

COMMONWEALTH OF DOMINICA**ACT NO 2007****BILL****FOR**

AN ACT to provide for the general requirements in relation to procurement, for the exempt and partially exempt procurement, for the establishment of the procurement authorities, for the source selection, the solicitation procedures and the award of contract, for the administration of contract, for the suspension and debarment of tenderer or offeror, for the assessment of procurement and contract administration, for the sanctions, for the review process, for the power to make regulations, for transitional matters and consequential amendments and to provide for matters connected therewith and incidental thereto.

(Gazetted)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PART 1**PRELIMINARY PROVISIONS****Short title and commencement.**

1. (a) This Act may be cited as the -
PROCUREMENT AND CONTRACT ADMINISTRATION ACT, 2007.
- (b) This Act shall come into force on such date as the Minister may by Order appoint.

Interpretation.

2. In this Act -

- “Central Procurement Board” means the Central Procurement Board established under section 20;
- “Central Procurement Unit” means the Central Procurement Unit established under section 20.
- “construction” means the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works and includes services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection therewith if the value does not exceed the value of the construction, reconstruction, erection, installation, repair, renovation or extension of the building, structure or works;
- “contract” means a formal agreement, a petty agreement or an agreement evidenced by the issue of a purchase order;
- “contractor” means a person having a procurement contract with the Government;
- “department” means a department of the Government and includes a branch of a department, a non-ministerial department and a Ministry or another service;
- “Departmental [Ministry] Procurement Board” means a Departmental Procurement Board established under section 28;
- “employee” means a person who is a public officer of, or has a contract of employment with, the Government;
- “formal agreement” means an agreement between the Government and another person in the form prescribed by the Minister as a formal agreement under section 15;
- “goods” means tangible property and includes services incidental to the supply of goods if the value of those services does not exceed the value of the goods;
- “invitation to tender” means the documents, whether attached or incorporated by reference, used in soliciting tenders;
- “list of pre-qualified small suppliers” means the list referred to in section 23(2);
- “Minister” unless the context requires otherwise, means Minister responsible for Finance;
- “offeror” means a person who submits a proposal;
- “Permanent Secretary” means the person appointed in accordance with section 68 of the Constitution;
- “person” means a corporation, association, individual, sole proprietorship, partnership or joint venture and includes the assigns and heirs, executors and administrators or other legal representatives of the person;
- “petty agreement” means an agreement between the Government and another person in the form approved by the Minister as a petty agreement under section 15;

- “procurement” means all activities that pertain to the solicitation and entering into a contract by the Government for the supply of goods, the rendering of services or for construction by an independent contractor;
- “procurement authority” with respect to source selection, solicitation procedures and review process means—
- (a) the Central Procurement Board;
 - (b) a Departmental Procurement Board; or
 - (c) the accounting officer of a procuring entity with respect to a small procurement by the procuring entity;
- “procuring entity” means a department of the Government including a non-ministerial department, a Ministry or another service for which a procurement is made;
- “procurement documents file” means the file referred to in subsection 25(3);
- “procurement officer”, in relation to a procurement, means the person appointed under section 25 in relation to that procurement and includes any person authorized to act on his behalf;
- “purchase” includes rent, lease or otherwise acquire;
- “qualified”, in relation to a person who submits a tender or a proposal, a person making a submission in relation to an emergency procurement or a person submitting a quotation means that the person has the capability and reliability, legal capacity and integrity to perform the contract and is in good standing with the Government;
- “request for proposals” means all documents, whether attached or incorporated by reference, used in soliciting proposals;
- “request for quotations” means all documents, whether attached or incorporated by reference, used in soliciting quotations;
- “responsive”, in relation to a tender, proposal or quotation, means compliant in all material respects with the requirements of the invitation to tender, request for proposals or request for quotations;
- “Secretary” means the secretary of the Central Procurement Board appointed under section 24 or the secretary of the Department Procurement Board, as the case may be;
- “services” means an object of procurement and includes the supply of -
- (a) professional services or other labour, time or effort and includes, reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services if the value of those goods does not exceed the value of the services;
 - (b) subject to paragraph 5(1)(c), the supply of electricity, telecommunications, water and other similar services; or
 - (c) insurance coverage and other similar services,

- but does not include engaging an employee;
- “small procurement” means a procurement referred to in Part 5;
- “tenderer” means a person who submits a tender.

Application of Finance Regulations. Chap 63:01.

3. The Finance Regulations apply to this Act with such modifications as the circumstances require.

Purposes.

4. (1) The purposes of this Act is to -
- (a) simplify, clarify and modernize procurement by the Government;
 - (b) provide for increased public confidence in the procurement procedures followed by the Government;
 - (c) ensure fair and equitable treatment of all persons who deal with the procurement system of the Government;
 - (d) provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government; and
 - (e) provide safeguards for the maintenance of a procurement system of quality, integrity and transparency.

PART II

EXEMPT AND PARTIALLY EXEMPT PROCUREMENTS

Procurements exempted from Part 5.

5. (1) The following procurements are exempted from Part 5 -
- (a) professional services by a health professional or a lawyer;
 - (b) the acquisition of an existing work of art or object of historical or cultural interest;
 - (c) the supply of electricity, telecommunications, water or other similar services by a supplier that is regulated by other enactments.
- (2) A contract for a procurement referred to in paragraph (1)(a) or (b) may be negotiated, be in the form required, be entered into, and be executed, on behalf of the Government by the accounting officer of the procuring entity.
- (3) A contract for a procurement referred to in paragraph (1)(c) may be negotiated and entered into by the Authority empowered in that behalf under the relevant enactment.

Notice by accounting officer.

6. (1) Without delay after a contract referred to in paragraph 5(1)(a) or (b) is entered into, the accounting officer of the procuring entity shall give written notice to the Secretary setting out -

- (a) the name and address of the contractor;
- (b) particulars of the nature of the procurement and its terms and conditions;
- (c) the date and amount of the contract;
- (d) the basis on which the procurement is exempted.

(2) Paragraph (1)(b) may be satisfied by attaching a copy of the contract.

Contracts involving national defense or national security wholly or partly exempted from Part 5

7. (1) If the Central Procurement Board determines, on the recommendation of the Minister responsible for national security, that it is in the public interest to do so, the Central Procurement Board may make an order—

- (a) wholly or partly exempting any procurement involving national defense or national security from Part 5; and
- (b) requiring the procurement to be kept confidential.

(2) An order under subsection (1) shall exempt a procurement from Part 5 to the minimum extent necessary to protect the national interest and, when the exemption is partial, shall specify the extent of the exemption.

(3) The procurement shall be made and the contract shall be entered into, be in the form and be executed on behalf of the Government in accordance with Part 5 except to the extent that it is exempted by an order under subsection (1).

(4) An order under subsection (1) shall be sent without delay to the Secretary.

(5) When an order under subparagraph (1)(b) provides that the procurement be kept confidential, no person shall disclose any information or document about the procurement -

- (a) to any public officer inside Government except to a person who needs to have that information or documentation to perform his functions; or
- (b) outside government except when required to do so under an Act or when the minister responsible for national security so authorizes in writing.

Procurements under co-operative purchasing agreements exempted from Part 5

8. (1) The Minister may enter into a co-operative procurement agreement for the procurement of goods or services with any one or more of the following -

- (a) a government outside Dominica;

- (b) a statutory body or public authority inside or outside Dominica;
 - (c) the Eastern Caribbean Central Bank or any regional organization in the Caribbean;
- (2) The Minister may vary or cancel a co-operative procurement agreement.
- (3) A copy of an agreement made under subsection (1) or an agreement to vary or cancel a co-operative procurement agreement shall be filed with the Secretary without delay after it is made.
- (4) Procurements under a co-operative procurement agreement are exempted from Part 5.

Donor-funded procurements that are partially exempted from Part 5

9. (1) For the purpose of this section, “donor” includes any regional or international organization that lends money to the Government of Dominica.

(2) When the funding for a procurement or part of the funding for a procurement is provided by a donor to the Government on the condition or on the understanding that the procurement procedures of the donor, or procurement procedures approved or agreed to, by the donor will be used, the procurement shall be made according to the procurement procedures of the donor or the procurement procedures approved or agreed on by the donor.

(3) The accounting officer for the procuring entity shall send to the Central Procurement Board a statement setting out the condition or understanding relevant to the procurement.

Exempted procurements files

10. The Secretary [or the Chief Procurement Officer] shall, for each financial year, maintain the following exempted procurements files—

- (a) a file for procurements referred to in section 5 (procurements exempted from Part 5) in which notices referred to in section 6 shall be filed;
- (b) a file for procurements referred to in section 7 (contracts involving national defense or national security exempted from Part 5) in which orders referred to in subsection 7(1) wholly exempting the procurement shall be filed;
- (c) a file of co-operative procurements agreements referred to in subsection 8(1) in which agreements and variations and cancellations referred to in section 8 shall be filed.

Filing when contract partially exempted.

11. When -

- (a) a procurement referred to in section 7 (contracts involving national defense or national security exempted from Part 5), the order partially exempting the procurement shall be filed in the procurement documents file for that procurement; and
- (b) a procurement referred to in section 9 (donor funded procurements that are partially exempted from Part 5) is made, the statements referred to in subsection 9(3) shall be filed in the procurement documents file for that procurement.

PART III

GENERAL PROCUREMENT REQUIREMENTS

General procurement requirements

- 12.** All procurements shall be made in accordance with this Act and the regulations and any policies and guidelines made by the Financial Secretary.

Requirement of estimate and commitment of sufficient funds before solicitation

- 13.** Before commencing a solicitation for a procurement, procuring entities shall—
- (a) enquire if their requirements can be met by the transfer of goods from another department;
 - (b) ensure that no procurement is made in excess of their requirements;
 - + (c) ensure, to the extent that is practicable in the circumstances, that the procurement is made in accordance with the annual acquisition plan prepared by the procuring entity;
 - (d) ensure that an accurate estimate of the costs of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and
 - (e) commit the amount of the estimate in accordance with the Finance Regulations.

Artificial division of procurement

14. No procurement shall be artificially divided so as to be procured as a small procurement.

Forms of agreements

15. (1) This section applies only in relation to procurements to the extent that they are not exempted under Part 2.

(2) The Minister may prescribe by Order -

- (a) the use of forms for formal agreements, petty agreements and purchase orders for construction, for the supply of goods and the rendering of services or for any class of construction, supply of goods and rendering of services; and
- (b) financial limits within which those forms shall or may be used.

(3) The Minister may approve different forms for formal agreements, petty agreements and purchase orders for construction, for the supply of goods and the rendering of services or for any class of construction, supply of goods and rendering of services.

Execution of agreements

16. (1) A formal agreement or a petty agreement in relation to a contract award by the Central Procurement Board or a Departmental Procurement Board shall be executed on behalf of the Government by the Accounting Officer of the procuring entity.

(2) A petty agreement in relation to a contract award for small procurement shall be executed by the Accounting Officer of the procuring entity.

(3) With respect to central purchasing, the procuring entity is the Ministry of Finance.

PART IV**PROCUREMENT AUTHORITIES****Establishment of Central Procurement Unit.**

17. There shall be a Central Procurement Unit within the Ministry of Finance under the overall supervision of the Chief Procurement Officer.

Chief Procurement Officer

18. The Minister shall designate a senior officer in the Ministry of Finance as Chief Procurement Officer.

Responsibilities and powers of Chief Procurement Officer

19. (1) The Chief Procurement Officer is responsible for the following -
- (a) assisting the procurement authorities in relation to the procurement system of Dominica;
 - (b) monitoring of public procurement;
 - (c) providing procurement information and managing statistical data bases;
 - (d) developing and supporting implementation of initiatives for improvements of the public procurement system;
 - (e) providing implementing tools and documents to support training and capacity development of procurement authorities and of any public officers involved in the procurement system;
 - (f) enquiring and reporting on procurement and contract administration having regard to the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year, if any, and setting out the cost and other measures necessary to address those issues and problems;
 - (g) subject to the approval of the Minister, developing policies and guidelines with respect to the application of the Act or the regulations.
- (2) Any report prepared pursuant to paragraph (1)(f) shall be sent to the Minister who shall, not later than fifteen days after the House of Assembly first meets after he has received the report, lay it before the House.
- (3) The Minister, after such consultations as appear to him to be appropriate, shall determine what action shall be taken in relation to the report.
- (4) The Chief Procurement Officer -
- (a) shall at all times have access to all procuring entities or places where procurement activities take place; and
 - (b) may require any public officer to furnish any information and provide access to any documents that the Chief Procurement Officer considers necessary for the purpose of enquiring and reporting

for the purpose of enquiring and reporting on procurement and contract administration pursuant to subsection (1)(f).

Establishment of Central Procurement Board.

20. (1) There is hereby established a Central Procurement Board consisting of -
- (a) the Financial Secretary or his nominee from the Ministry of Finance;
 - (b) the Director of Trade;

- (c) a nominee of the Attorney General from the Ministry of Legal Affairs;
- (d) a senior officer of the Ministry of Finance nominated by the Minister ;
- (e) a representative of the procuring entity.

(2) The person referred to in paragraph (1)(d) shall be a senior officer from the procuring entity.

(3) The Central Procurement Board is deemed to be properly constituted notwithstanding that there is a vacancy on the Central Procurement.

Chairperson and deputy chairperson

- 21.** (1) The Financial Secretary or his nominee is Chairperson of the Board.
- (2) The Central Procurement Board may designate a member referred to in subsection 20(1) to be deputy chairperson.
- (3) In the event of a tie vote, the Chairperson has a second or casting vote.

Quorum

- 22.** A quorum of the Central Procurement Board is majority of the members.

Responsibilities and powers of the Central Procurement Board

23. (1) The Central Procurement Board has sole responsibility for making procurements of the amount prescribed by regulation or more, other than those procurements delegated to a departmental procurement board.

- (2) The Central Procurement Board is responsible for -
- (a) making and maintaining a list, to be called the “list of pre-qualified small suppliers”, of persons from whom quotations for goods, services or construction or classes of goods, services or construction, may be requested;
 - (b) making and maintaining, as it considers necessary, lists of pre-qualified suppliers or contractors or categories of pre-qualified suppliers or contractors to whom an invitation to tender or a request for proposals may be issued for the procurement of goods, services or construction or classes of goods, services or construction.

(3) No persons name shall be placed on the pre-qualified small suppliers list or remain on such list unless that person is qualified in relation to procurements that are less than the limit for small procurements prescribed by regulation or any other amount determined from time to time by the Central Procurement Board.

(4) The pre-qualification process prescribed by regulations applies to the placing on or removal from the lists referred to in paragraphs (2)(a) and (b) with such modifications as the circumstances require.

(5) The Secretary shall make the lists referred to in paragraphs (2)(a) and (b) available to procurement officers.

(6) The Central Procurement Board has the authority set out in Part 7 over the administration of contracts arising from the procurements referred to in subsection (1).

(7) The Central Procurement Board has authority to suspend or debar a person under Part 8.

(8) The Central Procurement Board may make rules governing its procedure.

Secretary of the Central Procurement Board

24. (1) The Central Procurement Board shall appoint a public officer as Secretary to the Central Procurement Board, who shall, in addition to the responsibilities assigned to him under this Act, provide administrative support to the Board and more particularly –

- (a) give notice of meetings of the Board;
- (b) take or cause accurate minutes of meetings of the Board to be taken and providing copies to members of the Board and to affected procurement officers;
- (c) keep records of the business of the Board;
- (d) prepare the correspondence of the Board;
- (e) report to the Board in writing, any breach or non-observance of this Act, the regulations or any guidelines given by the Financial Secretary by a supplier or contractor or any circumstances that may lead to the suspension or debarment of a supplier or contractor that may come or be brought to his notice;
- (f) carry out such other tasks in relation to procurement as are assigned to him by this Act or the Board.

Appointment of procurement officer and his responsibilities

25. (1) The Central Procurement Board shall, with the approval of the appropriate accounting officer, designate a public officer as the procurement officer for each procurement referred to in subsection 23(1).

(2) The procurement officer shall maintain an accurate and up-to-date record of procurement information for each procurement referred to in subsection 23(1), which shall contain -

- (a) the file number in which the procurement documents are located;
- (b) the estimate of the cost of the procurement and a statement of the money available or likely to be available to cover the cost of the contracts and contingencies that might reasonably be expected to arise under the contract;

- (c) particulars of where the cost of the contract were charged at the time of award;
- (d) the contract number;
- (e) the name of the contractor;
- (f) the names of the officers of the contractor who signed the contract;
- (g) the original amount of the contract;
- (h) particulars of the performance security furnished by the contractor;
- (i) the amount, if any, of the contract amount that is retained as security and the period that it is retained; and;
- (j) the date of commencement of the contract and the date of completion.
- (k) particulars of any variation in the contract, progress payments, final payment, change orders, penalties deducted and other similar information.

(3) The procurement officer shall maintain an accurate and up-to-date procurement documents file for each procurement referred to in subsection 23 (1), in which shall be placed all of the documents referred to in this Act or the regulations.

Authority of Chairperson to act on behalf of the Central Procurement Board

26. (1) When a matter that requires a decision of the Board cannot without causing substantial prejudice to the Government await the next meeting of the Board, the Chairperson may, after such consultations with other members of the Board as are reasonable in the circumstances, make the decision on behalf of the Board.

(2) The decision and a summary of the consultations by the Chairperson shall be reported to the Board and recorded in the minutes.

Committees

27. (1) The Central Procurement Board may appoint such committees either generally or with respect to a specific procurement to furnish advice to, or to discharge a specified responsibility of the Central Procurement Board.

(2) Without restricting the generality of subsection (1), the Central Procurement Board may also appoint technical committees as may be considered necessary to evaluate any tender or proposal and for the pre-qualification of suppliers and contractors.

(3) A committee may consist of members of the Central Procurement Board, individuals who are not members of the Central Procurement Board, or both members and non-members.

Delegation to Departmental Procurement Board

28. (1) At the request of the accounting officer for a department, the Central Procurement Board may establish a Departmental Procurement Board for that department consisting of -

- (a) two public officers in that department as may be designated by the Central Procurement Board; and
- (b) one public officer who shall be the representative of the Ministry of Finance.

(2) A Departmental Procurement Board shall be established by the signature of a Letter of Understanding by the Chairman of the Central Procurement Board containing such terms and conditions as the Central Procurement Board may deem necessary to govern the delegation of authority to the Departmental Procurement Board.

(3) The Central Procurement Board, after consulting with the accounting officer referred to in subsection (1), shall appoint a person as Chairman of the Departmental Procurement Board.

(4) The Central Procurement Board shall appoint a public officer approved by the accounting officer referred to in subsection (1) as secretary to the Departmental Procurement Board.

(5) The Central Procurement Board may delegate to the Departmental Procurement Board procurements within financial limits determined by the Central Procurement Board after consultation with the Minister.

(6) The Central Procurement Board may give such directions to the Departmental Procurement Board with regard to carrying out its responsibilities and exercise of its powers as the Central Procurement Board considers appropriate.

(7) Subject to the directions referred to in subsection (6) -

- (a) the Departmental Procurement Board has, in relation to a procurement delegated to it, all the responsibilities and powers of the Central Procurement Board; and
- (b) the secretary of the Departmental Procurement Board, in relation to procurements delegated to the Board, has the responsibilities of the Secretary under section 24.

Procurement authority for small procurements

29. The procurement authority for a small procurement is the accounting officer of the procuring entity making the small procurement.

Appointment of procurement officer for each small procurement

30. The accounting officer shall appoint a public officer in his department as the procurement officer for small procurements or a class of small procurements.

PART V**SOLICITATION PROCEDURES****Solicitation procedures**

- 31.** A procurement shall be made by one of the following forms of solicitation—
- (a) by competitive sealed tendering;
 - (b) by competitive sealed proposals;
 - (c) as a sole source procurement;
 - (d) as an emergency procurement; or
 - (e) as a small procurements.

Competitive sealed tendering

32. (1) A procurement shall be made by competitive sealed tendering as prescribed by Regulations unless the procurement may be done by one of the forms of solicitation referred to in paragraph 31(1)(b) to (e).

(2) The procurement of research, experiment or development services, except where the contract or a subsequent contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs, may be solicited by competitive sealed tendering as prescribed by Regulations or negotiated, be in the form required, be entered into, and be executed, on behalf of the Government by the accounting officer of the procuring entity.

Competitive sealed proposal

33. (1) A procurement may be made by competitive sealed proposals as prescribed by Regulations only when the Central Procurement Board decides that it is not practicable or advantageous to make the procurement by competitive sealed tendering.

(2) Whether a competitive sealed proposal is practicable relates to such factual circumstances as whether there is sufficient time or information to prepare an invitation to tender.

(3) Whether a competitive sealed proposal is advantageous relates to such matters as whether quality, availability or capability is overriding in relation to price.

(4) The procurement officer shall file a copy of the decision of the Central Procurement Board in the procurement documents file.

Multi-step competitive sealed proposals

34. (1) When the Central Procurement Board considers that it is impracticable under subsection 33(2) to prepare a description of what is being procured, a request for unpriced proposals as prescribed by Regulations may be issued requesting the submission of unpriced offers to be

followed by a request for proposals limited to those offerors whose proposals meet the evaluation criteria set forth in the request for unpriced proposals.

Sole source procurement

35. (1) A procurement may be made as a sole source procurement as prescribed by Regulations when the Central Procurement Board determines that there is only one source for the supply of goods, services or construction.

(2) The procurement officer shall

- (a) make a record of the basis of the Central Procurement Board's determination that there is only one source of supply; and
- (b) file a copy of the contract in the procurement documents file.

Emergency procurement

36. (1) Notwithstanding any other provision of this Act, a procurement may be made as an emergency procurement as prescribed by Regulations when the Central Procurement Board determines that there exists a threat to public health, welfare or safety by reason of an emergency.

Small procurements

37. (1) Subject to sections 35 and 36, a procurement that is less than the prescribed amount may be made in accordance with the small procurement procedures as prescribed by Regulations.

PART VI

REVIEW

Right to review.

38. (1) Subject to subsection (2), any supplier or contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procurement authority by this Act or the Regulations may seek review in accordance with sections 39, 40, 42, 43 and 44.

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

- (a) the determination of the Central Procurement Board under subsection 7(1);
- (b) the selection of a solicitation procedure pursuant to sections 32, 33, 34, 35, 36 and 37; and
- (c) a decision of a procurement authority to reject all tenders, proposals, offers or quotations.

Right by procurement authority

39. (1) Unless the procurement contract has already entered into force, a complaint shall, in the first instance, be submitted in writing to the head of the procurement authority.

(2) The head of the procurement authority shall not entertain a complaint, unless it was submitted within 20 days from the day the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or from the day that supplier or contractor should have become aware of those circumstances, whichever is earlier.

(3) The head of the procurement authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force.

(4) Unless the complaint is resolved by mutual agreement of the supplier or contractor that submitted it and the procurement authority, the head of the procurement authority shall, within 30 days after the submission of the complaint, issue a written decision. The decision shall:

- (a) state the reasons for the decision; and
- (b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.

(5) If the head of the procurement authority does not issue a decision by the time specified in subsection (4), the supplier or contractor submitting the complaint is entitled immediately thereafter to institute proceedings under section 40. Upon the institution of such proceedings, the competence of the head of the procurement authority to entertain the complaint ceases.

(6) The decision of the head of the procurement authority shall be final unless proceedings are instituted under section 40 or 44.

Administrative review

40. (1) A supplier or contractor entitled under section 38 to seek review may submit a complaint to the Administrative Review Board established under section 41:

- (a) if the complaint cannot be submitted or entertained under section 39 because of the entry into force of the procurement contract, and provided that the intention to submit a complaint is notified to the Chief Procurement Officer within 20 days after the earlier of the time when the supplier or contractor bringing it became aware of the circumstances giving rise to the complaint or the time when that supplier or contractor should have become aware of those circumstances;
- (b) if the head of the procurement authority does not entertain the complaint because the procurement contract has entered into force, provided that the intention to submit a complaint is notified to the Chief Procurement Officer within 20 days after the issuance of the decision not to entertain the complaint;

- (c) pursuant to subsection 39 (5), provided that the intention to submit a complaint is notified to the Chief Procurement Officer within 20 days after the expiry of the period referred to in subsection 39(4); or
- (d) if the supplier or contractor claims to be adversely affected by a decision of the head of the procurement authority under section 39, provided that the intention to submit a complaint is notified to the Chief Procurement Officer within 20 days after the issuance of the decision.

(2) Upon receipt of a complaint, the Administrative Review Board shall give notice of the complaint promptly to the procurement authority.

(3) The Administrative Review Board, after making or causing to be made such investigation as it thinks necessary, may grant one or more of the following remedies, unless it dismisses the complaint:

- (a) declare the legal rules or principles that govern the subject-matter of the complaint;
- (b) prohibit the procurement authority from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procurement authority that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- (d) annul in whole or in part an unlawful act or decision of the procurement authority, other than any act or decision bringing the procurement contract into force;
- (e) revise an unlawful decision by the procurement authority or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
- (f) require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of, or procedure followed by, the procurement authority;
- (g) order that the procurement proceedings be terminated.

(4) The Administrative Appeal Board shall determine its own procedure, but shall give full opportunity to the parties to present evidence and make representations.

(5) Without restricting the generality of subsections (3) and (4), the Administrative Review Board may by a notice require any person -

- (a) to attend before the Board to give evidence under oath or, where permitted by law, on affirmation with respect to any matter related to the examination; and

(b) to produce any records respecting the matter referred to in the notice.

(6) If a person fails or refuses to comply with a notice under subsection (5), the High Court, on the application of the Administrative Review Board, may issue an order requiring the person to attend before the Administrative Review Board in compliance with the notice.

(7) If a witness refuses

(a) to give evidence in compliance with a notice under subsection (5);

(b) to answer any questions before the Administrative Review Board pursuant to the notice; or

(c) to produce any records referred to in the notice,

the High Court may commit the witness for contempt in accordance with the rules of the Eastern Caribbean Supreme Court Civil Procedure Rules or any other law.

(8) The Administrative Review Board shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.

(9) The decision shall be final unless an action is commenced under section 44.

Administrative Review Board

41. (1) Upon being notified of the intention to submit a complaint pursuant to section 40, the Chief Procurement Officer shall without delay inform the Minister who shall constitute an *ad hoc* Administrative Review Board.

(2) The intention to submit a complaint shall be accompanied by a copy of the complaint which shall be transmitted to the Administrative Review Board upon its constitution.

(3) The Administrative Review Board shall consist of three members appointed by the Minister.

(4) The Minister shall select members of the Administrative Review Board among persons declared apt to be appointed to such Board according to the recruiting and selection procedure established by regulation.

(5) The names of the persons declared apt shall be recorded in a register kept at the Ministry of Finance.

Certain rules applicable to review proceedings under sections 39 and 40

42. (1) Promptly after the submission of a complaint under section 39 or 40, the head of the procurement authority, or the Administrative Review Board, as the case may be, shall notify all suppliers or contractors participating in the procurement proceedings to which the complaint relates of the submission of the complaint and of its substance.

(2) Any such supplier or contractor or any governmental authority whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings. A supplier or contractor that fails to participate in the review proceedings is barred from subsequently making the same type of claim.

(3) A copy of the decision of the head of the procurement authority, or of the Administrative Review Board, as the case may be, shall be furnished within five days after the issuance of the decision to the supplier or contractor submitting the complaint, to the procurement authority and to any other supplier or contractor or governmental authority that has participated in the review proceedings. In addition, after the decision has been issued, the complaint and the decision shall be promptly made available for inspection by the general public, provided, however, that no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of procurement proceedings

43. (1) The timely submission of a complaint under section 39 or the timely notification of an intention to complain under section 40 suspends the procurement proceedings for a period of seven days, provided that the complaint is not frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the complaint will succeed and the granting of the suspension would not cause disproportionate harm to the procurement authority or to other suppliers or contractors.

(2) When the procurement contract enters into force, the timely notification of an intention to complain under section 40 shall suspend performance of the procurement contract for a period of seven days, provided the complaint meets the requirements set forth in subsection (1).

(3) The head of the procurement authority, or the Administrative Review Board, may extend the suspension provided for in subsection (1), and the Administrative Review Board may extend the suspension provided for in subsection (2) in order to preserve the rights of the supplier or contractor submitting the complaint or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed 30 days.

(4) The suspension provided for by this section shall not apply if the procurement authority certifies that urgent public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such 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.

(5) Any decision by the procurement authority under this section and the grounds and circumstances therefore shall be made part of the record of the procurement proceedings.

Judicial Review

44. The High Court has jurisdiction over actions pursuant to section 38 and petitions for judicial review of decisions made by an Administrative Review Board, or of the failure of those bodies to make a decision within the prescribed time-limit, under section 39 or 40.

PART VII**CONTRACT ADMINISTRATION****Interpretation**

45. For the purpose of this Part, “Contract Administrator” means the accounting officer referred to in subsection 46(1) or the delegate of the accounting officer referred to in subsection 46(2).

Contract Administrator

46. The accounting officer of the procuring entity shall be responsible for the administration of every contract exceeding the limit prescribed by regulation and shall, for that purpose, represent the interests of the Government under every such contract.

(2) The accounting officer may delegate to a senior officer any responsibilities under this Part.

Duties of contract administrator

47. (1) The contract administrator shall keep a record of all dealings with the contractor and in particular shall keep minutes of all meetings with the contractor detailing matters discussed and decisions made.

(2) The contract administrator shall not agree to any change in the contract price or the material terms of a contract without the prior approval in writing of the procurement authority.

(3) The records referred to in subsection (1) and the changes approved by the procurement authority shall be placed in the procurement documents file.

Work not to commence until formal agreement executed

48. The contract administrator shall not permit any work to commence under a construction contract before a formal agreement has been executed, except when the procurement is made as an emergency procurement.

Breach of contract

49. (1) The contract administrator shall report any breach of contract to the Central Procurement Board.

(2) When a contractor defaults in the performance of a contract, the Central Procurement Board may, subject the rights of the person who furnished the performance security, take such steps as it considers appropriate including issuing an invitation to tender or a request for proposal or negotiating a contract for completion of the contract.

PART VIII**SUSPENSION AND DEBARMENT****Suspension and debarment**

50. (1) After reasonable notice to the person involved and a reasonable opportunity of that person to be heard, the Central Procurement Board may for cause—

- (a) suspend a person for not more than 6 months; or
- (b) debar a person for not more than 3 years,

from submitting a tender, proposal or quotation or making an offer for a sole source or emergency procurement or from entering into a contract in relation to any of them.

(2) A person may be suspended or debarred for any of the following—

- (a) conviction for an offence involving obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract;
- (b) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
- (c) conviction for an offence involving corruption;
- (d) engaging in anti-competitive practices, whether or not involving collusion and whether or not an offence under the law;
- (e) deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify suspension or debarment;
- (f) unethical conduct including—
 - (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement,
 - (ii) offering to pay or paying a kickback whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract, and
 - (iii) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement.

(3) No contract shall be awarded to a person when he is suspended or debarred.

PART IX

OFFENCES

Sanctions

51. (1) A public officer who contravenes any of subsection 7(5), section 14, or commits an offence is liable to a fine –

- (a) of not less than \$1,000 nor more than \$5,000 for the first offence; and
- (b) of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction.

(2) Every one who,

- (a) being a public officer, corruptly
 - (i) accepts or obtains,
 - (ii) agrees to accept, or
 - (iii) attempts to obtain,

any payment, offer of employment, gratuity or other reward for himself or another person in connection with a procurement, or

- (b) gives or offers, corruptly, to a person referred to in paragraph (a) any payment, offer of employment, gratuity or other reward in connection with a procurement

commits an offence and is liable to

- (c) a fine of not less than \$1,000 nor more than \$5,000 for the first offence; and
- (d) a fine of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction, or
- (e) imprisonment for a term not exceeding _____.

(3) Every one who,

- (a) being a public officer, knowingly
 - (i) gives, or
 - (ii) agrees to give

confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement, or

- (b) knowingly solicit or obtain confidential information or attempt to obtain confidential information, in relation to a procurement for the

purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement

commits an offence and is liable to

- (c) a fine of not less than \$1,000 nor more than \$5,000 for the first offence; and
- (d) a fine of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction, or
- (d) imprisonment for a term not exceeding _____.

Party to the offence

52. A person who does or omits to do something in order to assist a person in committing an offence against this act or who counsels, encourages or incites a person to commit an offence, also commits the offence and is liable to the same penalty.

Report to Public Service Commission

53. (1) Notwithstanding anything in this Part, whenever a case of the following type comes or is brought to the notice of an accounting officer, that accounting officer shall forthwith report the circumstances of this case to the Public Service Commission through the Chief Personnel Officer -

- (a) artificial division of a procurement so as to be procured as a small procurement;
- (b) failure to take all necessary steps to keep all tenders or proposals received from being opened or tampered with until the date and time for the opening of tenders or proposals;
- (c) disclosing any information derived from a proposal or discussions with an offeror to another offeror while conducting or privy to discussions with an offeror;
- (d) accepting or obtaining, agreeing to accept or attempting to obtain any payment, offer of employment, gratuity or other reward in connection with a procurement;
- (e) giving or agreeing to give confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement;
- [(f) to be completed.]

(2) A copy of the report shall be transmitted to the Financial Secretary.

(3) Notwithstanding anything in this Part, whenever a case of the type referred to in subsection (1) comes or is brought to the notice of the Permanent Secretary, the Permanent

Secretary shall forthwith report the circumstances of the case to the Public Service Commission through the Chief Personnel Officer.

PART X

REGULATIONS AND MISCELLANEOUS

Power to make regulations

54. (1) The Minister may make such Regulations as appear to him to be necessary and expedient for the proper carrying out of the intent of this Act.

(2) Without restricting the generality of subsection (1), the Minister may make Regulations

- (a) respecting the procurements by competitive sealed tendering, by competitive sealed proposals, as sole source, as emergency procurement, and by competitive quotations, including—
 - (i) defining or determining the meaning of qualified, responsive, and evaluated in relation to competitive sealed tendering, competitive sealed proposals and solicitations for designated procurements; and
 - (ii) further defining “emergency condition.
- (b) respecting the award and execution of contracts;
- (c) respecting the confidentiality of solicitations, awards of contract and contract performance;
- (d) respecting the course of action to be taken when no contract can be awarded after a solicitation, including a further solicitation or the waiver of those solicitation procedures and the negotiation of a contract;
- (b) prescribing the amount of the charge for a copy of an invitation to tender or of a request for proposals.

Transitional provision

55. A procurement commenced before the coming into operation of this Act shall continue as if this Act had not been enacted until a contract is awarded or a decision is made not to continue with it.

Transitional Regulations

56. The Minister may make Regulations providing for any transitional matter arising as a consequence of the coming into operation of this Act or the regulations.

**DOMINICA
PROCUREMENT AND CONTRACT ADMINISTRATION ACT, 2007**

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