

The Public Procurement (Amendment) Bill, 2015

ARRANGEMENT OF SECTIONS

Section

1. Section 2 of Act 663 amended
2. Section 3 of Act 663 amended
3. Section 4 of Act 663 amended
4. Section 10 of Act 663 amended
5. Section 13 of Act 663 amended
6. Part Two of Act 663 amended
7. Section 21 of Act 663 amended
8. Section 22 of Act 663 amended
9. Section 22A of Act 663 inserted
10. Section 26 of Act 663 amended
11. Section 28 of Act 663 amended
12. Section 28A of Act 663 inserted
13. Section 31 of Act 663 amended
14. Section 32A of Act 663 inserted
15. Section 33 of Act 663 amended
16. Section 34A of Act 663 inserted
17. Section 38 of Act 663 amended
18. Section 40 of Act 663 amended
19. Section 42 of Act 663 amended
20. Section 43 of Act 663 amended
21. Section 44 of Act 663 amended
22. Section 47 of Act 663 amended
23. Section 49 of Act 663 amended
24. Section 50 of Act 663 amended
25. Section 53 of Act 663 amended
26. Section 54 of Act 663 amended
27. Section 57 of Act 663 amended
28. Section 58 of Act 663 amended
29. Section 59 of Act 663 amended
30. Section 60 of Act 663 amended
31. Section 64 of Act 663 amended

The Public Procurement (Amendment) Bill, 2015

32. Section 66 of Act 663 amended
33. Section 68 of Act 663 amended
34. Section 69 of Act 663 amended
35. Section 72 of Act 663 amended
36. Section 74 of Act 663 amended
37. Section 77 of Act 663 amended
38. Heading of Part Seven of Act 663 amended
39. Section 78 of Act 663 amended
40. Section 79 of Act 663 amended
41. Section 80 of Act 663 amended
42. Section 82 of Act 663 amended
43. Heading of Part Eight of Act 663 amended
44. Section 83 of Act 663 amended
45. Section 83A of Act 663 inserted
46. Section 85 of Act 663 amended
47. Section 86 of Act 663 amended
48. Section 87 of Act 663 amended
49. Section 89 of Act 663 amended
50. Section 90 of Act 663 amended
51. Section 92 of Act 663 amended
52. Section 94 of Act 663 amended
53. Section 95 of Act 663 amended
54. Section 96 of Act 663 amended
55. Section 97 of Act 663 amended
56. Section 98 of Act 663 amended
57. Section 99 of Act 663 amended
58. Schedules to Act 663 amended

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THE PUBLIC PROCUREMENT (AMENDMENT) ACT, 2015

AN ACT to amend the Public Procurement Act, 2003 (Act 663), to make further provision for public procurement, re-enact Part Two of the Act, provide for decentralised procurement and for connected purposes.

PASSED by Parliament and assented to by the President:

Section 2 of Act 663 amended

1. Section 2 of the Public Procurement Act, 2003 (Act 663) referred to in this Act as the principal enactment is amended by the insertion of “environmentally and socially sustainable” after “non-discriminatory.”

Section 3 of Act 663 amended

2. Section 3 of the principal enactment is amended by

- (a) the deletion of “draft” in paragraph (c);
- (b) the substitution for “a monthly” in paragraph (g) of “by the end of each month a”;
- (c) the insertion of “to the Board” after “proposals” in paragraph (h);

The Public Procurement (Amendment) Bill, 2015

- (d) the insertion of “including Metropolitan, Municipal and District Assemblies after “Government” in paragraph (l); and
- (e) the insertion of “complaints and” before “administrative review” in paragraph (m).

Section 4 of Act 663 amended

3. The principal enactment is amended by the substitution for section 4 of

“Governing body of the Authority

4. (1) The governing body of the Authority is a Board consisting of nine persons

- (a) a person competent and experienced in public procurement, as the chairperson;
- (b) four persons from the public sector made up of one representative of the Attorney General and three other persons nominated by the Minister, one of whom is a woman and each of whom is a person who has experience in public procurement and is familiar with governmental and multilateral agency procurement procedures;
- (c) three persons from the private sector who have experience in procurement, at least one of whom is a woman; and
- (d) the chief executive officer of the Authority.

(2) The vice chairperson shall be elected by members from among their number.

(3) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(4) The Board shall ensure the proper and effective performance of the functions of the Authority.”.

Section 10 of Act 663 amended

4. The principal enactment is amended by the substitution for section 10 of

“Funds of the Authority

10. (1) The funds of the Authority include
- (a) moneys provided by Parliament;
 - (b) administrative fines, fees and other income accruing to the Authority in the performance of its functions;
 - (c) donations, grants and gifts; and
 - (d) any other moneys provided by the Minister.
- (2) The Minister may, by legislative instrument, make provision for the Authority to retain part or all of its internally generated funds for specified purposes.” .

Section 13 of Act 663 amended

5. Section 13 of the principal enactment is amended by the insertion of a new subsection (3)

“(3) The part of the annual report concerning a Metropolitan, Municipal or a District Assembly and the relevant part of the audited accounts, together with relevant parts of the Auditor-General’s Report affecting specific Metropolitan, Municipal or District Assemblies shall be submitted to that Metropolitan, Municipal or District Assembly for debate.”.

Part Two of Act 663 amended

6. The principal enactment is amended by the substitution for Part Two of

“PART TWO

Procurement Structures

Scope and application

14. (1) This Act applies to
- (a) the procurement of goods, works and services, financed in whole or in part from public funds;
 - (b) functions that pertain to the procurement of goods, works and services including the description of requirements and sources of supply, selection and award of contracts and the phases of contract administration;

The Public Procurement (Amendment) Bill, 2015

- (c) the disposal of public stores, vehicles and equipment; and
 - (d) procurement with public funds including loans procured by government, grants, foreign aid funds and internally generated funds except as exempted under section 96.
- (2) In addition to subsection (1), this Act applies to
- (a) central management agencies;
 - (b) ministries, departments and agencies;
 - (c) subvented agencies;
 - (d) governance institutions;
 - (e) state owned enterprises to the extent that they utilise public funds;
 - (f) public universities, public schools, colleges and hospitals;
 - (g) the Bank of Ghana and financial institutions including public trusts, pension funds, insurance companies and building societies which are wholly owned by the Republic or in which the Republic has a majority interest;
 - (h) institutions established by Government for the general welfare of the public or community;
 - (i) statutory funds, Commissions and other bodies established by Government for a special purpose; and
 - (j) the phases of contract administration as specified in the Contract Administration Manuals.
- (3) The Contract Administrator shall
- (a) manage the obligations and duties of the procurement entity specified in the contract; and
 - (b) ensure that the supplier or contractor performs the contract in accordance with its terms and conditions.
- (4) The Board may recommend to the Minister, new procurement methods where the context requires.
- (5) A procurement entity in conducting procurement, shall be guided by further procedures specified in manuals, regulatory notices and guidelines issued by the Board.

Declaration of procurement entity

15. (1) The Minister in consultation with the Board may, by notice in the *Gazette*, declare an entity, a subsidiary or agency of an entity or a person to be a procurement entity.

The Public Procurement (Amendment) Bill, 2015

(2) Subject to approval by the Board, a procurement entity may undertake procurement in accordance with established commercial practices if

- (a) the procurement entity is legally and financially autonomous and operates under commercial law;
- (b) it is beyond contention that public procurement procedures are not suitable, considering the strategic nature of the procurement; and
- (c) the proposed procurement method will ensure value for money, provide competition and transparency to the extent possible.

(3) The approval given by the Board to a procurement entity to undertake procurement in accordance with established commercial practices shall be published in the *Gazette*.

Procurement entity

16. (1) A procurement entity is responsible for procurement, subject to this Act and any other conditions that may be established in Regulations and administrative instructions issued by the Minister in consultation with the Board.

(2) Procurement decisions of an entity shall be taken in a corporate manner and the internal units concerned shall contribute to the decision-making process.

Head of procurement entity

17. (1) The head of entity and an officer to whom responsibility is delegated are responsible and accountable for action taken and for instructions as regards the implementation of this Act.

(2) The liability of the head of entity or officer to whom responsibility is delegated is however limited to acts that are inconsistent with this Act.

Functions of the head of a procurement entity

18. (1) The head of entity shall ensure that provisions of this Act are complied with.

(2) The concurrent approval by a tender review committee shall not absolve the head of entity from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with a provision of this Act.

The Public Procurement (Amendment) Bill, 2015

- (3) The head of entity shall
 - (a) establish within the procurement entity, a procurement unit, staffed with qualified procurement personnel;
 - (b) empanel competent and qualified evaluation panels;
 - (c) ensure that at each stage of the procurement activity, procedures prescribed in this Act have been followed;
 - (d) ensure that stores, vehicles and equipment are disposed of in compliance with this Act;
 - (e) exercise sound judgment in making procurement decisions; and
 - (f) refer to the entity tender committee for approval, a procurement above the approval threshold of the head of entity.
- (4) The head of entity shall
 - (a) apply the thresholds that relate to heads of entities as specified in the Second and Third Schedules to this Act; and
 - (b) facilitate contract administration and ensure compliance with the reporting requirements under this Act.

Procurement unit

19. (1) The head of a procurement entity of each ministry, department and agency and Metropolitan, Municipal and District Assembly, shall establish a procurement unit within the entity which shall be headed and staffed by qualified procurement personnel.

(2) The head of a procurement entity shall appoint a head of procurement of the procurement entity who shall be the Secretary to the entity tender committee.

Entity tender committee

20. (1) A procurement entity shall establish a tender committee in the manner set out in the First Schedule and in accordance with the categories set out in Schedule 1A.

(2) An entity tender committee of each procurement entity shall have the composition specified in Schedule 1B or Schedule 1C of the First Schedule.

(3) An entity tender committee may co-opt a person to act as a technical adviser at a meeting of the entity tender committee, but a co-opted person shall not vote on a matter for decision before the entity tender committee.

The Public Procurement (Amendment) Bill, 2015

(4) An entity tender committee shall work within the method thresholds specified in the Fifth Schedule and approval limits specified in the Second and Third Schedules in the conduct of its duties as regards tenders for works, goods or services.

(5) The thresholds applicable to an entity tender committee shall be as specified in the Second and Third Schedules.

General provisions on the functions of an entity tender committee

20A. (1) An entity tender committee shall

- (a) ensure that at each stage of procurement activity, procedures prescribed in this Act have been followed;
- (b) work within the threshold limits specified in the Second Schedule and the method thresholds specified in the Fifth Schedule;
- (c) exercise sound judgment in making procurement decisions; and
- (d) review and refer to the central tender review committee for concurrent approval, procurement above the entity tender committee's threshold, that has been duly
 - (i) processed by the procurement unit: and
 - (ii) evaluated by the appropriate evaluation panel constituted by the head of entity.

(2) The chairpersons and members of an entity tender committee and a tender review committee may delegate their functions in writing.

Functions of specific entity tender committees

20B. (1) An entity tender committee of a central management agency, ministry, department and subvented agency shall

- (a) review and approve annual procurement plans and quarterly updates of procurement plans in order to ensure that they support the objectives and operations of the entity;
- (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the entity;
- (c) review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, the Regulations and guidelines made under this Act;

The Public Procurement (Amendment) Bill, 2015

- (d) ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Second Schedule;
- (e) facilitate contract administration and ensure compliance with reporting requirements under this Act; and
- (f) assist the head of entity to ensure that stores, vehicles and equipment are disposed of in accordance with this Act.

(2) An entity tender committee of a Regional Coordinating Council shall

- (a) review procurement plans in order to ensure that they support the policies and programmes of the Regional Administration, Metropolitan, Municipal or District Assembly;
- (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Regional Administration, Metropolitan, Municipal Assembly or District Assembly;
- (c) review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its Regulations and guidelines;
- (d) ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Third Schedule;
- (e) facilitate contract administration and ensure compliance with reporting requirements under this Act; and
- (f) assist the head of entity to ensure that stores, vehicles and equipment are disposed of in compliance with this Act.

(3) An entity tender committee of a Metropolitan, Municipal or District Assembly shall

- (a) review and approve annual procurement plans and quarterly updates of procurement plans in order to ensure that they support the policies and programmes of the Assembly;
- (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Assembly;

The Public Procurement (Amendment) Bill, 2015

- (c) review the schedules of procurement and specifications and ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, the Regulations and guidelines made under this Act;
- (d) ensure that the necessary concurrent approval is obtained from the appropriate tender review committee where applicable, as specified in the Third Schedule;
- (e) facilitate contract administration and ensure compliance with reporting requirements under this Act; and
- (f) assist the head of entity to ensure that stores, vehicles and equipment are disposed of in compliance with this Act.

Applicable thresholds

20C. (1) The threshold limits for ministries, departments and agencies and Metropolitan, Municipal and District Assemblies for procurement shall be as specified in the Second and Third Schedules.

(2) The threshold limits for procurement methods for ministries, departments and agencies, and Metropolitan, Municipal and District Assemblies shall be as specified in the Fifth Schedule.

Meetings of entity tender committees

20D. An entity tender committee shall meet at least once each quarter and notice of the meetings shall be given at least two weeks before the date of the meeting.

Tender evaluation panel

20E. (1) A procurement entity shall appoint a tender evaluation panel with the required expertise to evaluate tenders.

(2) A tender evaluation panel shall, in the performance of its functions, proceed according to the predetermined and published evaluation criteria.

Tender review committees

20F. (1) There shall be established tender review committees for ministries, departments and agencies and Metropolitan, Municipal and District Assemblies as specified in the Fourth Schedule.

(2) The tender review committee of a ministry, department or agency is the central tender review committee.

The Public Procurement (Amendment) Bill, 2015

(3) The tender review committee of a Metropolitan, Municipal and District Assembly is the regional tender review committee.

(4) The members of the central tender review committee shall be appointed by the Minister in consultation with the Board.

(5) The members of a regional tender review committee shall be appointed by the Regional Minister in consultation with the Minister.

(6) The central tender review committee, the regional tender review committee and each entity tender committee shall perform the functions of the tender review committee for the entities for which they are responsible.

(7) A tender review committee shall perform the following functions:

- (a) review the activities at each step of the procurement cycle leading to the selection of the lowest evaluated bid or best offer by the procurement entity in relation to the particular procurement under consideration, in order to ensure compliance with this Act, its operating instructions and guidelines;
- (b) give concurrent approval or otherwise to enable the procurement entity continue with the procurement process subject to subsection (1) of section (16);
- (c) participate in public procurement fora; and
- (d) review decisions of heads of entities in respect of a complaint.

(8) The regional tender review committee shall furnish the Board, Metropolitan, Municipal and District Assembly with reports pertaining to the regional tender review committee's operations in the prescribed format.

(9) A tender review committee may engage the services of consultants and advisers or co-opt persons with the specialised expertise that it may require for the proper and efficient performance of its functions.

Review of tender review committee decisions

20G. (1) A procurement entity or tenderer aggrieved by the decision of a tender review committee may apply to the Board for the review of the decision of that tender review committee.

(2) The Board shall take appropriate action and determine the grievance in accordance with section 80(3) or as it considers appropriate.

The Public Procurement (Amendment) Bill, 2015

(3) A tenderer or procurement entity that is dissatisfied with a decision of the Board may seek redress in court.

Section 21 of Act 663 amended

7. Section 21 of the principal enactment is amended

- (a) in subsection (2) (a) by the insertion after “packages” of “description or lots”;
- (b) in subsection (2) (c) by the insertion after “method” of “approvals needed”;
- (c) by the substitution for subsection (3) of
“(3) A procurement entity shall submit to its entity tender committee not later than one month to the end of the financial year the procurement plan for the following year for approval and shall post the procurement plan on the website of the Authority
- (d) by the substitution for subsection (4) of
“(4) After budget approval and at quarterly intervals after that, a procurement entity shall submit an update of the procurement plan to the entity tender committee and shall post the update of the procurement plan on the website of the Authority.”; and
- (e) by the repeal of subsection (5).

Section 22 of Act 663 amended

8. Section 22 of the principal enactment is amended

- (a) by the substitution for subsection (1) (a) (i) of
“(i) professional, technical and environmental qualifications”;
- (b) by the insertion of a new paragraph after paragraph (b) as paragraph (ba)
“(ba) meet ethical and other standards applicable in this country;”
- (c) by the substitution for “disbarment” of “debarment” before “proceedings” in paragraph (e) (ii);
- (d) by the addition of “that does not discriminate and is objectively justifiable” at the end of subsection (1) (f);

The Public Procurement (Amendment) Bill, 2015

- (e) by the insertion of “Subject to the right of tenderers to protect their intellectual property or trade secrets” at the beginning of subsection (2);
- (f) by the addition of “and shall be set out in the pre-qualification or pre-selection documents” at the end of subsection (3);
- (g) by the insertion of “that constitutes a misrepresentation” after “information” in subsection (5);
- (h) by the addition of new subsections (7), (8) and (9)

“(7) Other than in a case to which subsection (1) (a) applies, a procurement entity shall not disqualify a tenderer on the grounds that the information submitted concerning the qualifications of the tenderer were inaccurate or incomplete in a non-material respect.

(8) The tenderer may however be disqualified for failure to remedy the deficiency promptly on request by the procurement entity.

(9) The procurement entity may require the authentication of a foreign document provided by a tenderer to demonstrate the qualification of the tenderer.”.

Section 22A of Act 663 inserted

9. The principal enactment is amended by the insertion after section 22 of a new section 22A

“Suspension of a supplier or consultant

22A. (1) The Board may suspend a supplier or consultant from engaging in any public procurement or disposal process for a period determined by the Board

- (a) on the recommendation of a procurement entity or after investigations on its own initiative; and
- (b) where it is determined after a special audit or by a court, that a tenderer is engaged in corrupt or fraudulent practices.

(2) The suspension of a supplier or consultant by the Board shall occur where

- (a) the supplier or consultant is in contravention of a provision in this Act;

- (b) the supplier or consultant is debarred from the procurement processes of an international agency of which the Republic of Ghana is a member;
- (c) the supplier or consultant is found to have a record of unsatisfactory performance after investigations by the Auditor-General;
- (d) the supplier or consultant fails to substantially perform its obligations under the contract;
- (e) the supplier or consultant is suspended by a professional body for professional misconduct;
- (f) the supplier or consultant is found to have faulted on its obligations by an Act of Parliament; or
- (g) the supplier or consultant has been convicted of corrupt practice or a fraudulent act under this Act.”.

Section 26 of Act 663 amended

10. Section 26 of Act 663 is amended by the substitution for section 26 of

“Form of communication

26. (1) A procurement entity shall, when soliciting the participation of a tenderer in procurement proceedings, specify

- (a) the form of the procurement proceedings; and
- (b) measures and requirements needed to ensure the protection of classified information involved in the procurement.

(2) A procurement entity shall only use the means of communication commonly used by a tenderer in a specific type of procurement in the procurement process and in any meeting with tenderers shall use means of communication that ensure the full participation of tenderers.

(3) A procurement entity shall put in place measures to secure the authenticity, integrity and confidentiality of the information used in a procurement process.

- (4) Communication between procurement entities and tenderers shall be in writing and communication in any other form shall be referred to and confirmed in writing.”.

Section 28 of Act 663 amended

11. Section 28 of the principal enactment is amended

- (a) in subsection (1) (l) by the substitution for “section 25 (1)” of “section 25.”
- (b) by the addition of new paragraphs (o) to (y)
- “(o) a statement of the reasons and circumstances relied on by the procurement entity when the procurement is cancelled, stating the reasons and circumstances relied on by the procurement entity for its decision to cancel the procurement;
 - (p) the reasons and circumstances for which a procurement entity rejected a tender or consultancy proposal;
 - (q) any socio-economic policies considered in the procurement proceedings, details of the policies and the manner in which they were applied;
 - (r) a copy of the review proceedings where a complaint is submitted to the procurement entity;
 - (s) where a system other than competitive tendering has been used, the reasons and circumstances the procurement entity considered when selecting the other procurement method;
 - (t) the reasons and circumstances relied on by a procurement entity when a tenderer is excluded from procurement proceedings;
 - (u) a statement where the award of a procurement contract is as a result of the failure of the previous tenderer to sign the procurement contract or provide the required security for the performance of the contract;
 - (v) the reasons and circumstances relied on by a procurement entity where confidentiality in the procurement proceedings is required;
 - (w) the requirements imposed on tenderers for the protection of classified information in a procurement process;

The Public Procurement (Amendment) Bill, 2015

- (x) a statement of the reasons and circumstances used to justify the framework agreement process where applicable; and
- (y) any other information required to be included in the record by a procurement entity in furtherance of the procurement process.”;
- (c) in subsection (4) by the deletion of the words after “competent court” in the second line;
- (d) by the insertion of a new subsection (4A) after subsection (4);
 - “(4A) A procurement entity shall not disclose the portion of the record referred to in subsection (1) (c) to (e), (l) and (m) or information that relates to the examination, evaluation and comparison of tenders, proposals, offers or quotations and tenders, proposals, offers or quotation prices other than the summary referred to in subsection (1) (e) if
 - (a) non-disclosure of the information is necessary for the protection of essential security interests of the State; or
 - (b) disclosure of the information would be contrary to law and would
 - (i) impede law enforcement;
 - (ii) not be in the public interest,
 - (iii) prejudice the legitimate commercial interests of the tenderer or consultant; and
 - (iv) inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589),unless the disclosure is ordered by a court or the Board in which case the procurement entity shall comply with the conditions of the order.”; and

- (c) by the addition of a new subsection (7) after subsection (6)
“(7) A procurement entity shall record, file and preserve the documents that relate to the procurement proceedings, Regulations and the Public Records and Archives Administration Act, 1997 (Act 535).”.

Section 28A of Act 663 inserted

12. The principal enactment is amended by the insertion after section 28 of a new section 28A

“Cancellation of procurement proceedings

28A. (1) A procurement entity may, for specific and fully justified reasons, cancel procurement proceedings before the expiry of the deadline for the submission of tenders, where

- (a) the entity discovers an imperfection in the wording of the request for submission of tenders, which could mislead tenderers;
- (b) the procurement entity decides to carry out the work subject of the tender by itself;
- (c) there is a cut in the budget intended for performing the contract;
- (d) no bid has been submitted;
- (e) exceptional circumstances or a force majeure render normal performance of the contract impossible;
- (f) the economic or technical data of the project has fundamentally changed.

(2) The head of a procurement entity may, after the expiry of the deadline for the submission of tenders, cancel a procurement proceeding where

- (a) no tender has been submitted within the specified deadline;
- (b) the tender procedure has been unsuccessful;
- (c) it is established that the tender documents contain terms or technical specifications that cannot be met by any of the tenderers or that these specifications lead exclusively to a specific economic operator;

The Public Procurement (Amendment) Bill, 2015

- (d) the prices of the tenders that meet the terms and the technical requirements of the tender documents are unrealistic or appear to be the product of collusion between the tenderers, resulting in the circumvention of healthy competition;
- (e) the circumstances under which the procurement procedure was announced have changed to such an extent that the scope of the tender procedure is no longer necessary;
- (f) exceptional circumstances or a force majeure render normal performance of the contract impossible; or
- (g) any other serious unforeseeable reason, which the procurement entity considers justifiable, applies.

(3) The head of a procurement entity shall, before cancelling a procurement proceeding under subsection (2) have due regard to

- (a) the time and resources expended by interested tenderers, particularly in the case of complex contracts with a complicated scope;
- (b) the right of an interested party who has or had an interest in being awarded the specific contract, and who has sustained or is likely to sustain a loss as a result of the cancellation, to seek administrative review under this Act or to seek redress in court; and
- (c) general principles of good faith and transparency and public policy.

The Public Procurement (Amendment) Bill, 2015

(4) A procurement entity may cancel procurement proceedings after acceptance of a successful tender if the tenderer whose submission has been accepted, fails to sign the applicable contract as required or fails to provide the applicable security required for performance of the contract.

(5) Subject to subsection (3), where a procurement proceeding is cancelled before the contract is signed, a tenderer or interested party shall not be entitled to claim any compensation from the procurement entity.

(6) For the avoidance of doubt, a procurement entity shall not incur liability for invoking this section and shall in no event be liable for any damages including, damages for loss of profits in any way connected with the cancellation of a tender.

(7) The publication of a tender notice does not commit the procurement entity that published the notice to implement the programme or project announced.

(8) Subject to this section, where a tender proceeding divides tenders into lots, individual lots may be cancelled.

(9) The decision of a procurement entity to cancel the procurement and reasons for that decision shall be included in the record of procurement proceedings and shall be promptly communicated to any tenderer or consultant who presented a tender or proposal.

(10) A cancellation notice shall promptly after decision to cancel is made, be published on the website of the procurement entity or of the Authority.

(11) After cancelling a procurement proceeding, the procurement entity may

- (a) start a new tender proceeding; or
- (b) re-start the tender proceeding using the same reference as the original invitation.”

Section 31 of Act 663 amended

13. Section 31 of the principal enactment is amended

- (a) in subsection (1) by the addition of “on the website of the Authority” at the end of the subsection; and
- (b) by the substitution for subsection (2) of
“(2) The Regulations shall provide for any other manner of publication of the notice of procurement contract awards.”.

Section 32A of Act 663 inserted

14. The principal enactment is amended by the insertion after section 32 of a new section 32A

“Confidentiality

32A. (1) A procurement entity shall not disclose information to a supplier or contractor if the disclosure will compromise national security or if the disclosure will impede law enforcement, prejudice the legitimate commercial interest of a supplier or contractor, or impede fair competition.

(2) A procurement entity shall treat applications to pre-qualify, applications for pre-selection and submissions for a procurement contract in a manner that avoids the disclosure of their contents to a competing tenderer or any unauthorised person, except as provided under this Act.

(3) A discussion or communication permitted under this Act between a procurement entity and a tenderer during the tender process or other procurement process that permits discussions, negotiations or dialogue at any stage, is confidential and, unless required by law or ordered by a court, a person concerned with the discussion or communication shall not disclose any technical information, price or other information to another person without the consent of the other party.

(4) A person concerned with the discussion or communication in a procurement process shall not disclose any technical information, price or other information to another person without the consent of the other party.

(5) A person who contravenes subsections (3) or (4) commits an offence.

The Public Procurement (Amendment) Bill, 2015

- (6) Subject to section 28 (4), a procurement entity involved in classified information may
- (a) impose requirements on tenderers to protect classified information; and
 - (b) demand that tenderers ensure that their subcontractors comply with the requirements to protect classified information.”.

Section 33 of Act 663 amended

15. Section 33 of the principal enactment is amended

- (a) by the substitution for “or” in the headnote of “and”;
- (b) by the insertion of “goods, works and” after “description of” in the first line of paragraph (1) (c) and addition of “of tenderers” at the end of the paragraph;
- (c) by the substitution for subsection (3) of
“(3) Standardised features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the goods, works or services to be procured shall be used, where available, to formulate the specifications, plans, drawings and designs to be included in the pre-qualification documents, invitation documents or any other documents for invitation of proposals, offers or quotations.

(4) A procurement entity shall pay due regard to the use of standardised trade terms and standardised conditions where available in the formulation of the terms and conditions of the procurement, the procurement contract, the framework agreement, pre-qualification, pre-selection agreements and the tender documents.”

Section 34A of Act 663 inserted

16. The principal enactment is amended by the insertion after section 34 of a new section 34A under Part Four

“Methods of procurement and conditions of use, including framework contracting

34A. (1) The procurement entity may conduct procurement by means of the following methods and as from time to time determined by Regulations:

- (a) competitive tendering that includes;
 - (i) international competitive tendering,
 - (ii) national competitive tendering,
 - (iii) request for quotations, and
 - (iv) restricted tendering;
- (b) single source procurement;
- (c) selection of consultants determined by
 - (i) quality and cost based selection,
 - (ii) quality based selection,
 - (iii) selection based on consultant’s qualification,
 - (iv) least cost selection,
 - (v) fixed budget selection, and
 - (vi) single source selection; and
- (d) framework contracting where
 - (i) the Board in consultation with the Minister, may introduce framework contracting agreements and other methods for any specific entity where the context permits until it is possible to do so nationally; and
 - (ii) a procurement entity may engage in a framework agreement procedure in accordance with regulations or guidelines issued by the Board.

(2) These methods shall be used subject to and in accordance with the thresholds specified in the Fifth Schedule.”.

Section 38 of Act 663 amended

17. Section 38 of the principal enactment is amended

- (a) by the insertion of “by reason of the highly complex and specialised nature” after “if” in paragraph (a);

The Public Procurement (Amendment) Bill, 2015

- (b) by the numbering of the section as subsection (1);
- (c) by the addition of a new paragraph (c) after paragraph (b)
“(c) if an offer for competitive tendering fails to receive any response after publication.”; and
- (d) by the addition of a new subsection (2)
“(2) The Authority may charge a processing fee as determined by the Board for single source and restricted tendering applications.”.

Section 40 of Act 663 amended

18. Section 40 of the principal enactment is amended

- (a) in subsection (1) by the addition of “in the following exceptional circumstances” at the end of the second line;
- (b) by the substitution for paragraph (d) of
“(d) where the procurement entity having procured goods, equipment, technology or services from a supplier, contractor or consultant, determines that additional supplies must be procured from the supplier, contractor or consultant because of standardisation or compatibility with existing goods, equipment, technology or services taking into account
 - (i) the effectiveness of the original procurement in meeting the needs of the procurement entity;
 - (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.”; and
- (c) by the addition of “or socio-economic policy” after “69 (2) (c) (i)”, in the penultimate line of subsection (2).

Section 42 of Act 663 amended

19. Section 42 of the principal enactment is amended

- (a) in paragraph (a), by the insertion of “works” after “goods” in line one;

The Public Procurement (Amendment) Bill, 2015

- (b) by the re-numbering of the provision as subsection (1);
- (c) in section 42 (b) by the substitution for “Third Schedule” of “Fifth Schedule”; and
- (d) by the addition of a new subsection (2)
 - “(2) The successful quotation shall be the lowest evaluated responsive quotation that meets the needs of the procurement entity in the request for quotations.”.

Section 43 of Act 663 amended

20. Section 43 of the principal enactment is amended by the substitution for subsection (1) of

- “(1) The procurement entity shall request for quotations from as many suppliers or contractors as practicable, but shall compare quotations from at least three different sources that should not be related in terms of ownership, shareholding or directorship and the principles of conflict of interest shall apply between the procurement entities and their members and the different price quotation sources.”.

Section 44 of Act 663 amended

21. The principal enactment is amended by the substitution for section 44 of

“National competitive tendering

44. (1) Locally registered suppliers, contractors or consultants may participate in national competitive tendering procurement proceedings without regard to nationality, except where the procurement entity decides to limit participation in national competitive tendering proceedings to only domestic suppliers, contractors or consultants, in accordance with this section.

(2) In procurement proceedings in which the procurement entity decides that only domestic suppliers, contractors or consultants may submit tenders, the procurement entity shall employ national competitive tendering procedures.

(3) A procurement entity is not required to employ the procedures set out in sections 47 and 48 if the estimated contract amount is lower than the value threshold specified in the Fifth Schedule.

The Public Procurement (Amendment) Bill, 2015

(4) A procurement entity, when first calling for participation in procurement proceedings, shall notify prospective tenderers whether the proceedings are limited to domestic suppliers only and the declaration shall not be altered later.

(5) A procurement entity that decides to limit the participation of suppliers, contractors and consultants in procurement proceedings, shall include in the record of procurement proceedings, a statement of the reasons and circumstances on which it relied and shall make available to any person, on request, its reasons for limiting participation.

(6) A procurement entity may stipulate in the tender documents that tenderers must quote only in the local currency and payments must be made wholly in the local currency.

(7) A procurement entity shall stipulate a minimum period of two weeks or a maximum period of six weeks for the submission of tenders under the national competitive tender procedures.”.

Section 47 of Act 663 amended

22. The principal enactment is amended by the substitution for section 47 of

“Procedures for inviting tenders or applications to prequalify

47. (1) A procurement entity shall invite tenders or, where applicable, applications to prequalify by causing an invitation to tender or an invitation to prequalify, to be published in the Public Procurement Bulletin and on the website of the Authority.

(2) An invitation to tender or prequalify shall be published in at least one daily newspaper of national circulation.

(3) The invitation may also be published in a newspaper of wide international circulation, in a relevant trade publication or a technical or professional journal of wide international circulation.

(4) The invitation shall be published on the website of the Authority at a fee to be determined by the Board.”.

Section 49 of Act 663 amended

23. Section 49 of the principal enactment is amended by the addition after subsection (3) of a new subsection (4)

“(4) Where electronic procurement procedures are applied, the price of tender documents shall be determined by the Board.”.

Section 50 of Act 663 amended

24. Section 50 of the principal enactment is amended

- (a) in subsection (1) by the substitution for “Fourth Schedule” of “Sixth Schedule”;and
- (b) in subsection (3) (v) by the deletion of “outside the procurement contract” and the insertion of “a statement of” at the beginning of the paragraph.

Section 53 of Act 663 amended

25. Section 53 of the principal enactment is amended by the repeal of subsection (2).

Section 54 of Act 663 amended

26. Section 54 of the principal enactment is amended in subsection (2) by the addition of “before the expiry of the period of validity of tenders” at the end of the subsection.

Section 57 of Act 663 amended

27. Section 57 of the principal enactment is amended by the insertion of “in writing” after “tender” in subsection (1).

Section 58 of Act 663 amended

28. Section 58 of the principal enactment is amended in subsection (4) (b) by the substitution for “section 1(b)” of “section 57 (3)” .

Section 59 of Act 663 amended

29. Section 59 of the principal enactment is amended

- (a) by the insertion of new subsections (2), (3), (4) and (5) after subsection (1);

“(2) The evaluation criteria relating to the subject matter of the procurement shall include

- (a) the price;
- (b) the cost of operating, maintaining and repairing goods and the functional characteristics of the goods;

The Public Procurement (Amendment) Bill, 2015

- (c)* the time for delivery of goods;
 - (d)* the costs of construction and the functional characteristics of the construction;
 - (e)* the completion of construction;
 - (f)* the cost of the provision of services;
 - (g)* the environmental and other characteristics of the subject matter of the procurement;
 - (h)* the terms of payment of the procurement;
 - (i)* the guarantees in respect of the subject matter; and
 - (j)* any other matter the procurement entity considers relevant to the procurement.
- (3) The evaluation criteria shall also include
 - (a)* any criteria authorised or required to be taken into account by the procurement regulations and any other enactment; and
 - (b)* a margin of preference for the benefit of a domestic supplier or for domestically produced goods or any other preference authorised or required by procurement regulations or any other enactment.
- (4) The procurement entity shall set out in the tender documents
 - (a)* whether the successful tender will be determined on the basis of price or price and other criteria;
 - (b)* the evaluation criteria in pursuance of this section, including the price as modified by any preference;
 - (c)* the relative weights of the evaluation criteria; and
 - (d)* the manner of application of the criteria in the evaluation procedure.
- (5) A procurement entity shall use only the criteria and procedures in the tender documents and shall apply criteria and procedures in the manner disclosed in the tender documents.”;

The Public Procurement (Amendment) Bill, 2015

- (b) by the renumbering of subsections 59 (2), (3) and (4) as subsections (6), (7) and (8); and
- (c) by the insertion of “that” after “effect” in the renumbered subsection (8) (c).

Section 60 of Act 663 amended

30. Section 60 (1) of the principal enactment is amended by the addition of “or any other preference authorized by the Board or required by Regulations or any other enactment” at the end of the subsection.

Section 64 of Act 663 amended

31. Section 64 (2) (b) of the principal enactment is amended by the substitution for “Board” of “committee.”

Section 66 of Act 663 amended

32. Section 66 (1) of the principal enactment is amended by the substitution for “above the threshold in the Third Schedule” of “in accordance with the Fifth Schedule”.

Section 68 of Act 663 amended

33. Section 68 of the principal enactment is amended
- (a) in subsection (1) by the substitution for “Fourth Schedule” of “Sixth Schedule”; and
 - (b) in subsection (2)(l) by the substitution for “section 57” of “section 60.”

Section 69 of Act 663 amended

34. Section 69 (2) (c) of the principal enactment is amended by the repeal of subparagraph (vii).

Section 72 of Act 663 amended

35. Section 72 of the principal enactment is amended in subsections (3) and (4) by the substitution for “Third Schedule” of “Fifth Schedule”.

Section 74 of Act 663 amended

36. Section 74 of the principal enactment is amended
- (a) in subsection (2) by the substitution for “including the tender board reviews is concluded” of “is reviewed and approved by the appropriate approving authority”; and

The Public Procurement (Amendment) Bill, 2015

- (b) by the addition of a new subsection as subsection (4)
“(4) The evaluation panel shall open the financial proposals after the approval of the technical evaluation report by the appropriate approving authority and prepare a final evaluation report for approval by the appropriate entity tender committee.”.

Section 77 of Act 663 amended

37. The headnote of section 77 of the principal enactment is amended by the addition of “in selection procedure” after “confidentiality.”

Heading of Part Seven of Act 633 amended

38. The heading of Part Seven of the principal enactment is amended by the insertion of “Complaints and Administrative” before “Review”.

Section 78 of Act 663 amended

39. Section 78 of the principal enactment is amended
- (a) by the substitution for the headnote of “**Right to complaint or administrative review**”;
 - (b) in subsection (1), by the substitution for “review” in line three of “redress”;
 - (c) in subsection (2), by the substitution for “the review” of “complaint or administrative review;”
 - (d) by the addition of new subsections (3), (4) and (5)
 - “(3) A complaint may be made by an application to the procurement entity;
 - (4) A request for administrative review may be made by an application to the Board.
 - (5) A tenderer, supplier, contractor or consultant may appeal a decision taken in administrative review in court.”.

Section 79 of Act 663 amended

40. Section 79 of the principal enactment is amended
- (a) by the substitution for the head note of “Complaint procedure by procurement entity”;
 - (b) by the insertion of a new subsection after subsection (1) as subsection (1A)

The Public Procurement (Amendment) Bill, 2015

- “(1A) The procurement entity shall not take any step that will bring into force a procurement contract or framework agreement where the entity
- (a) receives a complaint within the time limits specified;
 - (b) receives notice of an application for administrative review from the Board; or
 - (c) receives notice of an application to or appeal from court. “;
- (c) by the deletion of “head of the” in subsections (3), (5) and (7);
- (d) by the insertion of a new subsection after subsection (5) as subsection (5A);
- “(5A) The procurement entity may overturn, correct, vary or uphold any decision or action taken by itself in the procurement proceedings to which the application relates but this shall not apply to decisions taken by the Board or the court.”;
- (e) by the insertion of new subsections after subsection (7) as subsections (7A) and (7B)
- “(7A) All decisions taken under this section, shall be in writing and shall state the action taken and the reasons for the decision.
- (7B) All decisions taken shall promptly be made part of the record of the procurement proceedings and shall include the complaint received by the procurement entity under this section.”; and
- (f) by the insertion of “for administrative review under section 80” after “proceedings” in the first line of subsection (8).

Section 80 of Act 663 amended

41. The principal enactment is amended by the substitution for section 80 of

“80. Administrative review

(1) A supplier, contractor or consultant entitled to seek administrative review may submit a petition to the Board if

The Public Procurement (Amendment) Bill, 2015

- (a) the head of the procurement entity does not entertain the complaint because the procurement contract has entered into force; or
 - (b) the supplier, contractor, or consultant claims to be adversely affected by a decision of the head of the procurement entity under section 79.
- (2) The petition shall be submitted within twenty-one days after
 - (a) the supplier, contractor or consultant became aware of the circumstances giving rise to the complaint, or
 - (b) the time when the supplier, contractor or consultant ought to have become aware of those circumstances, if the complaint cannot be submitted under section 79 because of the entry into force of the procurement contract.
- (3) On receipt of a complaint, the Authority shall give notice of the complaint promptly to the procurement entity.
- (4) The Board may
 - (a) declare the legal rules or principles that govern the subject-matter of the complaint and address any suspension in force;
 - (b) order that the provisions of this Act be complied with;
 - (c) prohibit the procurement entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Act;
 - (d) require the procurement entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Act to take action or make a decision or proceed in a manner that is in compliance with the provisions of this Act;
 - (e) overturn in whole or in part an act or decision of the procurement entity that is not in compliance with the provisions of this Act

The Public Procurement (Amendment) Bill, 2015

- other than an act or decision that brings the procurement contract or framework agreement into force;
- (f) revise a decision by the procurement entity that is not in compliance with the provisions of this Act other than any act or decision that brings the procurement contract or framework agreement into force;
 - (g) confirm a decision of the procurement entity;
 - (h) require the payment of compensation for reasonable costs incurred by the supplier or contractor who submitted the complaint,
 - (i) in connection with the procurement proceedings as a result of an act, decision or procedure followed by the procurement entity in the procurement proceedings that is not in compliance with the provisions of this Act, and
 - (ii) for any loss or damage suffered; which shall be limited to the costs of the preparation of the tender or the costs related to the application or both;
 - (i) order that the procurement proceedings be terminated;
 - (j) authorize the procurement entity to enter into the procurement contract or framework agreement where it is satisfied that public interest justifies this;
 - (k) dismiss the complaint and require the payment of compensation from the complainant for reasonable costs incurred by the procurement entity or the Board;

(5) The Board shall issue a written decision concerning the complaint within twenty-one days after starting an administrative review, stating the reasons for the decision.

The Public Procurement (Amendment) Bill, 2015

(6) The decision of the Board and reasons for the decision shall be made part of the record of procurement proceedings.

(7) Correspondence pertaining to a complaint shall be copied to the Board.

(8) Without limiting this section, the Minister may, in consultation with the Board by legislative instrument, specify different administrative review procedures for specific sectors or entities.”

Section 82 of Act 663 amended

42. The principal enactment is amended by the substitution for section 82 of

“Suspension of procurement proceedings

82. (1) The Authority in administrative review proceedings may

(a) order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; or

(b) order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force;

for as long as it finds the suspension necessary to protect the interests of the applicant, unless it decides that urgent public interest considerations require the procurement proceedings, the procurement contract or framework agreement to proceed; or

(c) order that any suspension applied be extended or lifted.

(2) The Authority shall order the suspension of a procurement proceeding for an initial period of thirty working days or as required under subsection (1).

(3) The Authority shall, upon receipt of an application for administrative review, promptly

(a) suspend or decide not to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement in accordance with subsection 1(a) and (b);

(b) notify the procurement entity and identified participants of the procurement proceedings to which the application relates, of the application and its substance; and

The Public Procurement (Amendment) Bill, 2015

- (c) notify the identified participants of its decision on the suspension of the procurement proceedings to which the application relates.
- (4) Where the Authority decides to suspend
 - (a) the procurement proceedings,
 - (b) the performance of a procurement contract, or
 - (c) the operation of a framework agreement,it shall also specify the period of suspension.
- (5) Where the Authority decides not to suspend the procurement, it shall
 - (a) provide the applicant and procurement entity with the reasons for its decision; and
 - (b) promptly publish a notice of the application on the website of the Authority when the application for administrative review is received.
- (6) The Board may dismiss the application and shall lift any suspension applied, where it decides that:
 - (a) the application is manifestly without merit or was not presented in compliance with the deadlines in subsection 80 (2(a) and (b)); or
 - (b) the application is without standing;and shall promptly notify the applicant, the procurement entity and any other relevant participants of the dismissal, the reasons for it and that the suspension is lifted.
- (7) The dismissal by the Board constitutes a decision on the application.
- (8) The procurement entity shall promptly provide the Board with effective access to documents in its possession related to the procurement proceedings after the lodgment of a complaint.
- (9) The procurement entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned
 - (a) where it receives notice of an application for administrative review from the Board; and or
 - (b) where it receives notice of an application or appeal from court.

The Public Procurement (Amendment) Bill, 2015

(10) The prohibition in subsections (9) and 79 (1A) shall expire fourteen working days after the decision of the procurement entity, the Board or the court has been communicated to the applicant, the procurement entity and any other participants in the review proceedings.

(11) The procurement entity may request the Board or a court to authorise it to enter into the procurement contract or framework agreement on the grounds of urgent public interest.

(12) The Board or court may, upon consideration of the request, authorise the procurement entity to enter into the procurement contract or framework agreement where it is satisfied that urgent public interest considerations justify this.

(13) The decision of the Board or court shall be made part of the record of procurement proceedings and promptly communicated to the procurement entity, the applicant and to any other participant in the administrative review proceedings.”.

Heading of Part Eight of Act 663 amended

43. The heading of Part Eight of the principal enactment is amended by the insertion of “Vehicles,” after “Stores”.

Section 83 of Act 662 amended

44. Section 83 of the principal enactment is amended in subsection (1) by the insertion of “vehicles,” before “unserviceable” in line two of the subsection.

Section 83A of Act 663 inserted

45. The principal enactment is amended by the insertion after section 83 of a new section 83A

“Instructions and guidelines for disposal of vehicles and unserviceable stores

83A. (1) The Minister shall, in consultation with the Board, make further Regulations on the disposal of vehicles, unserviceable stores, and obsolete equipment.

(2) The Board shall issue detailed instructions and policy guidelines related to the disposal of vehicles, unserviceable stores and obsolete equipment.”.

Section 85 of Act 663 amended

46. The principal enactment is amended by the repeal of section 85.

Section 86 of Act 663 amended

47. The principal enactment is amended by the substitution for section 86 of

“Code of conduct

86. (1) The Board shall, with the approval of the Minister, compile and publish a code of conduct that shall apply to each official of a procurement entity, the members of an evaluation panel, members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.

(2) The code of conduct shall address

- (a) conflicts of interest in procurement;
- (b) measures to regulate matters concerning personnel responsible for procurement;
- (c) declarations of interest in particular procurements;
- (d) screening procedures and training requirements;
- and
- (e) any other matter related to the ethics of procurement.

(3) For the purpose of subsection (2)(a), where a tenderer has a disqualifying conflict of interest, the affected party shall be given the opportunity to remedy the conflict of interest in accordance with the relevant procedures of the procurement entity concerned.

(4) A decision of a procurement entity to exclude a tenderer from the procurement process by reason of conflict of interest and the reasons for the exclusion shall be included in the record of procurement proceedings and shall be promptly communicated to the tenderer concerned.

(5) The code of conduct shall promptly be made accessible to the public and shall be updated regularly as directed by the Board.”

Section 87 of Act 663 amended

48. Section 87 of the principal enactment is amended by the substitution for “tender review board” in subsections (1) and (2) of “tender review committee”.

Section 89 of Act 663 amended

49. Section 89 of the principal enactment is amended in subsection (2) by the insertion of “or any other person” after “consultant” in paragraphs (a), (b), (d), (e) and (f).

Section 90 of Act 663 amended

50. The principal enactment is amended by the substitution for section 90 of

“Procedures on completion of investigation

90. (1) An investigator shall forward a copy of the investigation report to the Board.

(2) The Board shall afford a person adequate opportunity to make representations in a matter, before taking an action in terms of subsection (3) which may adversely alter the rights or property of that person.

(3) The Board shall, if satisfied that there has been a contravention of a provision of this Act or any other enactment in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with the relevant provisions of this Act.”.

Section 92 of Act 663 amended

51. The principal enactment is amended in section 92 by

- (a) the substitution for “one thousand” of “two thousand five hundred” in line three of section 92 (1);
- (b) the addition of a new subsection (3)

“(3) Despite anything to the contrary in an enactment, a person who contravenes a Regulation made under this Act is liable on summary conviction to a fine of not more than two thousand five hundred penalty units or to a term of imprisonment of not more than five years or to both.”.

Section 94 of Act 663 amended

52. The principal enactment is amended by the repeal of section 94.

Section 95 of Act 663 amended

53. Section 95 of the principal enactment is amended by the deletion of “chief executive officer of the” in the first line.

Section 96 of Act 663 amended

54. The principal enactment is amended by the substitution for section 96 of

“International obligations

96. (1) Despite the extent of the application of this Act to the procurement, procurement with international obligations arising from a grant or concessionary loan to the Government shall be in accordance with the terms of the grant or loan subject to the prior review and “no objection” of procurement procedures by the Authority.

(2) Procurement arising from an external loan and commercial facility, secured by Government, other than a concessionary loan and grant which specifies particular procurement procedures shall be subject to the prior review and “no objection” of those procurement procedures by the Authority.”.

Section 97 of Act 663 amended

55. Section 97 (2) of the principal enactment is amended

(a) by the insertion of a new paragraph (i)

“(i) to review the levels of method thresholds or approval thresholds;”;

(b) by the re-lettering of paragraph (i) as paragraph (j); and

(c) by the deletion of subsection (3).

Section 98 of Act 663 amended

56. Section 98 of the principal enactment is amended;

(a) by the insertion in the appropriate alphabetical order of the following new definitions:

“Commission” includes a committee and an ad hoc body established for a particular purpose;

The Public Procurement (Amendment) Bill, 2015

“contract administrator” means an individual appointed by the head of entity to administer a contract on behalf of the entity;

“court” means court of competent jurisdiction;

“domestic contractor” means, for the purpose of eligibility for a margin of domestic preference under international competitive tender for Works, a contractor registered and incorporated under the laws of Ghana, having majority shareholding by Ghanaians and not subcontracting more than 50 percent of the total value of Works to foreign contractors;

“framework agreement” means a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. Framework agreements are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition;

“locally registered supplier” means a business entity registered to do business under the Companies Act, 1963 (Act 179);

“promptly” means without delay;

“public interest” includes a right or advantage which enures or is intended to enure to the general benefit of the people of this country;

“socio-economic policy” means environmental, social, economic and other policies of the Government which promote social or economic impact, authorised or required by the procurement regulations or any other enactment taken into account by the procurement entity in procurement proceedings;

The Public Procurement (Amendment) Bill, 2015

“statutory fund” means a fund established by Act of Parliament; and

“vehicle” includes a serviceable and unserviceable means of conveyance for people and goods;

- (b) by the deletion of (v) appearing under the definition of “head of entity” and the insertion of “(v) State Owned Enterprises, the chief executive officer”;
- (c) by the insertion of “and” after “quality” in the definition of “quality cost based selection”; and
- (d) by the insertion of “entity’ in the definition of “ tender committee”.

Section 99 of Act 663 amended

57. The principal enactment is amended in section 99 by the substitution for subsection (4) of

“(4) Any tender review board and entity tender committee that performed the functions of an entity tender committee or tender review board under the First and Second Schedules of the principal enactment are reconstituted in accordance with the First and Fourth Schedules of this Act.”.

Schedules to Act 663 amended

58. The principal enactment is amended by the substitution for the Schedules of the following new Schedules:

The Public Procurement (Amendment) Bill, 2015

**“FIRST SCHEDULE
(Section 20 and 20A)
CATEGORIES OF ENTITY TENDER COMMITTEES**

SCHEDULE 1A

CATEGORY A (SPECIAL CONSTITUTIONAL BODIES)

1. Legislature
2. Judiciary
3. Council of State
4. Bank of Ghana

CATEGORY B

1. Independent Constitutional Bodies¹
2. Office of the President
3. Central Management Agencies
4. Ministries
5. State Owned Enterprises
6. Regional Coordinating Councils
7. Statutory fund management bodies

CATEGORY C

1. Head Office of subvented agencies and government departments²
2. Teaching Hospitals
3. Tertiary Institutions including autonomous schools, institutes, colleges and campuses of universities.

CATEGORY D

1. Regional office of subvented agencies and government departments
2. Regional hospitals
3. Colleges³

CATEGORY E

1. District office of subvented agencies and government departments⁴
2. District hospitals
3. Second cycle schools or institutions

CATEGORY F

1. Metropolitan Assemblies
2. Municipal Assemblies and District Assemblies

(footnotes)

1. Category B1 includes –Public Services Commission, National Development Planning Commission, Office of the Head of Civil Service, Electoral Commission, Office of the District Assemblies Common Fund Administrator, Commission On Human Rights and Administrative Justice, National Media Commission, Lands Commission and National Commission for Civic Education.
2. Category C1, D1 and E1 includes the Ghana Education Service, Ghana Health Service, Ghana Police Service, Ghana Prisons Service, Ghana Immigration Service, Ghana National Fire Service, Ghana Revenue Service and the Local Government Service.
3. Colleges – Training Colleges (Nursing & Agricultural or similar Colleges).
4. That are not decentralised departments

The Public Procurement (Amendment) Bill, 2015

SCHEDULE 1B
(Section 20)
SCH. 1B - COMPOSITION OF ENTITY TENDER COMMITTEES – MINISTRIES, DEPARTMENTS & AGENCIES
1B 1 CATEGORY A

Item	Legislature	Judiciary	Council of State	Bank of Ghana
1. Chairperson¹	Chief Administrator	Judicial Secretary		Governor First Deputy Governor
2. Members	Head of Finance	Head of Finance	Chief Director	
	Majority Leader	2 Members – Judicial Council	Head of Finance	Head of Legal
	Minority Leader	3 Members – Superior Courts ³	3 Heads of Departments	A representative of the Minister of Finance
	Chairperson of Public Accounts Committee	2 Members of Professional Bodies		Rep. of the Office of the President
	Chairperson of Works Committee		2 Members of Professional Bodies	Head of Finance
	Chairperson of a third parliamentary committee (selected by the Speaker)			1 Departmental Head
	2 Members of Professional Bodies			2 Members of Professional Bodies
Total membership	9	9	7	9
3. Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Quorum	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 3 members	Chairperson and 4 members

¹ Chairpersons may delegate to a member of the entity tender committee

² Selected Professional Bodies with skills required in procurement

³ One member each from the High Court, Court of Appeal and the Supreme Court

The Public Procurement (Amendment) Bill, 2015

1B 2 CATEGORY B

Item	Central Management Agency, Ministries, Independent Constitutional Bodies, Office of the President	Regional Coordinating Council	State Owned Enterprises	Statutory Fund Management Bodies ⁵
Chairperson	Minister/Head of Institution	Regional Minister	Chief Executive ⁴	Chief Executive
Members	Head of Finance An Attorney from the Attorney-General's Office 3 Heads including user department/agency	Head of Finance Head of the Attorney-General's Department in the region Three heads of departments from the Regional Coordinating Council including user agencies	Head of Finance Head of Legal 2 Members of professional bodies	Head of Finance Head of Legal 2 Members of professional bodies
			A Representative from the Sector Ministry	A representative from the Ministry of Finance A representative from the sector Ministry
	Chief Director	Regional Coordinating Director	3 heads of department/division including user departments	2 heads of department or division including user departments
	2 Members of Professional Bodies	2 members of Professional Bodies		
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Total membership	9	9	9	9
Quorum	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 4 members	Chairperson and 4 members

⁴ This includes any appropriate designation of chief executive such as director general and chief executive officer

⁵ Statutory Fund Management Bodies include Ghana Education Trust Fund, Road Fund, Export Development and Investment Fund and such similar institutions

The Public Procurement (Amendment) Bill, 2015

1B 3 CATEGORY C

Item	Head Office of Subvented Agencies and Government Department ⁴	Teaching Hospitals	Tertiary Institutions
Chairperson	Chief Executive/Head of Agency or Department	Chief Executive	Vice Chancellor/Principal/Dean/Recto or equivalent
Members	Head of Finance Attorney from the Attorney-General's Office 3 Heads of Department or Division including user departments	Head of Finance Attorney from the Attorney-General's Office 3 Heads of Department /Division, including user Department or Division	Registrar Head of Finance Lawyer appointed by Council
	2 members of Professional Bodies	A representative from the private sector	3 heads of Departments including user departments 1 member of a Professional Body
	Representative of sector Ministry		
Total Membership	9	2 members of Professional Bodies 9	1 member appointed by National Council for Tertiary Education 9
Secretary	Head of procurement unit	Head of procurement unit	Head of procurement unit
Quorum	Chairperson and 4 others	Chairperson and 4 others	Chairperson and 4 others

⁴ Subvented Agencies and Government Departments include Ghana Education Service, Ghana Health Service, Ghana Police Service, Ghana Prisons Service, Ghana Immigration Service, Ghana National Fire Service, Ghana Revenue Authority and Local Government Service.

The Public Procurement (Amendment) Bill, 2015

1B 4 CATEGORY D

Item	Regional office of Subvented Agencies and Government Department	Regional Hospitals	Colleges
Chairperson	Head of Regional Department or Government Agency	Regional Medical Superintendent/Director	Principal/Head Master/ Headmistress or equivalent
Members	Head of Finance Attorney from the Attorney-General's Office 3 Heads of departments including user departments A Representative from the Regional Co-ordinating Council	Head of Finance Health Service Administrator Head of Pharmacy Head of Nursing Clinical Head Attorney from the Attorney-General's Office Representative of the Regional Health Directorate Representative of the Regional Co-ordinating Council	Head of Finance A representative of the applicable Regional Health Directorate Lawyer appointed by Governing Body 3 Heads of Department including user departments
Total Membership	7	9	7
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Quorum	Chairperson and 3 others	Chairperson and 4 others	Chairperson and 3 others

The Public Procurement (Amendment) Bill, 2015

1B 5 CATEGORY E

Item	District Office of Subvented Agencies and Government Department	District Hospitals	Secondary Schools/Institutions
Chairperson	Head of District, Department or Government Agency	Medical Superintendent/ Director	Principal/Head Master/ Headmistress or equivalent
Members	Head of Finance An Attorney from the Attorney-General's Office 3 Heads of units including user unit	Head of Finance Head of Pharmacy Head of Nursing	Bursar/Finance Officer Lawyer appointed by governing body 3 Heads of department including user departments
	A Representative of the regional office of the subvented agency or government department	An Attorney from the Attorney-General's Office	A representative of the District Education Directorate
		Representative of the Regional Health Directorate	
		Representative of the District Co-ordinating Council	
Total Membership	7	7	7
Secretary	Head of Procurement Unit	Head of Procurement Unit	Head of Procurement Unit
Quorum	Chairperson and 3 others	Chairperson and 3 others	Chairperson and 3 others

SCHEDULE 1C
(Section 20)
SCHEDULE 1C - COMPOSITION OF ENTITY TENDER COMMITTEES –METROPOLITAN, MUNICIPAL AND DISTRICT ASSEMBLIES

Item	Metropolitan Assemblies	Municipal and District Assemblies
Chairperson	Metropolitan Chief Executive	Municipal or District Chief Executive
Members	Director of Finance	District Finance Officer
	Legal officer of the Metropolitan, Assembly or a lawyer appointed by the Metropolitan Assembly	Legal officer of the Municipal and District Assembly or lawyer appointed by District Assembly
	2 Chairpersons of committees(Works/Finance) of the Assembly	2 Chairpersons of committees (Works/Finance) of the Assembly
	2 Heads of Departments within the Metropolitan Assembly, including user departments	2 Heads of Departments within the district including user departments
	Budget Officer of the Metropolitan Assembly	District Budget Officer
	Metropolitan Co-ordinating Director	District Co-ordinating Director
Total membership	9	9
Secretary	Head of Procurement Unit	Head of Procurement Unit
Quorum	Chairperson and 4 others	Chairperson and 4 others

SECOND SCHEDULE

(Sections 18, 20, 20A, 20B and 20C)

THRESHOLDS FOR MINISTRIES, DEPARTMENTS AND AGENCIES – APPROVING AUTHORITY

Approving Authority	Category A and B			Category C			Category D ⁷			Category E ⁸		
	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services
Central Tender Review Committee	Above 1,000,000 0	Above 2,000,000 0	Above 1,000,000	Above 800,000	Above 1,500,000	Above 800,000	Above 400,000	Above 800,000	Above 400,000	Above 200,000	Above 400,000	Above 200,000
Entity Tender Committee	Above 100,000 to 1,000,000 0	Above 150,000 to 2,000,000 0	Above 100,000 to 1,000,000	Above 60,000 to 800,000	Above 90,000 to 1,500,000	Above 60,000 to 800,000	Above 45,000 to 400,000	Above 70,000 to 800,000	Above 45,000 to 400,000	Above 30,000 to 200,000	Above 45,000 to 400,000	Above 30,000 to 200,000
Entity Head	Up to 100,000	Up to 150,000	Up to 100,000	Up to 60,000	Up to 90,000	Up to 60,000	Up to 45,000	Up to 75,000	Up to 45,000	Up to 30,000	Up to 45,000	Up to 30,000

⁷ As regards the regional officers of a subvented agency, procurement above the regional entity tender committee threshold shall be handled by their head office entity tender committee

⁸ District hospitals and schools shall use the entity tender committees and the central tender review committee as appropriate for procurement above their entity tender committee's threshold. The district officers of a subvented agency shall operate under the threshold guidelines of their head office agency.

THIRD SCHEDULE

(Sections 18, 20, 20B, 20C and 44)

THRESHOLDS FOR REGIONAL COORDINATING COUNCILS AND METROPOLITAN, MUNICIPAL AND DISTRICT ASSEMBLIES APPROVING AUTHORITIES

Approving Authority	Category F1 Regional Coordinating Council			Category F2 Metropolitan Assemblies			Category F3 Municipal & District Assemblies		
	Goods	Works	Services	Goods	Works	Services	Goods	Works	Services
Regional Tender Review Committee ^a	Above 750,000	Above 1,000,000	Above 750,000	Above 550,000	Above 750,000	Above 550,000	Above 400,000	Above 550,000	Above 400,000
Entity Tender Committee	Above 100,000 to 750,000	Above 150,000 to 1,000,000	Above 100,000 to 750,000	Above 75,000 to 550,000	Above 125,000 to 750,000	Above 75,000 to 550,000	Above 50,000 to 400,000	Above 90,000 to 550,000	Above 50,000 to 400,000
Entity Head	Up to 100,000	Up to 150,000	Up to 100,000	Up to 75,000.00	Up to 125,000	Up to 75,000	Up to 50,000.00	Up to 90,000	Up to 50,000

^a Sub-Committee of the Regional Co-ordinating Council

FOURTH SCHEDULE
(Section 20F)

COMPOSITION OF TENDER REVIEW COMMITTEES

Item	Central Tender Review Committee	Regional Tender Review Committee
Chairperson	An eminent person nominated by the Minister responsible for Finance	An eminent person nominated by the Regional Minister
Members	Two public sector persons conversant with procurement principles and procedures nominated by the Board Three professionals nominated by the Institute of Engineers, Institute of Chartered Accountants and the Institute of Surveyors A representative of the Attorney-General's department not below the level of Chief State Attorney, nominated by the Attorney-General and Minister for Justice A representative of the National Development Planning Commission, not below the rank of Director, nominated by the Commission A representative of the Ministry of Finance, not below the rank of Director	Regional Coordinating Director Head of the Attorney-General's Department in the region 4 private sector persons with experience in procurement nominated by the Ghana Institute of Engineers, Ghana Institute of Surveyors, Chartered Institute of Purchasing and Supply and Institute of Chartered Accountants, Ghana respectively
Total Membership	9	7
Secretary	A representative of the Ministry of Finance not below the rank of technical director, nominated by the Minister	Regional Economic Development Planning Officer
Quorum	Chairperson and 4 others	Chairperson and 3 others

The Public Procurement (Amendment) Bill, 2015

FIFTH SCHEDULE

(Sections 20, 20A, 20C, 34A, 42, 44, 66 and 72)

THRESHOLDS FOR PROCUREMENT METHODS

Procurement method	Contract value threshold
1. International Competitive Tender	
a. Goods	Above GH¢10,000,000.00
b. Works	Above GH¢15,000,000.00
c. Technical Services	Above GH¢5,000,000.00
2. National Competitive Tender	
a. Goods	More than GH¢25,000.00 up to GH¢10,000,000.00
b. Works	More than GH¢50,000.00 up to GH¢15,000,000.00
c. Technical Services	More than GH¢25,000.00 up to GH¢5,000,000.00
3. Price Quotation	
a. Goods	Up to GH¢100,000.00
b. Works	Up to GH¢200,000.00
c. Technical Services	Up to GH¢50,000.00
Restricted tender	Subject to approval by the Board
Single source procurement and selection	Subject to approval by the Board
CONSULTANCY SERVICES – NO THRESHOLD LIMITS	
1. Quality Based Selection	Refer to Public Procurement Authority Manual for procedure
2. Quality and Cost Based Selection	Refer to Public Procurement Authority Manual for procedure
3. Consultant's Qualification	Refer to Public Procurement Authority Manual for procedure
4. Fixed Budget Selection	Refer to Public Procurement Authority Manual for procedure
5. Least Cost Selection	Refer to Public Procurement Authority Manual for procedure
6. Individual Consultant	Refer to Public Procurement Authority Manual for procedure
7. Single Source	Subject to Public Procurement Authority Approval

The Public Procurement (Amendment) Bill, 2015

<p>*Mandatory use of Expression of Interest for all except single source</p> <p>*Entities may advertise internationally where the required skills may not be available locally.</p>	
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MANDATORY PREQUALIFICATION	CONTRACT VALUE THRESHOLD
Goods	Above GH¢ 10,000,000.00
Works	Above GH¢15,000,000.00
Technical Services	Above GH¢ 5,000,000.00

**SIXTH SCHEDULE
(Sections 50 and 68)**

Standard Tender Documents and Standard Requests for Proposals

1. Standard tender document for procurement of works
2. Standard tender document for procurement of works, smaller contracts
3. Standard tender document for roads - major
4. Standard tender document for roads - minor
5. Standard tender document for procurement of goods
6. Standard tender document for procurement of health goods
7. Standard tender document for procurement of text books
8. Standard tender document for procurement of information technology systems
9. Standard request for proposals for selection of consultants
10. Standard document for prequalification of suppliers, consultants and contractors
11. Standard document for request for expression of interest
12. Sample format request for quotations
13. Disposal of stores, vehicles and equipment
14. Board of survey form/disposal certificate/destruction certificate
15. Standard tender evaluation format and reporting format for goods, works and selection of consultants
16. Standard and sample contracts for consultants services
Complex time based assignments
Lump-sum remuneration
Small assignments time based payments
Lump-sum payments.”.

Date of *Gazette* notification: 15th July, 2015.

Public Procurement (Amendment) Bill, 2015

MEMORANDUM

The purpose of this Bill is to amend the Public Procurement Act, 2003 (Act 663) to take account of current international best practice to enhance the operation of the procurement system. The amendment seeks to remove the delays caused by the hierarchical structures of the procurement system and improve public procurement efficiency. The amendment is also to provide for decentralised procurement and include new provisions from the revised United Nations Commission on International Trade (UNCITRAL) model law on procurement. The Bill addresses weaknesses in Act 663 and introduces sustainable public procurement, framework contracting and electronic procurement.

The Public Procurement Act, 2003 (Act 663) was enacted as part of the good governance initiative and public financial management reform programme. The Act provided national rules on public procurement to foster competition, efficiency, transparency and accountability in the public procurement of goods, works and services. It was also to provide for the fair, equal and equitable treatment of suppliers and contractors and promote the integrity of and public confidence in the procurement process.

The implementation of the Act for about nine years has revealed imbalances in the procurement structures that have created administrative bottlenecks. The enactment of this amendment Bill will remove the ambiguities and operational problems that have bedevilled the operation of Act 663 since its inception. It will also correct editorial errors in Act 663 and re-arrange the provisions in Part Two by the re-enactment of that Part to provide a more logical sequence of the provisions and greater clarity.

The major weaknesses identified in the principal enactment relate to the categorisation, membership and functions of entity tender committees and the need to clarify and harmonise their functions.

The reconstitution of entity tender committees has become necessary in order to speed up procurement decision-making, minimise delays and avoid associated administrative and transaction costs. To ensure a continuous implementation process, powers of delegation are required for key members of an entity tender committee.

Public Procurement (Amendment) Bill, 2015

An inter-operational linkage between an entity tender committee and a tender review board to remove function overlaps is needed for the procurement process to operate smoothly. Procurement entities need to be re-categorised based on type, function and spending levels to ensure adequate expenditure ceilings and authorisation levels.

The functions of tender review boards need to be ceded to strengthened and reconstituted entity tender committees. This is to ease the concurrent approval process and make it more relevant and accountable.

There have been difficulties in the application of the Act to state owned enterprises some of which still seek freedom from the Act because of their independence from government oversight. This has occurred with particular reference to commercially oriented state owned enterprises that have to compete in a private sector environment. This concern has been addressed by the increase in the thresholds for state owned enterprises and their re-categorisation as category B, high to medium spenders.

Low procurement thresholds for high spending public institutions such as the Bank of Ghana, the Central Management Agencies, Ministries, Departments and Agencies as well as for the Metropolitan, Municipal and District Assemblies and State Owned Enterprises have also made it necessary for the law to be reviewed.

The methods for the selection of consultants and the use of expression of interest in tendering for consultancies have been clarified. Provision has also been made for the thresholds to be amended by subsidiary legislation.

Act 663 did not take into consideration the decentralisation programme. Metropolitan, Municipal and District Assemblies are corporate bodies with legal personalities as provided for in section 4 (1) and (2) of the Local Government Act, 1993 (Act 462). District Assemblies are legislative bodies that also exercise executive authority through the Executive Committee of the District Assembly or Metropolitan Authority in the case of a Metropolitan Assembly. This role is expressed in article 241 of the 1992 Constitution.

Public Procurement (Amendment) Bill, 2015

The majority of the members of a District Assembly are elected as stipulated in article 242 (a) of the 1992 Constitution. Metropolitan, Municipal and District Assemblies take decisions and are responsible for the decisions. It is therefore unconstitutional to subject them to the supervisory control of other bureaucratic bodies.

Ministries, Departments and Agencies, unlike Metropolitan, Municipal and District Assemblies are unelected bodies and their decisions are subject to legitimisation by superior authorities. It is therefore appropriate for them to have bureaucratic oversight bodies. Due to the autonomy given to decentralised structures, Metropolitan, Municipal and District Assemblies do not have to rely on the Attorney-General for legal advice as do Ministries, Departments and Agencies as well as Regional Co-ordinating Councils. It is therefore necessary for them to have a separate regime for procurement but this was not factored into Act 663.

Metropolitan, Municipal and District Assemblies have responsibility for sectors assigned to them under the Local Government Act, 1993 (Act 462) as detailed in the Local Government (Establishment of Departments of District Assemblies) (Commencement) Instrument, 2009 (L.I. 1961) and must perform supervisory roles in the procurement activities of these decentralised departments. The departments are Central Administration, Works Department and Physical Planning Department. Others are the Department of Trade and Industry, the Department of Agriculture and the Department of Social Welfare and Community Development. Metropolitan and Municipal Assemblies have legal departments and a Waste Management Department. They also have an Urban Roads Department, a Transport Department and a Budgeting and Rating Department. The other departments at the decentralised level are the Finance Department, Department of Education, Youth and Sports, Disaster Prevention and Management Department, Natural Resources Conservation, Forestry, Game and Wildlife Department and the District Health Department. Each of these departments has a procurement requirement that must be provided for at the decentralised level.

Public Procurement (Amendment) Bill, 2015

A district tender committee can only work in the Metropolitan, Municipal and District Assemblies in respect of decentralised sectors. District tender committees as committees of the Metropolitan, Municipal and District Assemblies can only be responsible for procurements for the sectors that are departments of the Metropolitan, Municipal and District Assemblies. Decisions of the Metropolitan, Municipal and District Assemblies for the sectors must be final. Procurement by the devolved departments and the district level decentralisation must be supervised and controlled by the Metropolitan, Municipal and District Assemblies.

Procurement by central government departments will not come under the supervision and control of the Metropolitan, Municipal and District Assemblies but of the respective parent Ministries, Departments and Agencies and these procurement entity committees must have a different membership composition.

The decisions of the Metropolitan, Municipal and District Assemblies in respect of the sectors assigned to them must be subjected to administrative review as is the case of the Ministries, Departments and Agencies and non-decentralised departments at the district level. This is in order to ensure the timely and cost effective resolution of disputes at the local government level. Complaints against the procurement decisions of the Metropolitan, Municipal and District Assemblies must therefore first be resolved by administrative review conducted by the Assemblies, prior to judicial review proceedings in court. This is what happens with complaints against administrative decisions of the central government and should be replicated for local government. Finally, though Metropolitan, Municipal and District Assemblies mobilise their own internally generated funds which they use for procurement, the use of these funds will be subject to the Public Procurement Act.

It has become necessary to denote the central tender review board as the central tender review committee. The change from “board” to “committee” is to ensure uniformity of the administrative structures of the procurement system, in view of the creation of a second review body for the Metropolitan, Municipal and District Assemblies which is the

Public Procurement (Amendment) Bill, 2015

regional tender review committee. Since a procurement approval structure has been created for decentralised structures separate from that of the Ministries, Departments and Agencies with the regional tender review committee as its corresponding review body, there should be a correlation with the nomenclature at the centre.

On account of the fact that the entity tender committees have been strengthened and given higher thresholds, the ministerial, regional and district tender review boards which proved costly to maintain and were actually redundant have been abolished.

The Bill also simplifies the mode of appointment of members to the two review bodies at the central and at the regional levels. This is in consonance with the purely administrative function they are required to play in the procurement approval process. Membership of the central tender review committee is currently disorganised. There are three modes of appointment, the chairperson is appointed by the President, others are appointed by the Minister for Finance and the rest by specific institutions. For reasons of uniformity and simplification, the Bill has streamlined the membership of these bodies and proposes that members are appointed and supervised by the Minister for Finance in consultation with the Board of the Authority.

The amendment Bill also corrects inaccuracies in the principal enactment to remove ambiguity and ensure clarity. It is expected that the amendments will positively impact the management of the public finances of the country. It will encourage good governance and public accountability to build competence in public finance management and contribute towards the collation of useful financial information for input into the national budgeting cycle. In order for the procurement law to meet international standards, it has become necessary to include provisions from the UNCITRAL model law on procurement. Consequently, framework agreements have been included in this amendment Bill.

After the enactment of the Bill, the Attorney-General may, in accordance with section 12(6) of the Interpretation Act 2009 (Act 792), authorise the reprinting of the Public Procurement Act, 2003 (Act 663) to consolidate the amending Act with Act 663. The reprinting will indicate

Public Procurement (Amendment) Bill, 2015

the changes for the legislative history to be known and this explanatory memorandum, with the necessary modifications, may be printed as part of the amendment Act to provide the explanation of the changes.

Clause 1 of the Bill amends section 2 of the Act to broaden the object of the Authority to include the environment and social sustainability.

Clause 2 of the Bill amends section 3 of the Act on the functions of the Authority to empower the Authority to develop rules and instructions. A time bound element is introduced for the publication of germane information on public procurement in the Public Procurement Bulletin to support the publication in electronic format. The amendment also takes account of the fact that the Board of the Authority is to advise the decentralised units of government on issues related to public procurement within their districts. This follows the separation of procurement structures for decentralised bodies in support of the decentralisation policy of the government. The final amendment to section 3 creates an avenue for the Authority, through the Minister for Finance, to make sector specific rules on complaints and administrative review, particularly as regards Metropolitan, Municipal and District Assemblies.

Clause 3 amends section 4 of the Act by indicating that the membership of the governing body is nine persons inclusive of the vice-chairperson who is elected from the membership and is not an additional member. The amendment also stipulates that the Board is to ensure the proper and effective performance of the functions of the Authority.

Clause 4 substitutes section 10 of the Act. The clause expressly specifies other sources of funds of the Authority, in addition to moneys provided by Parliament to the Authority. The provision acknowledges funds from other sources since the Authority periodically relies on donor partner funding for its activities. The clause also permits the Minister to, by legislative instrument, make provision for the Authority to retain part or all of its internally generated funds for specified purposes.

Clause 5 amends section 13 of the Act on annual report and provides that the annual report concerning the decentralised bodies and the relevant

Public Procurement (Amendment) Bill, 2015

part of the audited accounts, together with relevant parts of the Auditor-General's Report affecting specific decentralised bodies are to be submitted to the Metropolitan, Municipal and District Assembly for debate. This is in line with the good governance rule that these bodies are entitled to debate what concerns them.

Clause 6 of the Bill re-enacts Part Two of the Act. This is considered expedient because of the re-organisation of the Part to enable the logical sequence of provisions on procurement structures. The amended part deals with the scope and application of the Act.

Section 14(1)(d) has been amended in *clause 6* to clarify the scope of funds and include internally generated funds within the scope of the Act. The former discretion given to the Minister for Finance to decide that it is in the national interest to use different procurement procedures from those provided under the Act has been removed. This provision has not worked in practice because of the difficulty in finding different procurement procedures that are not already covered in the Act.

The provisions on the declaration of a procurement entity in section 16 remain essentially unchanged except that the scope for the declaration of a procurement entity has been widened to support an application by a procurement entity for its subsidiary or agency to be declared a procurement entity.

Certain state owned enterprises operating commercially have rejected the applicability of the Act and have sought to maintain their procurement processes on the basis of undue delay because they have to go through the concurrent approval processes. Based on the principle of standardisation of national procurement rules and the need to supervise public spending, the Public Procurement Authority is of the view that public institutions must apply uniform rules. In this regard, a combination of this amendment and those proposed to the First and Second Schedules make it easier for state owned enterprises to apply Act 663.

Major changes have been introduced in sections 15 and 17 by the re-categorisation of entity tender committees, the re-composition of their membership and that of the tender review committees. There has been a

Public Procurement (Amendment) Bill, 2015

substantial increase in their approval thresholds. These changes have become necessary in order to streamline and reduce the excessive costs to the government as regards the administration of these structures.

Entity tender committees have been re-categorised according to function and spending limits. The composition of the membership of these bodies has been changed. The new membership comprises the internal staff of the various entities listed in the First Schedule. This is in order to strengthen the purchasing functions of government institutions and is expected to give greater control to entities for their purchasing activities with the need for accountability.

The functions of entity tender committees and tender review committees were not given satisfactory prominence in the First and Second Schedules of the Act. The transfer of their functions to the body of the Act will make their functions more visible and reader friendly. New provisions have therefore been introduced that link the procurement entities, entity tender committees and tender review committees to their various categories, memberships and thresholds in the revised First, Second and Third Schedules.

Sections 15 and 17 have been merged to specify the functions of the various procurement structures such as the procurement entity, head of entity, procurement unit, entity tender committees and tender committees with their corresponding functions. In line with the decentralisation policy, these sections distinguish the procurement structures of Ministries, Departments and Agencies from the procurement structures of the Metropolitan, Municipal and District Assemblies.

A new section 20A on the functions of an entity tender committee, enables the delegation of authority by a member of an entity tender committee and a tender review committee. The section also allows chairpersons to delegate their membership functions appropriately in writing. The need for the power to delegate avoids the administrative delays that occur when chairpersons and members are absent or unavailable at meetings. This has been a stumbling block in the procurement process.

Public Procurement (Amendment) Bill, 2015

The functions of separate entity tender committees for Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies are provided in the new provisions of section 20B. Section 20C links the Second and Third Schedules that deal with the composition and approval thresholds for entity tender committees with the new provisions of section 20B. The threshold limits for procurement methods have also been increased in section 20C and now form the Fifth Schedule. The provisions on the meetings of entity tender committees and tender evaluation panels are in sections 20D and 20E.

The amendment in section 20F changes “board” to “committee” to make it clear that committees derive their authority from the principal enactment. The key amendment here in accordance with decentralisation objectives, is the creation of appropriate tender review committees for Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies. The amendment further creates a direct linkage with the corresponding Schedule for ease of cross reference.

In order to reduce excessive administrative costs and enhance efficiency, the tender review boards, with the exception of the central tender review board, have been removed. Ministries, Departments and Agencies will work towards the central tender review committees and Metropolitan, Municipal and District Assemblies towards the newly created regional tender review committees. The current set up of the entity tender committees and the tender review boards hinders the efficient operation of the procurement process. These committees have therefore been simplified and streamlined to permit timely and flexible operations. The procurement structure will now only comprise the head of entity, the entity tender committee and the central tender review committee for ministries, departments and agencies and the regional tender review committee for Metropolitan, Municipal and District Assemblies. Each of these committees will perform review functions for the entities beneath them.

A new provision in section 20G adds the review of the decisions of tender review committees to the administrative review powers of the Board of the Authority.

Public Procurement (Amendment) Bill, 2015

Editorial changes are made to section 21 of the Act on procurement plans in *clause 7* of the Bill. The amendment also provides for the publication of procurement plans and updates of the procurement plan on the website of the Authority and further repeals section 21(5) of the Act.

Clause 8 amends section 22(1) by introducing sustainability criteria in tenderer qualifications. By virtue of *clause 8*, a tenderer is now required to possess environmental qualifications and meet the ethical and other standards that are applicable in this country. The term “disbarment” has also been substituted with “debarment” to bring the language in line with the internationally recognised term used in the UNCITRAL Model Law.

Novel provisions on non-material deviations are introduced in new subsections (7),(8) and (9) of section 22. This is to clarify the treatment of non-material deviations. The Act provides for the treatment of material deviations. Non-material deviations have been relegated to the Public Procurement Authority Manual and this has resulted in the inability of an entity to effectively manage these situations. A new provision has been introduced by the amendment to this section to enable an entity request the legalisation of a foreign document produced by a tenderer to demonstrate the qualification of the tenderer for the tender procedure.

Clause 9 introduces section 22A which authorises the Board to suspend a supplier or consultant either on its own accord, after investigations, or upon the recommendation of the procurement entity in a number of specified circumstances that include unsatisfactory performance, failure to perform contractual obligations and contravention of the Act.

The amendment to section 26 on the form of communication in *clause 10* brings the section into conformity with the UNCITRAL rules on the protection of classified information contained in a tender document submitted by a tenderer. It enables a procurement entity to specify measures and requirements needed for the protection of classified information in the solicitation and participation of a tender in the procurement process. The measures specified by the entity should secure authenticity, integrity and confidentiality of the tender. The amendment also promotes clarity by removing ambiguities that may result in miscommunication.

Public Procurement (Amendment) Bill, 2015

Section 28 on the record of procurement proceedings has been amended in *clause 11* by the inclusion of additional circumstances that must be recorded in the record of procurement proceedings. Section 28(4) has been rephrased to clarify the meaning of that section and avoid the effect of ousting the jurisdiction of the courts.

A new section 28A on the cancellation of procurement has been introduced by *clause 12*. This is differentiated from the provisions on rejection of tenders. The provision particularly provides for the cancellation of procurement in situations where a successful tenderer fails to sign a contract.

Section 31 on the public notice of procurement contract awards is amended in *clause 13*, to permit the publication of contract awards on the website of the Authority. The clause rephrases section 31(2) to make it possible for other manner of publication, other than publication on the website of the Authority, to be provided for in Regulations.

Clause 14 introduces section 32A to protect sensitive information of the tenderer and the procurement entity, especially in cases where disclosure could compromise national security or during pre-qualification or pre-selection stages of the procurement process. This is when it becomes important to avoid disclosure to competing tenderers for the protection of classified information. Contravention of this section is an offence. The penalty is a fine under section 92 of the Act.

In *clause 15*, editorial changes are made to section 33 on the description of goods, works and services. The clause also introduces new subsections (3) and (4) to permit the use of standardised trade terms and conditions for sustainable public procurement in the drafting of technical specifications. The word “performance” is introduced in the new subsection (3) to facilitate the use of environment and other sustainable criteria.

A new section 34A on methods of procurement and conditions of use, including framework contracting, is introduced in *clause 16*. The clause authorises the Board to introduce new methods of procurement based on international best practice. This amendment will enable the Authority introduce framework contracting after the current pilot phase.

Public Procurement (Amendment) Bill, 2015

Section 38 on restricted tendering is amended in *clause* 17. The clause restricts this practice to situations that involve procurements of a highly complex and specialised nature. It effectively strengthens the use of section 38(a). A new provision is introduced to deal with situations where competitive tendering fails to elicit any response and the addition of subsection (2) is to enable the Authority to charge fees for the administrative procedure for single source and restricted tendering applications.

Section 40 on single source procurement is amended in *clause* 18. This is in line with the revised provisions of the UNCITRAL model law on the procurement of construction, goods and services. Section 40(1)(d) has also been rephrased to remove the ambiguity as to whether or not it is to be read as a composite section. Section 40(2) has been amended to permit the use of single sourcing to procure projects to promote socio-economic policies that are sustainable to public procurement.

An editorial correction is made to section 42 on the request for quotations in *clause* 19. The amendment also adds a new subsection (2) which provides that the successful quotation should be the lowest evaluated quotation that meets the needs of the procurement entity in the request for quotations.

The amendment to section 43 in *clause* 20 on the procedure for request for quotations, is to ensure the actual comparison of invoices by entities as opposed to just obtaining a number of invoices for the sake of compliance which is considered unsatisfactory for transparency purposes. The amendment is also to regulate the submission of multiple invoices by one company.

The amendment to section 44 on national competitive tendering in *clause* 21, confirms the reservation of national competitive tendering for citizens and strengthens the policy that gives a preference based on nationality to Ghanaian tenderers. These amendments also take into account the efforts being made by the international community to foster aid effectiveness through the use of country systems and the use of public procurement as a tool, not only for public financial management, but also for the harmonisation of cross-border trade. For this reason, the two distinct instances are clarified and an entity is given the option of either

Public Procurement (Amendment) Bill, 2015

inviting “locally registered” companies to participate in national competitive tendering, or limiting it only to “domestic suppliers” who are defined as citizens. The amendment therefore recognises that non-domestic tenderers need to know and must have certainty about whether a particular tender is limited to a citizen. Due to the complexity of certain projects, the amended provision provides a minimum and a maximum period of between two weeks and six weeks respectively for the submission of tenders under the national competitive tender to allow sufficient time for tender preparation.

Section 47 of the Act on procedures to invite tenders or applications to pre-qualify is substituted in *clause 22*. The amendment is principally on the publication of tenders on the Public Procurement Authority website to afford wider coverage for entities. The amendment also reduces publication from two newspapers to one newspaper of national circulation.

The amendment in section 49 on the provision of tender documents in *clause 23* is to enable the Board determine the price of a tender in the event that electronic procurement procedures are used.

Editorial changes are made to section 50 on the contents of tender documents and use of standard tender documents in *clause 24*.

Clause 25 repeals subsection(2) of section 53 of the Act which deals with the time frame in respect of the preparation of national competitive tenders. The provision is incorporated under *clause 21* as a new subsection to section 44.

The amendment in *clause 26* is in respect of section 54(2) that deals with the validity of tenders, modification and withdrawal of tenders. This is to clarify the provision that the period of validity of a tender may be before the expiry of the period of effectiveness of tenders.

An addition of the words “in writing” is the subject of the amendment to section 57(1) in *clause 27*. The amendment requires the request for clarification by a procurement entity to be in writing for the avoidance of doubt. An editorial correction is made in *clause 28* to correct the wrong reference in section 58(4)(b).

Public Procurement (Amendment) Bill, 2015

The amendment of section 59 on the evaluation of tenders in *clause 29* is to limit the evaluation criteria strictly to procurement subject matter and to criteria that has been pre-disclosed. This will enhance the transparency principles of public procurement to promote the principle of sustainable public procurement. New subsections are added to the section to facilitate the use of social, environmental and economic criteria that the government may introduce through preferences or by other legislation.

Section 60 on the margin of preference is amended in *clause 30* to widen the scope of the provision to any other preference authorised by the Board or required by Regulations or any other enactment.

Clause 31 amends section 64 on the prohibition of negotiations with suppliers or contractors to take account of the correct nomenclature of tender review committees referred to in the Act as tender review boards.

Clause 32 amends section 66 to change the reference to the Schedule in the principal enactment which is consequential to the amendments made to Act 663.

In *clause 33*, an editorial correction is made to section 68 (2) (1) which deals with content of requests for proposals for consultancy services by correcting the wrong reference to section 57. The appropriate reference is indicated as section 60 which relates to margin of preference.

Clause 34 repeals subparagraph (vii) of section 69(2)(c) as the provision is not applicable to the engagement of consultants.

Section 72 on the conditions for use of other methods of selection of consultants is amended in *clause 35* to change the reference in section 72 (4) to the Fifth Schedule that has replaced the Third Schedule of the principal enactment.

Section 74 on the evaluation of proposals is amended in *clause 36* to specify that evaluators of technical proposals are not to be given access to the financial proposals until the technical evaluation is reviewed and approved by the head of entity. A new subsection is also introduced

Public Procurement (Amendment) Bill, 2015

to provide the procedure to be followed by the evaluation panel when opening a financial proposal.

Clause 37 amends the headnote to section 77 to make it clear that the confidentiality provision applies to the process for the selection of consultants.

The heading of Part Seven of the Act is amended in *clause 38* to read “Complaints and Administrative Review” to accurately reflect the contents of the Part. Section 78 on the right to review is amended in *clause 39* to introduce new subsections to state the three avenues where complaints on the procurement process may be lodged. These are the procurement entity, the Authority or a court. The amendment also provides that a supplier, contractor or consultant may appeal to the court against a decision taken pursuant to an administrative review.

Clause 40 amends section 79 on the review by a procurement entity to make some editorial changes. The amendment also introduces key changes to the process of review by a procurement entity.

The provision on administrative review in section 80 is amended by *clause 41* to remove the element of “illegality” and replace it with an element of “non-compliance” as revised under the framework provisions of the UNCITRAL model Law on construction, goods and services.

Section 82 on the suspension of procurement proceedings is substituted in *clause 42* with a clearer provision to remove the discretion previously given to an entity to determine that urgent public interest considerations require the procurement process to proceed. The onus is now on the Authority to make that determination as the regulator of the sector.

Clauses 43 and 44 introduce the word “vehicles” to the heading in Part Eight and section 83(1) of Act 663 respectively. The rationale is to broaden the subject matter dealt with under Part Eight of Act 883 to include the disposal of vehicles.

Clause 45 inserts a new provision as section 83A to provide for instructions and guidelines for the disposal of vehicles, unserviceable

Public Procurement (Amendment) Bill, 2015

stores and obsolete equipment. This is a relocation of section 85 from Part Nine of the Act on miscellaneous provisions to Part Eight. *Clause 46* accordingly repeals section 85 of Act 663.

Section 86 on the code of conduct is substituted by *clause 47* to make provision to address a conflict of interest situation that may arise in the course of a procurement procedure.

The amendments to section 87 in *clause 48* are editorial and reflect the change of name from tender review board to tender review committee.

Section 89(2) is amended in *clause 49* by the inclusion of the words “or any other person” to make it possible for an investigator appointed by the Board to exercise the powers conferred on that investigator in respect of a person other than a procurement entity, tenderer, supplier, contractor or consultant provided that that person is concerned with the procurement proceedings under investigation.

Section 90 on procedures on completion of investigation is substituted by *clause 50* by deleting subsection(1)(b) and re-arranging subsections (2) and (3) for a better sequestration.

The amendment of section 92 in *clause 51* increases the number of penalty units for an offence from one thousand to two thousand five hundred to reflect prevailing levels and increase the effect of deterrence. The other amendment relocates the penalty for the breach of a regulation from section 97 to section 92.

Section 94 on the review of thresholds is repealed by *clause 52*. Due to the dynamic nature of threshold values, a periodic review is necessary to take account of inflationary or currency depreciation trends and enable the timely amendment of threshold levels to correspond to the changing purchasing needs of an entity. Section 94 of the Act subjects the review of threshold levels specified in the Third Schedule to an amendment process by Parliament. A less cumbersome amendment process by legislative instrument is preferred and is necessary to facilitate the swift adjustment of threshold levels to reflect prevailing economic conditions

Public Procurement (Amendment) Bill, 2015

and facilitate the work of a procurement entity. Section 94 has therefore been re-introduced under section 97 to facilitate the timely amendment of threshold levels by legislative instrument.

The policy behind the increase in threshold levels is to give public institutions greater responsibility and control over a larger pool of funds within the limit of funds duly appropriated by Parliament under the Appropriation Act in any given year than what an entity has under the Act. The amendment of a threshold by legislative instrument does not contravene article 108(a) of the Constitution or section 14 of the Financial Administration Act, 2003 (Act 654). It does not impose a tax or re-allocate expenditure nor does it operate to impose a charge on the consolidated or other public fund outside an annual appropriation. An entity will still be bound to operate within the ceiling approved under its respective budget regardless of threshold ceilings.

Clause 53 amends section 95 on public access to legal texts by shifting the burden of ensuring public access to administrative rulings to the Authority as the legal body responsible for procurement.

Clause 54 substitutes section 96 on international obligations. The new provision ensures the compliance of international agreements with domestic procurement legislation. Projects that require the use of external procedures are required to be submitted to the Authority for approval to ensure harmony and uniformity in the rules that are applied.

Section 97 on Regulations is amended by *clause 55* to give the Public Procurement Authority the mandate to effect changes to thresholds and the Schedules by legislative instrument.

The amendment to the interpretation section, section 98, by *clause 56*, introduces new definitions and deals with editorial corrections. Included in the definitions is the meaning of “framework agreement” to mean a procurement process conducted in two stages, a first stage to select a supplier or contractor to be a party to a framework agreement and a second stage to award a procurement process under the agreement. Another new definition is the meaning given to a “locally registered

Public Procurement (Amendment) Bill, 2015

supplier' as a business entity registered to do business under the Companies Act, 1963 (Act 179). In support of the initiative of the government to introduce sustainable public procurement, a definition of "socio-economic policies" has been given to mean an environmental, social, economic and other policy of the Government which promote social or economic impact, authorised or required by the procurement regulations or any other enactment to be taken into account by the procurement entity in procurement proceedings. The clause further makes some editorial changes to some of the words already defined in Act 663.

Clause 57 substitutes section 99(4) by reconstituting tender review boards and entity tender committees in accordance with the First and Second Schedules provided for in this Bill.

Clause 58 substitutes the Schedules in Act 663 with new Schedules provided for in the Bill.

The proposals for the enactment of this Bill have been through a thorough consultative process and the Bill when enacted will plug the loopholes in the principal enactment that have hindered the smooth implementation of a public procurement regime that meets the requirements for the acquisition of goods, works and services in a transparent and accountable way that complies with international standards.

Once the amendments have been enacted, the Regulations under the Act can be made to complete the legal framework for public procurement at the central level and at local government levels.

HON. SETH TERKPER
Minister for Finance and Economic Planning

Date: 10th July, 2015.