(c) monitor the operation of this Act and report thereon to the Board;

(d) foster the development of procurement professionals;

(e) after consultation with Procurement Committees and such other persons as the Chief Procurement Officer or the Board considers appropriate, prepare standard solicitation documents for any method of procurement for approval by the Board;

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(f) under the direction of the Board, develop and periodically update a procurement manual for use by all persons involved in procurement;

(g) attend Board meetings at the request of the chairperson; and

(h) perform any other duties and exercise any other powers in relation to procurement as are assigned to him or her by the Board.

(Act 8/2016, s. 2)

The Procurement Committee

11. (1) The Procurement Committee is responsible for—

(a) procurement planning for the ministry and its departments;

(b) procurement planning for each entity;

(Act 19/2021, s. 9(a))

(c) developing, implementing, monitoring and reviewing a Procurement Plan;

(d) submitting the Procurement Plan to the Chief Procurement Officer;

(e) preparing and submitting bid documents and invitations for bids to the Procurement Office;

(f) conducting small procurements in accordance with section 17;

(g) selecting the members of the Evaluation Committee in accordance with section 41;

(h) ensuring that procurement is done in accordance with the procedures set out in the Act;

(i) ensuring that it possesses current information of the status of a procurement;

(j) securing and filing all procurement documents; and

(k) recording all deliberations and decisions of meetings.

(2) The permanent secretary may delegate the administration of a procurement project or any procurement planning functions to a suitably qualified professional—

(a) in the private sector; or

(b) in the public sector, where that public officer or officer of an entity has attained the requisite approval to conduct this type of work.

(Act 19/2021, s. 9(b))

(3) The permanent secretary shall negotiate the best contractual price for the provision of services by the professional under subsection (2)(a) or (b) and the contractual price can only be enforced on the approval of the minister.

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(4) The Procurement Committee shall submit to the Procurement Office reports of decisions, justifications for decisions and the minutes of meetings, on the request of the Chief Procurement Officer.

(5) The conduct of the Procurement Committee shall be subject to the direction of the Chief Procurement Officer.

(6) Subject to subsection (14), a Procurement Committee—

(a) for a ministry, shall be appointed by each minister of Government from public officers within that ministry;

(b) for a department under the portfolio of the Governor, shall be appointed by the Deputy Governor from among public officers within a department or across several departments; or

(c) for an entity, shall be appointed by the Board of Directors of the entity.

(Act 19/2021, s. 9(c))

(7) A Procurement Committee for the ministries and departments shall include—

(a) an accounting officer or a public officer delegated to carry out the accounting officer's responsibilities pursuant to the Financial Administration and Audit Act, who shall be chairperson; and

(b) 2 other public officers.

(Act 19/2021, s. 9(d))

(8) In the case of a Procurement Committee referred to in subsection (7), the Minister may appoint 2 additional public officers to serve as alternates on the Procurement Committee where the accounting officer or a public officer referred to in subsection (7)(a) or (b) respectively is absent.

(Act 19/2021, s. 9(e))

(9) A Procurement Committee for each entity shall include—

(a) the Chief Executive Officer or person holding an equivalent position in the entity, who shall be the Chairperson;

(b) one other officer from the entity; and

(c) one public officer from the Ministry responsible for the entity.

(Act 19/2021, s. 9(e))

(10) Where in relation to an entity, there is no responsible Ministry, the Procurement Committee for such entity shall include—

(a) the Chief Executive Officer or person holding an equivalent position in the entity, who shall be the Chairperson; and

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(b) two other officers from that entity.

(Act 19/2021, s. 9(e))

(11) In the case of a Procurement Committee for each entity, the Board of Directors of the entity may appoint—

(a) a second officer from the entity; and

(b) a second public officer, where in relation to the entity there is a responsible Ministry;

to serve on the Committee where the Chief Executive officer or a public officer or officer referred to in subsection (9)(a), (b) or (c) respectively is absent.

(Act 19/2021, s. 9(e))

(12) Where in relation to an entity, there is no responsible Ministry, the Board of Directors of the entity may appoint 2 additional officers from the entity, to serve on the Committee where the Chief Executive officer or an officer referred to in subsection (10)(a) or (b) respectively is absent.

(Act 19/2021, s. 9(e))

(13) Where in relation to an entity, that entity comprises 5 persons or less, the Procurement Committee for such entity shall include—

(a) a senior officer from that entity who shall be the Chairperson; and

(b) where, in relation to that entity—

(i) there is a responsible Ministry, 2 public officers, or

(ii) there is no responsible Ministry, 2 officers from that entity.

(Act 19/2021, s. 9(e))

(14) The permanent secretary shall approve the appointment of each member of a Procurement Committee before the person is appointed.

(15) A Procurement Committee may be provided with a stipend if the permanent secretary approves.

(16) The Board may make rules governing the conduct of the Procurement Committee.

(Act 8/2016, s. 2)

Procurement planning

12. (1) Procurement planning is the process of deciding what to buy, when to buy it, and from what source and generally entails—

(a) identifying the goods, works and services it procures or plans to procure;

(b) clearly identifying the objectives and goals of the purchase;

(c) assessing the benefits and fiscal risks associated with the purchase;

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(d) identifying the human resources needed such as a project manager, Evaluation Committee, proposal manager, contract manager and approving authority;

(e) identifying the appropriate type of funding, the source of funding and preparing the procurement budget;

(f) determining or assessing the market's capacity to competitively respond to a procurement;

(g) selecting the proposed procurement method to be used;

(h) determining how the goods, works or services will be evaluated;

(i) where a contract is needed, preparing a draft of the contractual terms or indicating the plan to have the contract prepared;

(j) indicating generally the initial contract management strategy including transitional arrangements and performance management measures;

(k) indicating whether a local preference policy would be applied;

(l) on the request of the Chief Procurement Officer, preparation of a business case for unusually large and complex procurements; and

(m) meeting any other requirement considered necessary by the Chief Procurement Officer.

(2) The procurement plan is a rolling annual procurement plan and shall be submitted by the Procurement Committee to the Chief Procurement Officer by July 1 of each year, and the procurement plan shall be updated as needed, but no less than every 6 months.

(3) The Board may make rules guiding—

(a) when a business case needs to be prepared and the content and procedure for the submission of a business case; and

(b) procurement planning not provided for by this Act.

(Act 8/2016, s. 2)

Establishment of Board and appointment of Board members

13. (1) The Procurement Board is established.

(2) The Board shall consist of the following 7 members, appointed by the Executive Council in the following manner—

(a) the principal assistant secretary or the equivalent post in the ministry, who shall be an *ex officio* member and Chairperson of the Board;

(b) 2 public officers in the ministry, one of whom shall be appointed as the Deputy Chairperson of the Board;

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(c) 3 officers, each of whom shall either be an officer of an entity or public officer chosen from outside the ministry, and shall have experience or knowledge in public administration, finance, accounting, engineering, law, management, corporate governance, building and construction technology or policy studies; and

(Act 19/2021, s. 10)

(d) one private citizen, chosen from among persons with qualifications listed in subsection (2)(c).

(3) A member appointed according to subsection (2)(b), (c) or (d) shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.

(4) The Schedule has effect with regard to the constitution, operation and procedures of the Board.

(Act 8/2016, s. 2)

Duties and powers of the Board

14. (1) Subject to the direction of the permanent secretary, the Board is responsible for the administration of public procurement and, in this regard, shall oversee and manage the operation of the Procurement Unit.

(Act 19/2021, s. 2(1))

(2) The Board shall—

(a) approve standard solicitation documents for use in the solicitation of works, goods or services;

(b) approve a procurement manual;

(c) make an award of contracts for large procurements;

(d) make rules or policies in relation to any aspect of procurement and the administration of contracts not covered by this Act, including policies in relation to matters requiring the approval of the Board such as—

(i) material changes to standard solicitation documents,

(ii) cancellation of procurements, or

(iii) rejection of all submissions;

(e) give directions to a Procurement Committee in respect of making any solicitation or administering a contract; and

(f) provide advice that is requested by the minister, but that advice shall not contain information pertaining to the deliberations of the Board.

(3) Subject to the Schedule, the Board may make rules governing its procedure.

(Act 8/2016, s. 2)

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PART 3

CATEGORIES AND METHODS OF PROCUREMENT

Division 1

Categories of Procurement, Prequalification of Bidders or Offerors and Exempt Procurements

Categories of procurement

15. The categories of procurement are large procurements, small procurements, micro procurements, emergency procurements, confidential procurements and selective procurements.

(Act 8/2016, s. 2 and Act 19/2021, s. 11)

Large procurements

16. (1) A procurement is categorized as a large procurement when the estimate of the amount of the contract is equal to or exceeds—

(a) $54,000 for procuring goods, works or services; or

(b) $67,750 for procuring vehicles.

(2) Large procurements shall be managed on the direction of the Chief Procurement Officer and the selection of the successful bidder and award of the contract shall be approved by the Board.

(3) Large procurements shall be conducted using—

(a) one-stage procurement for competitive bids or proposals (one-envelope procedure);

(b) one-stage procurement for competitive bids or proposals (two-envelope procedure);

(c) two-stage procurement for competitive bids or proposals;

(d) selective procurement; or

(e) sole source solicitation.

(Act 8/2016, s. 2)

Small procurements

17. (1) A procurement shall be categorised as a small procurement when the estimate of a contract or order is less than $54,000 but—

(a) more than EC$10,000 when procuring food; or

(b) more than EC$4,000 when procuring goods, works or services not specified in paragraph (a).

(Act 19/2021, s. 12)

(2) Small procurements shall be conducted by the Procurement Committee subject to the direction of the Chief Procurement Officer.

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(3) Small procurements shall be conducted using a request for quotations or direct solicitations.

(Act 8/2016, s. 2)

Micro Procurements

18. (1) A procurement shall be categorized as a micro procurement when the estimate of a contract or order is less than—

(a) EC$10,000 when procuring food; or

(b) EC$4,000 when procuring goods, works or services not specified in paragraph (a).

(2) Micro procurements shall be conducted by procuring entities.

(3) Goods, works or services may be procured under this section on the basis of a single oral or written quotation where the good, work or service being procured is—

(a) a readily available off-the-shelf good;

(b) standard specification commodities; or

(c) for simple civil works and services.

(4) The acceptance of a quote shall be formalised by the issuance by the procuring entity of a contract or a purchase order.

(Act 19/2021, s. 13)

Chief Procurement Officer and small procurements

19. (1) Subject to the written consent of the Board, the Chief Procurement Officer may—

(a) take over and manage small procurements;

(b) audit the procurement process of any Procurement Committee;

(c) carry out investigations in relation to the award of a small procurement; and

(d) cancel any small procurement.

(2) The permanent secretary may delegate the functions under subsection (1)(a), (b) and (c) to a suitably qualified professional—

(a) in the private sector; or

(b) in the public sector, where that public officer or officer of an entity has attained the requisite approval to conduct this type of work.

(Act 19/2021, s. 14)

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(3) The permanent secretary shall negotiate the best contractual price for the provision of services by the professional under subsections (2)(a) or (b) and the contractual price can only be enforced on the approval of the minister.

(Act 8/2016, s. 2)

Emergency procurements

20. (1) An emergency procurement may be conducted when—

(a) there exists a threat to public health, welfare or safety by reason of an emergency condition and the procurement is for the purpose of eliminating or mitigating the threat;

(b) the procurement is urgently required and the urgency justifies a less stringent competitive procedure than would otherwise apply; and

(c) it is in the public interest to do so.

(2) In determining whether a procurement is an emergency procurement, consideration shall be given to the following matters—

(a) the time and resources required to prepare, or complete the preparation of, an invitation for bids or an invitation for proposals;

(b) the time required to permit solicitation by competitive sealed bids or competitive sealed proposals; and

(c) the degree of urgency in making the procurement and the damage to, or additional damage to, the public good that would likely ensue from delaying the procurement.

(Act 8/2016, s. 2)

Large emergency procurements

21. (1) The Chairperson of the Board, one Board member and the Chief Procurement Officer shall be responsible for approving emergency procurements when the estimate of the amount of the contract is the amount for large procurements.

(2) Where the 3 persons named in subsection (1) are unable to convene (in person, electronically or telephonically) to determine whether a large emergency procurement should be made, the permanent secretary shall be responsible for approving a large emergency procurement.

(3) The determination of a large emergency procurement allows the persons named under subsection (1), or the permanent secretary, to approve the use of any procurement method specified under this Act, including direct solicitations, and to modify the procedures for the procurement method chosen in order to satisfy the urgency of the procurement.

(4) The Chief Procurement Officer shall prepare a report for submission to the Board about a large emergency procurement.

(Act 8/2016, s. 2)

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Small emergency procurements

22. (1) The Procurement Committee may approve emergency procurements when the estimate of the contract is within the amount for small procurements.

(2) The approval of a small emergency procurement means that the Procurement Committee may approve the use of any procurement method applicable to small procurements and may modify the procedures for the procurement method chosen to satisfy the urgency of the procurement.

(3) The Procurement Committee shall, within one month after the small emergency procurement, prepare a report for submission to the Chief Procurement Officer about the small emergency procurement.

(Act 8/2016, s. 2)

Confidential procurements

23. (1) A procurement is confidential when—

(a) it is needed for the purpose of national defence or national security; and

(b) the Executive Council certifies in writing that the confidentiality of the procurement is necessary to protect the national interest.

(2) A confidential procurement may be determined to be a large procurement or a small procurement based on the estimate of the amount of the contract, and any contract that follows shall be confidential.

(3) The Procurement Committee may require potential bidders or offerors to sign confidentiality undertakings before being given access to confidential information.

(4) The Board may make rules governing confidential procurements.

(Act 8/2016, s. 2)

Confidential large procurements

24. (1) The determination of a large procurement as confidential allows the Chairperson of the Board and the Chief Procurement Officer to approve the use of any procurement method named under this Act, including direct solicitations, and to modify the procedures for the procurement method chosen in order to ensure that the confidentiality of the procurement is satisfied.

(2) The Evaluation Committee may use evaluation criteria to assess the ability of bidders or offerors to comply with confidentiality requirements.

(Act 8/2016, s. 2)

Confidential small procurements

25. The determination of a small procurement as confidential allows the Chairperson of the Procurement Committee and the Chief Procurement Officer to approve the use of any procurement method for small solicitations and to modify the procedures for the procurement method chosen in order to ensure that the confidentiality of the procurement is satisfied.

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Selective procurements

26. (1) Selective procurements limit the request for solicitations to a select number of suppliers, contractors or service providers who are invited to procure.

(2) The Procurement Committee shall receive the written consent of the Board before proceeding with this method of procurement.

(3) The Procurement Committee may use selective procurement when—

(a) there is only a limited number of suppliers, contractors or service providers with the capacity to fulfil the specific type of requirement;

(b) many suppliers exist within a market and it is not feasible to issue an invitation to bid or request for proposals to each or to cover the entirety of the market; or

(c) there exist exceptional circumstances that justify a departure from open competition.

(4) Subject to the direction of the Chief Procurement Officer, the Procurement Committee shall determine the number and specific firms or companies that will be invited to submit solicitations.

(5) The Board may make rules governing the practice and procedure for selective procurement.

(Act 8/2016, s. 2)

Prequalification of bidders or offerors

27. (1) The Procurement Committee may engage in a prequalification process with a view to identifying, prior to inviting bids or requests for proposals, the bidders that are qualified.

(2) Before the Procurement Committee prequalifies bidders, it shall submit its reasons for doing so to the Chief Procurement Officer, who has the discretion to approve or disapprove prequalification for a procurement method.

(3) A potential bidder may be required to be prequalified as a condition of submitting a bid or proposal in response to an invitation for bids or requests for proposals.

(4) The Procurement Committee shall decide who is prequalified in accordance with the guidance about responsible bidders or offerors, as provided for in the regulations, the bid or proposal documents or in any other prequalification documents prepared or approved by the Board.

(5) When a prequalification process has been engaged in, only bidders or offerors who have prequalified are entitled to continue in the procurement proceedings.

(6) When applicants have been prequalified for bids or proposals, the Chief Procurement Officer may give notice only to the applicants who prequalified.

(7) The Board may develop rules to further govern the prequalification process.

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Procurements exempt under the Act

28. The following procurements may be exempted from this Act—

(a) a procurement made under a co-operative procurement agreement;

(b) a procurement the funding for which, or part of the funding for which, is furnished to the Government by another government or by an international or regional agency, whether the funding is by loan, donation or otherwise, on the condition or on the understanding that the procurement procedures of the other government or international or regional agency, or procurement procedures approved or agreed to by the government or international or regional agency, will be used;

(c) the procurement of banking services;

(d) the procurement of fiscal agency or depository services or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(e) the procurement of media and media-related services, such as the purchase of television or radio time or production capacity;

(f) the procurement of travel services and hotel accommodation;

(g) the procurement of works of art, objects of historical or cultural interest or performances of cultural interest;

(h) the procurement of specified professional services;

(i) a procurement for casual hospitality or catering services in an amount not exceeding $6,500 or such other amount as may be prescribed;

(j) the procurement of the services of an administrator, insolvency practitioner, financial services expert or investigator appointed under section 39 of the Financial Services Commission Act or any other financial services skilled person or other special investigator for the purposes of a confidential investigation;

(Act 19/2021, s. 15)

(k) grants (whether in the form of a contract, conditional gift or deed);

(l) investments or divestments;

(m) sales by tender;

(n) statutory appointments; and

(o) appointments made by a minister using the executive power (for example, the appointment of a person to an advisory board or as full or part-time contract officer).

(Act 8/2016, s. 2)

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Division 2

Methods of Procurement

Methods of procurement

29. The methods of procurement are divided into 2 categories—

(a) competitive procurement which comprises—

(i) one-stage procurement for competitive bids or proposals (one-envelope procedure),

(ii) one-stage procurement for competitive bids or proposals (two-envelope procedure),

(iii) two-stage procurement for competitive bids or proposals,

(iv) selective procurement, and

(v) requests for quotations; and

(b) non-competitive procurement which comprises—

(i) sole source solicitation, and

(ii) direct solicitation.

(Act 8/2016, s. 2)

Electronic bidding

30. (1) Where the Procurement Office, with the approval of the Procurement Board, determines that it is necessary or expedient to do so, bids or proposals for the procurement of goods, services or works may be submitted electronically.

(2) Where a determination is made under subsection (1), the Procurement Committee shall state in the bid documents or invitation for bids, that bidders may submit bids electronically.

(3) Where a bid is submitted electronically, it must be submitted in accordance with section 7 of the Regulations.

(Act 19/2021, s. 19)

Guidance in selecting a procurement method

31. When selecting a procurement method, the Chief Procurement Officer and a Procurement Committee shall consider—

(a) the need to promote open and effective competition throughout the procurement process;

(b) the value and fiscal risk associated with the procurement;

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(c) whether the benefits of the method outweigh the costs; and

(d) the circumstances of the market from which purchases would be made.

(Act 8/2016, s. 2)

Division 3

Competitive procurement

Competitive procurement

32. (1) Competitive procurement shall be the preferred or default procurement method for procurements unless the Procurement Committee, with the approval of the Chief Procurement Officer, determines that the procurement may be made using another procurement method.

(2) Where the Procurement Committee chooses not to use competitive procurement, it shall record in writing the reasons and circumstances that justify the use of the non-competitive method of procurement.

(3) When competitive procurement is followed, the Chief Procurement Officer shall invite bids or proposals by publishing an invitation to bid or a request for proposals in the manner prescribed and shall make physical copies of the invitation to bid or request for proposals available for a fee.

(Act 8/2016, s. 2)

One-stage procurement for competitive bids or proposals (one-envelope procedure)

33. For competitive bids or proposals, where the Procurement Committee is of the opinion that it is not essential to evaluate the technical aspect of a bid separately from the financial aspect, it may request that the one-stage procurement procedure be used whereby the bidders or offerors submit bids or proposals in one envelope containing both the technical and the financial bids or proposals.

(Act 8/2016, s. 2)

One-stage procurement for competitive bids or proposals (two-envelope procedure)

34. (1) For competitive bids or proposals, where the Procurement Committee is of the opinion that it is essential to evaluate the technical aspects of a bid or proposal before considering its financial aspect, it may request that the bidder or offeror submit one envelope containing—

(a) a financial bid or proposal; and

(b) a technical bid or proposal but without a bid or proposal price.

(2) The technical bids or proposals shall be submitted in a sealed envelope with the word ‘technical’ clearly marked on the envelope and the financial bid or proposal shall be submitted in a sealed envelope with the word ‘financial’ clearly marked on the envelope and both of these envelopes shall be enclosed together in an outer single envelope.

(3) Bids or proposals that are not submitted strictly in accordance with subsection (1) and (2), are non-compliant and shall be rejected by the Chief Procurement Officer.

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(4) Bids or proposals submitted according to this section shall be evaluated in 2 phases—

(a) the technical bids or proposals shall be opened first and evaluated by the Evaluation Committee and only the bidders or offerors who are technically compliant shall then move to the second stage; and

(b) the financial bid or proposal publicly shall then be opened and evaluated by the Evaluation Committee.

(5) The Chief Procurement Officer is required to give notice only to the bidders or offerors who were technically compliant.

(Act 8/2016, s. 2)

Two-stage procurement for competitive proposals

35. (1) In the two-stage procurement for competitive proposals offerors first submit only their technical proposals and the Evaluation Committee shall revise them with the objective of determining the proposals that have a reasonable prospect of satisfying the technical specifications.

(2) Only the offerors who have demonstrated a reasonable prospect of satisfying the technical specifications shall be given a fair opportunity to revise or adjust their technical proposal accordingly to conform to the requirements of the procurement.

(3) Any revision to the proposal documents shall be approved by the Chief Procurement Officer, who shall organise and chair a meeting with the Procurement Committee, the Evaluation Committee and the offerors that have demonstrated a reasonable prospect of satisfying the technical specifications.

(4) The objective of the meeting shall be to ensure that all proposals conform to the same technical standard and meet the technical solution by the Procurement Committee.

(5) The Chief Procurement Officer shall ensure that minutes of the meeting are taken and distributed to all persons in attendance and any other person that the Chief Procurement Officer considers relevant.

(6) Where an offeror is unable or unwilling to bring their proposal to an acceptable technical standard, the Evaluation Committee shall reject their proposal as technically non-compliant.

(7) In the second stage, offerors shall submit revised technical proposals and financial proposals using either the procedure under section 33 or section 34, as determined by the Procurement Committee.

(Act 8/2016, s. 2)

Requests for quotations

36. (1) For small procurements, the Procurement Committee may request written quotations for the procurement of readily available goods, services and works.

(2) A written request for quotations shall be made to no fewer than 3 persons, if it is possible to do so.

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(3) A request for quotations may be selective and this occurs when the only persons who are entitled to submit quotations are selected by the Procurement Committee.

(4) Written requests for quotations and the responses thereto may be done by email, fax, courier or hand-delivery but not telephonically.

(5) The Procurement Committee shall make its best efforts to check prices on the internet and other sources to ensure the reasonableness of quoted prices.

(6) Each supplier is permitted to give only one price quotation, which it is not permitted to change after it is submitted, and the Procurement Committee shall not engage in negotiations with a supplier with respect to a quotation submitted by the supplier.

(7) The Procurement Committee may reject or cancel requests for quotations if it considers that it is reasonable to do so.

(8) Where a request for quotations is rejected or cancelled, the Government of Anguilla or an entity shall not be responsible for any costs or loss associated with the procurement.

(Act 19/2021, s. 2(2)(b))

(9) The Board may make rules governing the practice and procedure for requests for quotations.

(Act 8/2016, s. 2)

Contents of a written request for quotations

37. A written request for quotations shall include—

(a) a quotation form;

(b) a description of what is to be procured;

(c) if necessary, the contractual terms and conditions applicable to the procurement;

(d) general instructions, which may include—

(i) where, to whom and how the quotation is to be submitted,

(ii) the day and time when quotations will close,

(iii) a statement that the basis of award of contract will be an award to the responsible person who submits the lowest responsive evaluated quotation,

(iv) a statement that the Procurement Committee is not bound to accept the lowest or any quotation submitted, and

(v) the name, telephone and fax number and email address of the Chairperson of the Procurement Committee who can be contacted in relation to the solicitation; and

(e) any other information that the Procurement Committee considers necessary.

(Act 8/2016, s. 2)

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Division 4

Non-competitive Procurement

Sole source solicitation

38. (1) Sole source solicitation means procuring goods, works or services from a single entity when the estimate of the amount of the contract is the amount for large procurements.

(2) A Procurement Committee may use a sole source solicitation when it is in the public interest to do so and—

(a) the cost of using a competitive procurement method would be out of proportion to the value of the benefits likely to be obtained; or

(b) given the circumstances of the case, it would be impractical to use the competitive method.

(3) In addition to demonstrating the grounds in subsection (2), the Procurement Committee shall justify the use of sole source solicitation using at least one of the following grounds—

(a) the subject matter of the procurement is available only from a particular supplier and no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;

(b) the procurement is of a confidential nature;

(c) the procurement is for the purposes of research, experiment, study or development;

(d) a particular contractor has exclusive or proprietary rights in respect of goods, services or works;

(e) standardising equipment or spare parts is available only from a specific source, and the Procurement Committee has purchased goods, equipment or technology from that source, and additional supply is required for reasons of uniformity;

(f) there is follow-on procurement, where a contractor has already provided goods, services or works and additional goods, services or works of a similar nature are required to complete the procurement requirements;

(g) for reasons of urgency brought about by events unforeseen by the Procurement Committee, the products or services could not be obtained in time by means of the open competitive bid process;

(h) the Procurement Committee and the Board agree that, given the context of the subject of the procurement, this is the best method; or

(i) international or regional agreements specify that goods or services must be procured from a specific source.

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(4) A Procurement Committee that wishes to procure from a sole source provider shall receive the written approval of the Board to do so and shall provide the Board with—

(a) a recent (less than 30 days) quotation from the sole source provider;

(b) a justification for using this type of solicitation;

(c) a statement of capability from the sole source provider that meets the Government's procurement needs; and

(d) written approval to procure from a single source by the permanent secretary.

(5) The Board may award the contract as recommended by the Procurement Committee and the Procurement Committee shall negotiate the best contractual terms with the selected sole source provider and prepare an evaluation report for the Board.

(6) The Board retains the discretion to reject a request to use sole source solicitation and may recommend the use of an alternative procurement method.

(Act 8/2016, s. 2)

Direct solicitation

39. (1) Direct solicitation means procuring goods, works or services from a single entity when the estimate of the amount of the contract is the amount for small procurements.

(2) A Procurement Committee may use direct solicitation when it is in the public interest to do so and—

(a) the cost of using a competitive procurement method would be out of proportion to the value of the benefits likely to be obtained; or

(b) given the circumstances of the case, it would be impractical to use the competitive method.

(3) In addition to demonstrating the grounds in subsection (2), the Procurement Committee shall demonstrate the use of direct solicitation using at least one of the following grounds—

(a) the procurement is for the purchase of goods off-the-shelf, for the supply of services or for the provision of works each sourced from within Anguilla, where the value of the goods, services or works is less than $15,000;

(b) there is an existing contract for goods, works or services and the Procurement Committee wishes to have that contract extended either on the same terms and conditions or extended for additional goods, works or services of a similar nature;

(c) the procurement is in response to natural disasters or other emergency situations; or

(d) the purchase of goods, services or works is on an as-required basis.

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(4) Where a contract is necessary, the Procurement Committee shall negotiate the best contractual terms with the provider of the goods, works or services and prepare an evaluation report for the Board.

(5) The Chief Procurement Officer retains the discretion to investigate and audit direct solicitations made by the Procurement Committee and make recommendations to the Board about the findings.

(Act 8/2016, s. 2)

Rules

40. The Board may make rules governing the procedure for sole source solicitations and direct solicitations.

(Act 8/2016, s. 2)

PART 4

EVALUATION AND AWARD OF CONTRACT

Constitution of Evaluation Committee

41. (1) Prior to the date for the submission of bids or proposals, the Procurement Committee shall constitute an Evaluation Committee consisting of at least 3 members and forward the names and titles of the members to the Procurement Office.

(2) In a two-stage procurement for competitive bids or proposals, the Procurement Committee shall determine whether a separate Evaluation Committee will be set up for each stage and the names and titles of each Evaluation Committee member shall be sent to the Procurement Office prior to the date for the submission of bids or proposals.

(Act 8/2016, s. 2)

Objective of Evaluation Committee

42. The objective of an Evaluation Committee is to evaluate bids or proposals for large procurements, except emergency procurements, in accordance with objective evaluation criteria set out in the invitation for bids or requests for proposals to determine if the works, goods or services meet the description of what is being procured.

(Act 8/2016, s. 2)

Evaluation of bids or proposals

43. (1) In evaluating bids or proposals for one-stage procurement procedures the Evaluation Committee shall determine—

(a) which bidder is responsible and is determined to have submitted the lowest responsive evaluated bid; or

(b) which offeror is responsible and is determined to—

(i) have submitted a proposal that is responsive and capable of acceptance, or

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(ii) have submitted the lowest responsive evaluated proposal.

(2) No person conducting or privy to discussions with an offeror shall disclose any information derived from a proposal or discussions with any offeror to any other offeror directly or indirectly or to any other person, except when that person needs to know to perform his or her official functions.

(Act 8/2016, s. 2)

Criteria for evaluations

44. (1) The criteria for determining the responsive and successful bid, including the relative weight to be attached to each criterion, shall be contained in the bid or proposal documents.

(2) The Evaluation Committee shall be responsible for the evaluation of the bids using the criteria in the bid or proposal documents, and no other criteria may be used.

(Act 8/2016, s. 2)

The Board and the Evaluation Committee

45. (1) The Evaluation Committee shall report its findings to the Board and the Procurement Committee.

(2) The Board may—

(a) accept the findings of the Evaluation Committee;

(b) reject the findings of the Evaluation Committee;

(c) request further and better information from the Evaluation Committee; or

(d) enter into discussions with the Evaluation Committee with the aim of verifying, clarifying or explaining matters arising out of the evaluation report.

(Act 8/2016, s. 2)

Award of contract for large procurements

46. It is the responsibility of the Board to award contracts for large procurements, and the Board shall do so in the manner prescribed.

(Act 8/2016, s. 2)

Evaluations and award of contracts or purchase orders for small procurements

47. (1) The Procurement Committee is responsible for evaluating quotations and awarding contracts or issuing purchase orders for small procurements.

(2) In evaluating quotations, the Procurement Committee shall determine which person is responsible and is determined to have submitted the lowest responsive evaluated quotation.

(3) The acceptance of a quotation shall be unconditional, except that it may be subject to the execution of a formal contract.

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(4) When a quotation is accepted that is not subject to the execution of a formal contract, the issuance of a purchase order to the person submitting the quotation constitutes an award of contract.
(Act 8/2016, s. 2)

PART 5

SUSPENSION AND DEBARMENT

Definition

48. In this Part—

"person" means a person who participates, seeks to participate, or has participated in a procurement in Anguilla;

"appointed person" means a person appointed by the Board under section 50(1) to conduct proceedings for debarment or suspension.

Grounds of suspension or debarment

49. The Board may suspend or debar a person from public procurement if the Board is satisfied that a person has—

(a) been convicted under the laws of any country involving corruption, theft, embezzlement, forgery, bribery, falsification or destruction of records or other similar offences that calls into serious question the honesty of the person;

(b) in or in relation to a submission made in Anguilla, provided false or misleading information or failed to disclose material information respecting whether he or she is a responsible contractor;

(c) violated the code of conduct as provided for under section 60; or

(d) committed or been associated with any other conduct that any reasonable person considers would bring the administration of public procurement into disrepute.

Procedure for suspension or debarment

50. (1) Where the Board is satisfied that sufficient evidence exists to debar or suspend a person, the Board may instruct the Chief Procurement Officer or any appointed person to commence proceedings using the procedure under subsection (2).

(2) Proceedings for debarment or suspension must commence by serving a notice which sets out—

(a) the grounds for suspension or debarment;

(b) the terms of the proposed suspension or debarment;

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(c) the period of time from the date of service within which a written response or submissions may be made but such period of time must be no more than 28 days from the date of service; and

(d) a statement indicating that the person has the right to—

(i) have an oral hearing before the Chief Procurement Officer or the appointed person, and

(ii) request the evidence on which the Board relies for the suspension or debarment of the person.

(3) The Chief Procurement Officer or the appointed person may extend the period of time referred to in subsection (2)(c) for up to 14 more days after the expiration of 28 days from the date of service.

(4) The Chief Procurement Officer or the appointed person must, on the request of the person, disclose the evidence on which the Board relies for the suspension or debarment.

(5) The Chief Procurement Officer or the appointed person must report their findings and recommendations to the Board in a manner and at a time which is determined by the Board but such reporting must take place after any procedure adopted under subsection (2) has concluded or if the person having been served does not respond within the specified time period.

(6) the Board may, in accordance with subsection (7), debar or suspend a person from being eligible to make any submission in relation to a solicitation issued, or from being awarded a contract, under this Act.

(7) The Board may—

(a) suspend the person for a period of not more than 3 months; or

(b) debar the person for a period of not more than 3 years.

(8) The Chief Procurement Officer must serve a written notice on the person—

(a) setting out the Board's decision and the reasons for it; and

(b) indicating that the person may appeal under section 51.

Appeal

51. (1) A person may appeal the decision of the Board by filing a notice of appeal of suspension or debarment in the High Court not later than 14 days after service of the notice of the decision of the Board referred to in section 50(6).

(2) A notice of appeal given under subsection (1) must set out—

(a) the name of the appellant;

(b) concisely the decision appealed against; and

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(c) concisely the grounds on which the appellant wishes to appeal against the decision.

(3) A person who files a notice of appeal under subsection (1) must immediately serve a copy of the notice of appeal on the Chairperson of the Board who must immediately on receipt of the notice deliver to the Permanent Secretary and the Attorney General—

(a) a copy of the notice of appeal;

(b) a copy of the decision appealed against;

(c) the report of the findings of Chief Procurement Officer or the appointed person under section 50(5); and

(d) all papers and documents submitted by the appellant to the Chief Procurement Officer and the Board during the tenure of the matter on appeal.

Order suspending effect of decision of the Board

52. (1) A person who has filed an appeal under section 51 may apply to the High Court to suspend the decision of the Board.

(2) The appellant must immediately serve the application filed under subsection (1) on the Chairperson of the Board who must immediately on receipt of the notice deliver a copy to the Permanent Secretary and the Attorney General.

(3) The High Court may order the suspension of the decision of the Board on such conditions as the High Court considers appropriate or may refuse to grant the order.

(4) The decision of the High Court under subsection (3) is final and binding and not subject to further appeal.

Order of High Court

53. (1) The High Court may make such orders on the hearing of the appeal as it considers appropriate, including an order for payment of costs on the appeal.

(2) The decision of the High Court under subsection (1) is final and binding and not subject to further appeal.

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PART 6

MISCELLANEOUS

Offences

54. (1) A public officer or an officer of an entity who wilfully fails to comply with his or her obligations under this Act is guilty of the offence of financial misconduct and is liable on conviction—

(a) on indictment to a fine of $100,000 or to imprisonment for a period of 5 years or to both; or

(b) on summary conviction to a fine of $5,000 or to imprisonment for a period of two years or to both.

(2) A court that has convicted a public officer or an officer of an entity of the offence of financial misconduct may, in addition to, or in substitution for, any penalty to which the officer may be liable, order the officer to make restitution to the government to the extent of any loss sustained by the government by reason of the offence.

(3) An order for restitution made under subsection (2) is enforceable as if it were an order for the payment of a fine.

(4) It shall be a defence to a charge under this section if the public officer or officer of an entity can prove that he was acting on the instruction of the Chief Procurement Officer and it was reasonable for him to do so.

(Act 19/2021, s. 18)

Regulations

55. (1) The Executive Council may make regulations for the better administration of this Act, including regulations—

(a) prescribing anything that may be prescribed under this Act;

(b) excluding any financial interest or class of financial interest for the purposes of section 1(3);

(c) exempting procurements for the purposes of section 5;

(d) requiring a pre-clearance confirming that sufficient funds are available to make a procurement based on the solicitation;

(Act 8/2016, s. 3(b))

(e) specifying the manner in which notice of an invitation for bids, request for proposals or invitation to prequalify is to be given and for what period before the day for the close of bids, proposals or applications to prequalify when they are confidential under section 23 and when they are not;

(f) providing for requirements in relation to confidentiality under section 23;

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(g) defining or determining the meaning of "responsible" and "disqualified" in relation to "bidder" and the meaning of "lowest" and "responsive" in relation to a bid and further defining "evaluated";

(Act 8/2016, s. 3(c))

(h) defining or determining the meaning of "responsible" and "disqualified" in relation to "offeror" and the meaning of "responsive" in relation to a proposal and further defining "evaluated";

(Act 8/2016, s. 3(d))

(i) respecting solicitations by competitive quotations, including defining or determining the meaning of "responsible" and "disqualified" in relation to a person who submits a quotation and the meaning of "lowest" and "responsive" in relation to a quotation and further defining "evaluated";

(j) respecting the cancellation of a solicitation;

(k) respecting the evaluation of solicitations;

(l) respecting the award of contracts;

(m) respecting the rejection of submissions;

(n) respecting the course of action to be taken in the event that an award of contract cannot be made or an award of contract is made and the person to whom it is made fails to furnish a performance security or execute a formal or other agreement;

(o) respecting formal agreements and determining when and what type of formal agreement is necessary;

(p) respecting the application of the rules relating to procurement when a contract of procurement is breached, frustrated or any other similar situation arises;

(q) respecting the maintenance of procurement files;

(r) establishing a local preference policy for the award of contracts for goods, services or works or classes of goods, services or works;

(s) establishing a policy for setting aside procurement or classes of procurement for local businesses as an incentive to the development of local business;

(t) respecting contract administration including the role of the Board and public officers therein;

(u) respecting generally the confidentiality of solicitations, invitations to prequalify, awards of contract, particulars of contract performance and other information and documents;

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(v) respecting the procedure to be followed before the Board and the High Court on appeal in relation to a suspension or debarment of bidders, offerors and other persons who have participated or propose to participate in procurement;

(w) amending or replacing the Schedule;

(x) defining any term used but not defined in the Act;

(y) respecting the establishment and governance of stores; and

(z) prescribing specified professional services other than an architect or engineer.

(Act 8/2016, s. 3(f))

(2) Regulations may also provide for matters—

(a) contemplated by or necessary for giving full effect to this Act and for its administration; or

(b) incidental to or consequential upon any provision of this Act.

(Act 8/2016, s. 3(g))

(3) No provision of a regulation shall amend the Act, except to the extent expressly permitted in subsection (1).

Regulations to be laid before the House of Assembly

56. (1) All regulations must be laid before the House of Assembly as soon as they are made and, if within 21 days beginning with the day on which such regulations are laid, the House of Assembly resolves that the regulations be annulled, they shall cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

(2) In determining the period of 21 days specified in subsection (1), no account shall be taken of any time during which the House of Assembly is dissolved or prorogued.

Procurement Policy Advisory Committee

57. (1) The Executive Council may, after consultation with the Board, appoint a Procurement Policy Advisory Committee.

(2) The Chief Procurement Officer is an *ex officio* member of any Procurement Policy Advisory Committee appointed under subsection (1).

(3) The Policy Advisory Committee will be responsible for developing any policy position in relation to matters determined by the Executive Council.

(4) The Procurement Policy Advisory Committee may conduct its affairs using the procedure of the Board under the Schedule.

(5) The Executive Council may remunerate the members of the Policy Advisory Committee for carrying out their duties assigned under subsection (3).

(Act 8/2016, s. 7(b))

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Procurement Ombudsman

58. (1) The Minister may request that the Executive Council appoint a Procurement Ombudsman to investigate any complaint made in relation to an award of contract.

(Act 8/2016, s. 7(b))

(2) The terms of the appointment shall be determined by the Executive Council.

(Act 8/2016, s. 7(b))

(3) A Procurement Ombudsman must only be appointed to investigate a complaint that arises after the award of a contract.

(4) The following persons are disqualified from being appointed as Procurement Ombudsman—

(a) a member of the House of Assembly;

(b) a person who is an undischarged bankrupt;

(c) a person who has been convicted of an indictable office or an offence involving dishonesty.

Investigating a complaint

59. (1) A person may file a complaint only after the award of the contract to which the complaint relates.

(2) In conducting an investigation, the Procurement Ombudsman may—

(a) review and assess the policies and practices of the procurement unit, any Procurement Committee and the Board;

(b) request from the procurement unit, any Procurement Committee or the Board all documents that the Procurement Ombudsman considers relevant towards conducting the investigation; and

(c) conduct interviews with all persons deemed relevant to the matter.

(Act 8/2016, s. 7(a))

(3) In performing his or her duties or exercising his or her powers, the Procurement Ombudsman shall not be subject to the direction or control of any person or authority.

(4) The Procurement Ombudsman must, within the appointed period, provide the Executive Council with his or her findings and any recommendations.

(Act 8/2016, s. 7(b))

(5) The Procurement Ombudsman shall not, in respect of a complaint, recommend the cancellation of a contract award to which the complaint relates.

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Development of a code of conduct

60. (1) The Minister may develop a code of conduct which defines the ethical standards of persons participating in procurement.

(2) A Code of Conduct under subsection (1) becomes operational on the approval of the Executive Council.

(Act 8/2016, s. 7(b))

Immunity

61. (1) No action for damages may be commenced against—

(a) the Board;

(b) any member of the Procurement Policy Advisory Committee or any other member of a committee established under this Act;

(c) a public officer;

(d) an agent of the Government or an entity; or

(Act 19/2021, s. 16)

(e) the Procurement Ombudsman;

for anything done or not done by that person in good faith while performing that person's functions under this Act.

(2) Subsection (1) does not, by reason of section 4(1) and (4) of the Crown Proceedings Act, relieve the Crown of liability in respect of a tort committed by any person referred to in subsection (1) to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted.

Limitation on court proceedings

62. In proceedings under this Act or the regulations in relation to a solicitation or the evaluation or award of contract or the decision not to award a contract, no court shall have the power to order any remedy other than an award of damages to a person who made, sought to make, or would have wished to make, a submission if a contract in relation to which the damages arose has been entered into.

Citation

63. This Act may be cited as the Public Procurement and Contract Administration Act, Revised Statutes of Anguilla, Chapter P161.

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SCHEDULE

(Section 12(4), 13(3) and 43(4))

CONSTITUTION, OPERATION AND PROCEDURES OF THE BOARD

Constitution of the Board

1. (1) The Board is deemed to be properly constituted notwithstanding that there is a vacancy on the Board or a defect in the appointment of a member, other than a disqualification referred to in subsection (4).

(2) Where a member is absent from Anguilla, sick or otherwise unable to temporarily perform his or her duties, the permanent secretary may appoint a person who has the requisite qualifications to act in the place of that member.

(3) If the chairperson and the deputy chairperson are absent from a meeting, the remaining members shall select an interim chairperson from among the public officers and the interim chairperson shall discharge the duties and exercise the powers of the chairperson at a meeting.

(4) A person is disqualified from being appointed and from remaining a member if the person—

(a) is under the age of 21 years;

(b) is a member of the House of Assembly;

(c) is an undischarged bankrupt;

(d) is of unsound mind;

(e) has been convicted of an offence involving fraud, corruption or dishonesty inside or outside of Anguilla; or

(f) has breached any code of conduct under this Act.

(5) A notice of the appointment of a member shall be published without delay in the *Gazette* after the appointment.

Quorum, voting and decision of Board

2. (1) A quorum of the Board is a majority of the members.

(2) In the event of a tie vote, the chairperson has a second vote.

(3) A decision of the majority of the members is a decision of the Board.

Board meetings

3. (1) The Board shall meet as often as may be necessary to perform its duties and exercise its powers in an expeditious manner.

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(2) A meeting of the Board shall be held on the days and at the times that the chairperson may determine.

(3) The Board may hold a meeting electronically, telephonically, by video conference, in person or by using a method of communication that permits the members participating to communicate with each other simultaneously.

(4) The decision of the chairperson is final on the following matters—

(a) agenda for a meeting;

(b) conduct of the meeting; and

(c) procedure for handling motions.

Rules of the Board

4. (1) Rules of the Board shall be enforced by a signed resolution of the Board.

(2) Any dissent to the enforcement of a rule shall be made in writing.

(3) The Chief Procurement Officer shall publish all rules of the Board as soon as they are enforced.

(4) The secretary shall minute and file all resolutions of the Board.

Remuneration, expenses and allowances of Board

5. (1) The Board shall be paid such remuneration as may be determined by the minister.

(2) The minister may—

(a) reimburse the reasonable expenses of the Board; or

(b) establish allowances for the reimbursement of reasonable expenses of the Board, incurred in the course of the carrying out of their responsibilities.

Resignation and removal of members

6. (1) A member may at any time resign by giving written notice to the minister and a resignation is effective upon receipt of the notice by the minister.

(2) The Executive Council may, by written notice, remove a member from office if the Executive Council is satisfied that—

(a) the member has been absent from 3 or more consecutive meetings without the consent of the chairperson or without providing reasonable justification for doing so;

(b) the member has an interest that is likely to affect prejudicially the exercise and performance of his or her responsibilities as a member;

(c) the member is unable or unfit to carry out his or her responsibilities as a member; or

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(d) the member's continued appointment is contrary to public policies.

(3) If an appointment is vacated by death or otherwise the Executive Council may appoint a new member to fill the vacancy.

Committees

7. (1) The Board may appoint committees to give advice to the Board.

(2) The Board shall appoint a member as chairperson of the committee.

(3) A committee may include persons other than members of the Board.

(4) The Board may develop rules to govern the procedure of a committee.

(5) The permanent secretary may provide a committee with a stipend.

(6) Section 8 applies to a meeting of a committee.

Disclosure of financial interest

8. When a member of the Board or his or her family members have a financial interest in a procurement and is in attendance at a Board meeting when the matter is to be discussed, that member shall, before that matter is considered by the Board—

(a) disclose the nature of the financial interest to the Board;

(b) withdraw from any meeting while the matter is being considered; and

(c) refrain from expressing any view or taking part in any vote concerning the matter.

Secretary to the Board

9. (1) The secretary shall provide administrative support to the Board, including—

(a) preparing the agenda for each Board meeting;

(b) giving notice of meetings that include the agenda, the day, time and place of the meeting and the minutes of the previous meeting to members;

(c) taking accurate minutes of each meeting of the Board, including—

(i) attendance by members,

(ii) for each resolution moved, the members present, those who voted for and against it or abstaining from voting on it and whether the resolution was passed or defeated, and

(iii) for each disclosure made under section 8, an indication of whether the affected member of the Board withdrew from the meeting while the matter was being considered;

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(d) inserting any resolution referred to in section 4 in the minutes;

(e) providing copies of minutes to members and to affected public officers or officers of an entity;

(Act 19/2021, s. 20)

(f) preparing the correspondence of the Board; and

(g) carrying out such other tasks in relation to procurement as are assigned to him or her by the Board or the regulations.

(2) The secretary shall table for approval a copy of the minutes of a meeting at the next meeting of the Board.

(Act 8/2016, s. 10)

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