

Section 271 – Appeal to Supreme Court

SECTION

ARRANGEMENT OF SECTIONS

Substitute for subsection (1), the following new subsection – PART I - PRELIMINARY

- "(1) An appeal shall lie from any decision of a subordinate court to the High Court."
1. Short title
 2. Interpretation
 3. Objectives of this Act

Sections 273 and 281

PART II - THE GAMBIA PUBLIC PROCUREMENT AUTHORITY

Delete these sections.

PASSED in the National Assembly this
in the year of Our Lord Two Thousand and One

day of

Ag. Clerk of the National Assembly.

PART III – FUNCTIONS AND POWERS OF THE AUTHORITY

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

Ag. Clerk of the National Assembly.

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THE GAMBIA

NO. 3 OF 2002.

Assented to by The President,

this 1st day of February, 2002.

[Signature]
President.

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

[]

ENACTED by the President and the National Assembly.

PART 1- PRELIMINARY

Short title

1. This Act may be cited as The Gambia Public Procurement Act, 2001.

Interpretation

2. In this Act, unless the context otherwise requires -

"Authority" means The Gambia Public Procurement Authority established under section 4;

"award" means a decision by the procuring organisation to determine the successful bidder;

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

"bidder" means a physical or juridical person submitting or seeking to submit a bid;

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

"Board" means the Board of the Authority;

"corrupt practice" includes the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in the execution of a contract;

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

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

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

- "goods" means objects of every kind and description including raw materials, products and equipment, objects in solid, liquid or gaseous form, and electricity;
- "international tendering proceeding" means a tender proceeding in which the invitation to bid, or to apply for qualification, is published in the international media;
- "procurement" or "public procurement" means acquisition by any means, of goods, works or services funded in whole or in part by public funds;
- "procurement contract" means the contract between a procuring organisation and a supplier resulting from procurement proceedings;
- "procuring organisation" means a Department of State, department, agency or organ of the State, statutory corporation, public enterprise, Local Government Authority or other unit of Government or any subdivision thereof, engaged in procurement;
- "public funds" means –
- (a) any monetary resources appropriated to procuring organisations through budgetary processes;
 - (b) aid, grants and credits made available to procuring organisations by local and foreign donors; and
 - (c) revenues of procuring organisations, including the Consolidated Revenue Fund, the Development Fund and general funds of Local Government Authorities.
- "Regulations" means Regulations made under this Act;
- "Secretary of State" means the Secretary of State responsible for finance;

- "services" means any object of procurement, other than goods or works;
- "supplier" means a physical or juridical person under contract with a procuring organisation to supply goods, works or services;
- "works" means all works associated with the construction, rehabilitation, demolition, maintenance or renovation of a building or structure, including –
- (a) site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing; and
 - (b) services incidental to works comprising drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the work itself.
3. 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 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 providing opportunities for local small enterprises and individuals to participate in an economic manner as suppliers, contractors and subcontractors in public procurement.

PART II - THE GAMBIA PUBLIC PROCUREMENT AUTHORITY

Establishment
of The Gambia
Public
Procurement
Authority

4 (1) There is hereby established an authority to be known as 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;
- (c) may purchase and otherwise acquire and dispose of any property, movable and immovable; and
- (d) shall be capable of doing or performing all such acts and things as bodies corporate may by law do and perform and exercise the rights, powers and privileges and incur the liabilities and obligations of a juristic person of full age and capacity.

(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 proved unless the contrary is proved.

The Board
5. (1) There is hereby established a Board for the Authority which shall be the governing body of the Authority.

(2) The Board shall comprise -

- (a) a Chairperson;
- (b) the Permanent Secretary of the Department of State responsible for finance or his or her designate;
- (c) the Solicitor General or his or her designate;

(d) the Auditor General or his or her designate;

(e) two other persons; and

(f) the Director General of the Authority.

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

(4) The Chairperson and other members of the Board, other than *ex-officio* members shall be -

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

(b) appointed by the President on the recommendation of the Secretary of State.

(5) A member shall not, by virtue only of his or her appointment to the Board, be deemed to be an officer in the public service.

(6) A member shall hold office for a term of three years from the date of his or her appointment and may be re-appointed for one further term of three years.

(7) A member may at any time resign his or her office by a letter addressed to the Secretary of State.

(8) The office of a member shall become vacant-

- (a) on the expiry of the period of his or her appointment;
- (b) on his or her death, or incapacitation by physical or mental illness, or if he or she is otherwise unable or unfit to discharge the functions of a member of the Board;

(c) if he or she is adjudged a bankrupt;

(d) if he or she is sentenced for an offence-

(i) of a felonious character or involving moral turpitude, or

(ii) resulting in a term of imprisonment for a period of six months or more;

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

(f) on his or her resignation from office; or

(g) if he or she contravenes section 8.

(9) Whenever there is a vacancy in the office of a member other than an ex-officio member, the President shall appoint a replacement on the advice of the Secretary of State.

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

Meetings of the Board

6. (1) The Board shall meet at such place or places, and at such time or times, as the Chairperson may determine, and shall meet at least once in every three months.

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

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

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

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

(6) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke those standing orders.

(7) Meetings of the Board shall be convened by the Secretary to the Board on the direction of the Chairperson.

(8) The minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary to the Board or committee and shall be confirmed at the succeeding meeting.

(9) The decision of the Board at a meeting on any matter shall be that of the majority of the members present and voting, but where there is an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(10) The Board may co-opt any person to act as an adviser at its meeting except that the co-opted person shall not vote.

(11) 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.

(12) Subject to the provisions of this Act, the Board and any of its committees may regulate its own procedure.

7. (1) The Secretary of State, or his or her nominee, may attend a meeting of the Board and participate in the deliberations of the Board in respect of any matter.

(2) The person attending the Board's meeting under subsection (1) shall not vote at the meeting.

Disclosure of interest

8. A member who has a direct or indirect personal interest in outcome of the deliberations of the Board at a 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 relation to that matter and not vote on it.

Transaction of business without meeting

9. 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.

Committees of the Board

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

- (a) a Standing Committee for Supplier and Relations, with representation from the private 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 which may consider or include persons who are not members of the Board or employees of the Authority, as the Board shall determine to perform such functions and responsibilities as the Board shall determine.

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

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

(4) The provisions of section 6 relating to the meetings of the Board shall apply, with the necessary changes, to the meetings of any committee.

11. (1) Members of the Board shall be paid from the funds of the Authority such allowances as the Cabinet may determine.

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

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

- (a) direct the Director-General to furnish it with any information, reports or other documents 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;
- (c) on the recommendation of the Director-General, approve such organizational structures as the Director-General may consider necessary for the discharge of the functions of the Authority.

PART III- FUNCTIONS AND POWERS OF THE AUTHORITY

13. (1) The Authority shall -

- (a) be an autonomous agency of the Government responsible for the regulation and monitoring of public

procurement in The Gambia, and no procuring organisation shall engage in any procurement of such amount as may be specified in the Regulations without obtaining the approval of the Authority at the stage of the procurement proceedings, including tendering, request for proposals, awards and procurement; and

(b) report directly and be accountable to, and operate under the general supervision of the Cabinet.

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall be to-

(a) assist in developing and enhancing the efficiency, effectiveness of public procurement operations by designating one or more persons or a special appointed agent to -

(i) carry out the procurement of goods, works or services required by two or more procuring organisations on behalf of other organisations, or

(ii) enter into framework agreements under which procuring organisations may place orders for certain types of goods, works or services

(b) develop, in consultation with concerned professional 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

(ii) instructions and bidding documents which shall be binding on all procuring organisations

(c) promote the development of a professional procurement workforce, including, by organising and conducting training programmes, and developing Government policies and programmes aimed at establishing procurement related positions, career paths and performance incentives;

(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;

(e) provide annually to the Secretary of State a quantitative and qualitative assessment of procurement activities in The Gambia;

(f) inspect records, and activities, of procuring organisations and refer to the Auditor General violations of this Act and the Regulations, and other procedures relating to procurement;

(g) propose improvements in public procurement procedures;

(h) provide administrative review of bid protests pursuant to section 52 (2);

(i) carry out economic studies and future projections on procurement to enable it to advise the Government on any policy it may formulate in procurement matters;

(j) 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;

Powers of the Authority

(k) participate in discussions with donor and international organisations on public procurement issues affecting The Gambia;

(l) consult with The Gambia Chamber of Commerce and other private sector bodies to obtain the views of the private sector on matters relating to public procurement.

14 (1) The Authority shall have such powers as are necessary to enable it to carry out its duties and such other powers as may be conferred on it by or in pursuance of any law, and such powers as may be convenient or 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, except as provided in section 13(1) and in the Regulations.

(3) Without prejudice to the generality of subsection (1), the Authority has power to-

(a) require a procuring organisation to provide it with information in relation to the procuring organisation's activities; and

(b) require 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 Departments of State and agencies of Government) whether inside or, with the prior consent of the Secretary of State, outside The Gambia as it considers appropriate;

(c) establish a committee or other body with responsibility to make recommendations to the Authority on a specific matter in accordance with section 10 (1);

(d) provide training, technical assistance or advice to procuring organisations, and to the private sector, necessary or convenient 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;

(g) make an extract from or a copy of any document, book, voucher, stamp, newspaper, tape or date storage devices, in the possession or under the control of any procuring organisation.

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

PART IV - STAFF OF THE AUTHORITY

15 (1) There shall be a Director-General of the Authority who shall be appointed by the President.

(2) The terms and conditions of service of the Director-General shall be subject to approval by the Board.

(3) The Director-General shall be 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;
- (c) the administration, organisation and control of the other officers and staff of the Authority.

(4) The Director-General shall devote his or her full time to duties of his or her office and shall not hold any office of trust, profit, other than that of Director-General, or engage in any occupation for reward outside the office of Director-General except that, the Board may grant specific and time-limited waiver 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 the exceptional office or occupation.

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

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

PART V – FINANCIAL PROVISIONS OF THE AUTHORITY

17 (1) The funds of the Authority shall comprise –

- (a) monies appropriated to it by the National Assembly;

Funds of the Authority

(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 Secretary of State, monies raised by way of loans from any source inside or outside The Gambia, for the discharge of its functions; and

(d) fees charged and collected in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.

(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 for the ensuing financial year.

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

18 (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.

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

Reports

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

20. The financial year of the Authority shall be a period of twelve months commencing on 1st January in each year, and ending 31st December in the same year or such other period as may be determined by the Secretary of State.

PART VI. GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

21(1) Subject to subsection (2), this Act applies to all public procurements as defined in section 2.

(2) Where the Secretary of State responsible for defence, with the approval of the Secretary of State responsible for finance, determines that a procurement is related to national defence or national security, the application of the rules and procedures in this Act may be modified.

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

(4) Where a provision of this Act conflicts with the procurement rules of a donor or funding agency, the application of the mandatory provisions pursuant to an obligation entered into by the Government, the requirements of the rules shall prevail, but in other respects, the procurement shall be governed by this Act.

22. A procuring organisation shall not divide its procurement artificially in order to avoid the monetary thresholds set in the Regulations.

23(1) The principles and rules in this section apply to the determination, by procuring organisations, of the qualifications of bidders for a procurement. The principles and rules shall apply to a bidder at all stages of the procurement proceedings, including pre-qualification proceedings, if they take place.

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

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

(a) it possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation and personnel, to perform the contract;

(b) it has the legal capacity to enter into the contract;

(c) it is not insolvent, in receivership, bankrupt or being wound up, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;

(d) it has fulfilled its obligations to pay taxes and social security contributions, if it applies;

(e) it, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings, and that it is not subject to debarment.

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

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

(6) A procuring organisation shall evaluate the qualification prospective bidders only in accordance with the criteria procedures set out in the pre-qualification or bidding documents and referred to in subsections (2) and (3).

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

(8) A procuring organisation may disqualify a prospective bidder if it finds at any time that the information submitted concerning qualifications of the prospective bidder was materially inaccurate or incomplete.

Pre-qualification proceedings

24(1) Pre-qualification proceeding may be undertaken procuring organisation in order to limit the bidding process in accordance with the criteria set out in section 23(2) and bidders with the capability and resources to perform the contract satisfactorily, taking into account their-

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

(a) any specifications, plans, drawings and designs setting out the technical or quality characteristics of the goods or services to be procured; and

(b) requirements concerning testing and test methods, packaging, marking, labelling, or conformity, certification, symbols and terminology, or description of services, and contract terms,

shall be drawn up in an objective manner.

(3) Descriptions and definitions of procurement requirements shall -

(a) be formulated in terms of performance wherever possible rather than design or descriptive characteristics; and

(b) take into account international and national standards

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

(4) No requirement or reference shall be made in the technical specifications to a particular trademark or name, patent, design type, specific original, producer or service provider, unless -

(a) there is no sufficiently precise or intelligible way of describing the procurement requirements; and

(b) words such as "or equivalent" are included in the specifications.

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

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

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

(5) A procuring organisation shall respond promptly to requests for clarification of the pre-qualification documents that are received within a reasonable time prior to the deadline for submission of applications to pre-qualify, and the clarification shall be provided to all bidders.

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

Eligibility
25. In order to be awarded a procurement contract, local suppliers shall be registered in accordance with Regulations made under this Act.

Rules concerning description of goods, works and services
26 (1) The technical specifications for goods, works and services shall clearly describe a procuring organisation's requirements with respect to quality, performance, safety and dimension symbols, terminology, packaging, marking and labelling or the processes and methods for production and requirements relating to conformity assessment procedures.

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

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

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

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

(a) discharge his or her duties impartially so as to assure fair competitive access to public procurement by suppliers;

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

(c) at all times avoid conflicts of interest and the appearance of impropriety in carrying out his or her duties and conducting himself or herself, and

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

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

(a) a procurement process or the execution of a contract to the detriment of the procuring organisation; and

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

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

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

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

(6) A violation of any provision of this Act or the Regulations shall be referred to the relevant authorities for applicable administrative, civil and criminal sanctions.

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

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

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

- (a) reasonable notice to the supplier or bidder involved of the cause of the proposed action;
 - (b) reasonable opportunity for the potential supplier or bidder to respond to the proposed action; and
 - (c) consultation with the affected procuring organisation to consider all the facts of the case.
- (2) A supplier or bidder shall not be excluded from participation in procurement except on the following grounds -

- (a) refusal by a successful bidder to -
 - (i) sign a procurement contract, or
 - (ii) furnish a performance security, if required to do so in accordance with the terms of the bidding documents;
- (b) provision of false information supplied in the process of submitting a bid;
- (c) collusion between the bidders or a bidder and a public officer concerning the formulation of terms of reference or the bidding documents;
- (d) connivance to interfere with the participation of competing bidders;

(e) misconduct relating to the submission of bids, including corruption, collusion, price fixing, a pattern of underpricing of bids, and breach of confidentiality;

(f) breach of contractual obligations under a procurement contract deemed serious enough to warrant debarment, provided that the breach was not due to circumstances beyond the control of the supplier or bidder;

(g) conviction of a criminal offence relating to obtaining attempting to obtain a contract or subcontract; or

(h) conviction for an economic crime.

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

31(1) A procuring organisation is responsible for administration of procurement contracts into which it enters and shall establish procedures for contract administration and provide the necessary material and human resources for the implementation.

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

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

(2) A procuring organisation may -

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

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

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

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

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

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

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

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

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

(2) The notice, which shall indicate the contract price and the name and address of the successful bidder, shall be published in the local media and by such other means as provided in the Regulations.

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

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

- (a) a description of the object of the procurement;
- (b) a list of the participating bidders, their names, addresses, and their qualifications, or lack of qualifications;
- (c) names of bidders that express interest or a request to be short listed;
- (d) the name and address of the successful bidder;
- (e) bid prices, including that of the winning bid;
- (f) the evaluation criteria stipulated and applied, including the relative weight;
- (g) a summary of the evaluation of bids;
- (h) a summary of any review proceedings and decisions of the proceedings;
- (i) a summary of requests for clarification of pre-qualification documents and bidding documents, and responses to those clarifications;
- (j) statement of grounds for rejection of all bids or cancellations of procurement proceedings;
- (k) statement of grounds for choice of a procurement method other than tendering or request for proposals for service contracts;
- (l) statement of grounds for reduction of bid-preparation periods;
- (m) information concerning rejection of bids pursuant to sections 28(4) and 32(2);

- (n) summary of requests for proposals by members of the Contracts Committee; and
 - (o) such other information as may be required by the Regulations.
- (3) The record shall, on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed at an earlier or later point in time pursuant to the Regulations or by order of a competent court.
- (4) The documents required to be preserved pursuant to subsection (1) include -
- (a) a copy of the invitation to bid actually made available to bidders;
 - (b) pre-qualification documents, if any;
 - (c) bidding documents and any amendments made to the documents as issued to the bidders;
 - (d) requests for clarification of bidding and pre-qualification documents, and responses thereto;
 - (e) minutes of -
 - (i) pre-bid conference, if any,
 - (ii) bid opening proceedings,
 - (iii) bid evaluation meetings,
 - (iv) any negotiations with bidders, and
 - (v) all other meetings related to the procurement;

(f) the time the bids are submitted;

(g) correspondence between the procuring organisation and the bidders;

(h) bid evaluation reports;

(i) the procurement contract;

(j) correspondence and documents relating to the performance of the procurement contract.

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

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

(a) if the disclosure would -

(i) be contrary to law,

(ii) impede law enforcement,

(iii) not be in the public interest,

(iv) prejudice legitimate commercial interest of the parties, or

(v) would inhibit fair competition; or

(b) relating to the examination, evaluation and content of bids, other than in the summary form referred to in subsection (2).

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

(2) The head of a procuring organisation shall -

(a) be responsible for effectively implementing the programme within its activities, and achieving programme goals;

(b) ensure that procurement personnel maintain knowledge of the programme requirements; and

(c) take all reasonable action to increase participation in the organisation's procurement by those enterprises.

38(1) A Permanent Secretary or head of a procuring organisation shall be -

(a) personally responsible for any lapses in the general supervision and control of stores and stores accounts in the procuring organisation and shall ensure that the members of the store-keeping staff perform their duties satisfactorily; and

(b) financially liable for any financially loss incurred through his or her failure to meet those responsibilities.

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

PART VII – METHODS OF PROCUREMENT AND CONDITIONS FOR USE

Preference for open tendering

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

Conditions for use of restricted tendering

40. Restricted tender proceedings may be used only when
- (a) when the goods, works or services are available from a limited number of bidders, to the procuring organisation; and
 - (b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement.

Conditions for use of two-stage tendering

41. (1) A tendering proceeding may be conducted in two stages
- (a) when it is not feasible to define fully the technical contractual aspects of the procurement; and
 - (b) when, because of the complex nature of the goods or services to be procured, the procuring organisation wishes to consider various technical contractual solutions, and to negotiate with bidders about the relative merits of those various possible amendments thereto, before deciding on final technical specifications and contractual terms.

Conditions for use of international tendering

42. (1) An international tendering proceeding shall be held—
- (a) when the estimated value of the contract exceeds the amount set by the Authority;

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

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

43. Request for proposals may be used for the procurement of consultants' services and other types of intellectual services.

44. (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,

when 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 or services are ordinarily available from three or more sources in The Gambia at competitive prices and conditions.

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

- (a) when the estimated value of the procurement does not exceed the amount set in the Regulations;

(b) when only one supplier has the technical capability capacity to fulfil the procurement requirement, or exclusive right to manufacture the goods, carry out works, or perform the services to be procured, and suitable alternative exists;

(c) when there is an emergency need for the goods, works or services, involving an imminent threat to the physical safety of the population or of damage to property, or in the case of other unforeseeable urgent circumstances not to the dilatory conduct of the procuring organisation, and engaging in tendering proceedings or other procurement methods would therefore be impractical;

(d) when the procuring organisation, having procured goods 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;

(e) for purchase of perishable commodities such as fresh fruits, vegetables or other similar items which are purchased on competitive market terms.

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

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

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

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

PART VIII - CONTRACTS COMMITTEES AND SPECIALISED PROCUREMENT UNITS

48(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 49.

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

(4) The accounting officer, or the head of a procuring organisation where there is no designated accounting officer, shall appoint a 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 matters considered by the Contracts Committee.

(6) A Contracts Committee may delegate, to a special 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, work or services.

(8) A decision by a procuring organisation to proceed with 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 (3).

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

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

49 (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 accounting unit, or the head of the procuring organisation, 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, as well as an engineer or technician familiar with the substance of the procurement, if available.

(5) Ad hoc members to provide necessary technical, legal and business expertise to the Contracts Committee shall be drawn from the relevant Department of State or unit.

50. The general 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 bids to review documents;

(c) approval of use of single-source procurement in accordance with the Regulations;

(d) conducting the opening of bids;

(e) comparing and evaluating the bids, and selecting winning bid, subject to paragraph (f);

(f) submitting the recommendations resulting from evaluation of bids to the Secretary of State concerned other official designated in the Regulations, in case value of the procurement exceeds the authority of Contracts Committee; and

(g) considering applications for the variations.

Establishment of specialised procurement units

51. The Secretary of State, concerned or the head of a procurement organisation shall establish specialized procurement units and assign, to the heads of those units, authority to conduct procurement activities in accordance with this Act and the Regulations.

Staffing of specialized procurement units

52. A specialised procurement unit shall be staffed with personnel that are well trained concerning public procurement, and will professional qualifications meet the requirements that may be established in accordance with guidelines to be issued by the Authority.

Career development and management of procurement officers

53. The Authority shall develop and recommend to the Secretary of State concerned and heads of procuring organisations a system for development and management programme, and a system for selection, appointment and termination of appointment of procurement officers.

PART IX - REVIEW

54(1) Subject to subsection (2), a bidder that claims to have suffered, or that is likely to suffer, loss or injury due to a breach of a duty imposed on the procuring organisation by this Act may seek review in accordance with this Part.

(2) Subsection (1) shall not apply to -

(a) the selection of a method of procurement pursuant to Part VII;

(b) the choice of a selection procedure in request for proposals for services, in accordance with the Regulations;

(c) a decision by the procuring organisation under section 32(2) to reject all bids or to cancel the procurement proceedings;

(d) a refusal by the procuring organisation to respond to an expression of interest in participating in request for proposals for services proceedings set out in the Regulations.

(3) An application for review shall not be entertained unless it identifies the specific act of omission or commission alleged to violate this Act or the Regulations.

55 (1) Prior to the entry into force of a procurement contract, application for review shall be made in the first instance, in writing, to the head of the procuring organisation.

(2) The head of the procuring organisation shall not entertain an application for review unless it was submitted 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, 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 review.
- (4) The matter in question may be brought before the Authority in the following circumstances -
- (a) in the form of an appeal by the complaining party 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 render a decision within the required time, provided that the application for review is filed within ten working days of the expiry of the time for decision by the head of the procuring organisation referred to in subsection (3);
 - (c) in the case of an application for review submitted to the first instance to the Authority, if the procuree has already entered into force, the application shall be entertained unless it is submitted to the Authority within ten working days of when the bidder submitted the complaint or of when the bidder should have become aware of those circumstances, whichever is earlier.
- (5) The Authority shall make a decision under this Part within ten working days after receiving the complaint.
- (6) Unless a complaint is dismissed, the remedies that may be ordered by the Authority include -
- (a) prohibiting the procuring organisation from acting in an authorised manner or from following an incorrect procedure;

- (b) annulling in whole or in part any unauthorised act or decision of a procuring organisation, other than any act or decision bringing the procurement contract into force;
 - (c) reversing a decision by the procuring organisation or substituting its own decision for such a decision, other than any decision bringing the procurement contract into force;
 - (d) payment of reasonable costs incurred in participating in the bidding process where the results were not in accordance with this Act or the Regulations.
- (7) The timely submission of a complaint in accordance with the deadlines set in this section suspends the procurement proceedings for a period of ten working days, and the suspension shall take effect on the filing of the application for review.
- (8) The head of the procuring organisation or the Director General of the Authority may extend the period provided in subsection (7) in order to preserve the rights of the bidder submitting the application for review, provided that the total period of suspension shall not exceed thirty days.
- (9) The suspension provided by this section shall not apply if the procuring organisation certifies that urgent public interest considerations require the procurement to proceed.
- (10) The certification, which shall state the grounds for the finding that urgent considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of review except judicial review.

PART XII - AUDITING

Regular auditing of procurement activity

56. 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.

Bodies to cooperate with the Authority

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

PART XIII - MISCELLANEOUS PROVISIONS

Exemption from personal liability

58. Subject to this Act, no person shall, in his or her personal capacity, be liable in civil proceedings in respect of any done or omitted to be done in good faith in the performance of his or her duties or functions under this Act.

Regulations

59. (1) The Authority shall, with the approval of the Secretary of State, make Regulations for the better implementation of this Act.

(2) In particular, the Authority shall make Regulations -

(a) for the management of supplies;

(b) for the transfer of excess supplies;

(c) for the sale, lease or disposal of surplus supplies, including public auction, tendering with sealed bids, or any appropriate method designated by regulation, provided that no employee of the owning or disposing authority shall be entitled to purchase any such supplies; and

(d) to prescribe the principles and procedure for the different methods of procurement set out in this Act.

(3) The Regulations referred to in subsections (1) and (2) shall be published in the Gazette.

PASSED in the National Assembly this 24th day of December 2001

Ag. Clerk of the National Assembly:

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy.

Ag. Clerk of the National Assembly: