

ACT

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THE PUBLIC PROCUREMENT ACT, 2004

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SCHEDULE

SIGNED this 7th day of December, 2004

ALHAJI AHMAD TEJAN KABBAH,
President.



Sierra Leone

No. 14

2004

(LS)

The Public Procurement Act, 2004.

Short title.

Being an Act to establish the National Public Procurement Authority, to regulate and harmonise public procurement processes in the public service, to decentralise public procurement to procuring entities, to promote economic development, including capacity building in the field of public procurement by ensuring value for money in public expenditures and the participation in public procurement by qualified suppliers, contractors, consultants and other qualified providers of goods, works and services and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Application.

1. (1) This Act shall apply to the procurement of goods, works and services, including any procurement financed in whole or in part from public or donor funds by the following bodies or organizations:—

- (a) central Government Ministries, departments, commissions and agencies;
- (b) local councils;
- (c) subvented agencies;
- (d) state-owned enterprises which utilise public funds;
- (e) public universities, colleges, hospitals and all companies which are wholly owned by the State or in which the State has majority interest; and
- (f) any entity in the private sector which is given the responsibility for carrying out activities using public funds.

(2) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory pursuant to or under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, the procurement shall be governed by this Act.

(3) Where the Minister responsible for defence, with the approval of the Defence Council, determines that a procurement related to national defence or national security requires the application of special measures, the application of the rules and procedures set out in this Act may be modified by the National Public Procurement Authority, but the modification shall be governed only with defence considerations.

(4) For the purposes of subsection (3), procurement of items such as general stores, uniforms, stationery, office equipment and standard vehicles shall not be classified as national defence or national security procurement.

(5) In implementing this Act, including the composition of boards, committees and other organs provided therein, regard shall be had to compliance with the Government's policy of promoting the appointment and full participation of women.

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

Interpretation.

“**Authority**” means the National Public Procurement Authority established by section 3;

“**bid**” means, according to the type of procurement method being used, a proposal or quotation submitted by a bidder in response to an invitation by a procuring entity;

“**bid security**” means the bank guarantee or other form of security submitted by a bidder together with a bid to secure the obligations of the bidder participating in a bidding proceeding, including the obligation to sign a procurement contract if the bid is accepted, in accordance with the requirements of this Act and the bidding documents;

“**Board**” means the Board of the Authority;

“**collusive practices**” means a scheme or arrangement between two or more consultants with or without the knowledge of the procuring entity, designed to establish prices at artificial, noncompetitive levels;

“**consultant**” means the provider of intellectual services, including consultants' services;

“**contract**” means an agreement between a procuring entity and a supplier, contractor or consultant resulting from procurement proceedings;

“contractor” means a physical or juridical person under contract with a procuring entity to be a provider of civil works;

“corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the selection process or in contract execution;

“employer” means the contracting party benefiting from a works contract (usually the procuring entity);

“force account” means the conduct of procurement proceedings by any procuring entity with self-supervision, utilising the entity’s own resources;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

“goods” means objects of every kind and description, including commodities, raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods, if the value of those incidental services does not exceed that of the goods themselves;

“head of procuring entity” means the chief executive officer of the entity such as the Minister of a Ministry or the overall head of an organization;

“intellectual services” means any activity of an intellectual nature that does not lead to a measurable physical output;

“performance security” means the bank guarantee or other form of security submitted by the supplier, contractor or consultant to secure their obligations under the procurement contract, in accordance with the requirements in the bidding documents;

“member” means a member of the Board;

“Minister” means the Minister responsible for finance;

“procurement” means the acquisition by any contractual means of goods, works, intellectual services or other services;

“procurement committee” means the group within the procuring entity, comprising officials within and outside of the entity, referred to in section 18;

“procuring entity” means any organ of the State or regional and local authorities as well as statutory bodies, public sector corporations which are majority owned by the Government, public utilities using revenue collected by the sale of public services, as well as any other physical or juridical person to whom public funds have been allocated for use in public procurement;

“procurement unit” means the department formally established within the procuring entity to carry out the procurement activities of that entity in accordance with the functions set out in section 19;

“public funds” means any monetary resources of the State budget, or aid and credits under agreement with foreign donors, or extra-budgetary resources of procuring entities, used in public procurement;

“public office” means an office of emolument in the public service;

“public officer” means a person holding or acting in a public office, and includes the members and office-holders in a local council;

“regulations” means the regulations issued by the National Public Procurement Authority to fulfill the objectives and to carry out the provisions of this Act;

“services” means any services other than intellectual services;

“supplier” means a physical or juridical person under contract with a procuring entity to supply goods, construct works or provide intellectual and other services;

“vote controller” means Permanent Secretary of a Government Ministry, Chief Administrator of a local council, Managing Director or a General Manager, Executive Director or other head of a State-owned enterprise, or head of a Government department, agency or commission;

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the construction itself.

PART II – ESTABLISHMENT AND FUNCTIONS OF NATIONAL PUBLIC PROCUREMENT AUTHORITY

Establishment of National Procurement Authority.

3. (1) There is hereby established a body to be known as the National Public Procurement Authority.

(2) The Authority shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Authority shall have a common seal, the use of which shall be authenticated by the signature of–

- (a) the Chairman or other member of the Board authorised either generally or specially by the Board in that behalf; and

- (b) the Chief Executive or some other person authorised by the Board in that behalf.

4. (1) The governing body of the Authority shall be a Board consisting of – Board of Authority.

- (a) a Chairman, who shall be a person competent and knowledgeable in public procurement and the public service;
- (b) a representative of the Attorney-General and Minister of Justice;
- (c) five persons appointed for their knowledge and experience in public procurement and the public service, of whom two shall represent public sector interests and three shall represent the broad cross section of the private business community and professional associations; and
- (d) the Chief Executive.

(2) The members of the Board shall be persons of high personal probity, appointed by the President and subject to the approval of Parliament.

5. (1) The Chairman and other members of the Board who are not *ex-officio* members shall hold office for three years and shall be eligible for re-appointment for not more than two terms. Tenure of members of Board.

(2) A person shall cease to be a member of the Board on any of the following grounds–

- (a) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if he becomes bankrupt or insolvent;