MONTSERRAT

STATUTORY RULES AND ORDERS

S.R.O. 43 OF 2025

PUBLIC PROCUREMENT REGULATIONS 2025

ARRANGEMENT OF REGULATIONS

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THE PUBLIC PROCUREMENT REGULATIONS 2025 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET UNDER SECTION 45 OF PUBLIC PROCUREMENT ACT 2025.

PART 1— PRELIMINARY PROVISIONS

1. Citation

These Regulations may be cited as the Public Procurement Regulations 2025.

2. Interpretation of "extreme urgency"

(1) For the purposes of the Act and these Regulations, **"a circumstance of extreme urgency"** means a situation arising from events that were not reasonably foreseeable and are outside the control of the procuring entity, (including late externally imposed funding releases or late notification of donor or appropriation conditions) and in which engaging in any other procurement method would—

(a) cause serious risk to life, public health or safety, continuity of essential services or statutory compliance;

(b) cause substantial financial or operational loss;

(c) cause harm to government interests;

(d) be otherwise detrimental to the procuring entity or beneficiaries of the procurement.

(2) A circumstance of extreme urgency does not include circumstances attributable to poor planning, internal delay or avoidable administrative failure within the procuring entity.

PART 2 — GENERAL PROVISIONS

3. Application to Government Owned Entities

(1) A Government Owned Entity may conduct procurement in accordance with its own procurement rules or regulations if the rules or regulations are consistent with the Act and have been approved by the Cabinet on the recommendation of the Public Procurement Board.

(2) Approval shall be granted within six months of an application by the Government Owned Entity to the Public Procurement Board.

(3) A Government Owned Entity which does not have its own procurement rules or regulations that are approved by the Cabinet shall conduct procurement in accordance with the Act.

(4) The Public Procurement Board may, from time to time, review the approved procurement rules or regulations of a Government Owned Entity and may recommend to the Cabinet the confirmation or revocation of approval of the rules and regulations.

(5) Nothing in this regulation shall allow a Ministry, department, unit or other sub-division of Government that is not a Government Owned Entity to avoid the application of the Act and Regulations.

4. Functions of the Government Procurement Services

(1) In executing its responsibilities under section 10(3) of the Act, the Head of Government Procurement Services shall —

(a) develop and recommend policy and legislative changes to the Financial Secretary on public sector procurement procedures;

(b) report annually to the Financial Secretary on the effectiveness of the procurement processes, and recommend any amendment to this Act and Regulations that may be necessary to improve the effectiveness of the procurement process;

(c) adopt standard tender documents and contract forms for any method of procurement and any supplemental documents and templates;

(d) develop or cause to be developed a procurement website for disseminating information, including the publication of procurement opportunities and tender documents, by way of electronic or print or other information means and, at such time as is appropriate, a platform for the conduct of electronic procurement and the development of appropriate electronic procurement tools;

(e) ensuring the proper use of information and communication technology in public procurement;

(f) maintain and coordinate procurement data and manage statistical databases;

(g) advise the Public Procurement Board on the consistency with the Act of the procurement rules and regulations of Government Owned Entities;

(h) publish on the website a summary annual procurement plans of the procuring entities under regulation 8(4);

(i) review international developments in—

(i) procurement good practice to drive continuous improvement;

(ii) sustainable procurement and adopting consequential policies and tools for application in Montserrat;

(j) coordinate, design and deliver or cause to be delivered training and capacity development initiatives for public and private participants in public procurement;

(k) provide such operational advice in respect of procurement services as the Financial Secretary may request;

(l) establish a contract management framework and provide tools, guidance and support for procuring entities in carrying out contract management functions;

(m) establish and maintain supplier registers in accordance with section 29 of the Act;

(n) establish and maintain a list of suppliers debarred under sections 18(7) or 40(6) of the Act;

(o) provide reports to the Financial Secretary of the decisions of the Government Procurement Services and other activities every quarter of the financial year and at any other time that the Financial Secretary requires;

(p) organise supplier engagement forums; and

(q) perform any other functions assigned to the Government Procurement Services by the Financial Secretary.

(2) In the exercise of its functions under section 10(4) of the Act, the Government Procurement Services shall provide advice and assistance by—

(a) preparing the invitation to tender in a procurement or notice to pre-qualify in accordance with the templates contained in the standard tender documents;

(b) publishing the notices in accordance with section 23(2) of the Act and regulation 44;

(c) conducting the public tender opening and transmitting the tender opening record to the Evaluation Panel;

(d) recommending or appointing members of the Evaluation Panel;

(e) responding to requests for clarification from tenderers and organising and recording the results of pre-tender meetings or site visits, if any;

(f) assisting the Evaluation Panel in seeking clarifications from tenderers;

(g) receiving the evaluation report from the Evaluation Panel;

(h) preparing a recommendation for review or approval by the relevant authority;

(i) where the award of the contract to the recommended tenderer is approved, ensuring that formal contracts are prepared, where required under the Act; or

(j) preparing and publishing contract award notices in accordance with section 31(5) of the Act and regulation 44.

5. Designation of procurement functions by the Financial Secretary

(1) In making their determination under section 10(5) or section 11(2) of the Act, the Financial Secretary shall take the following criteria into account—

(a) the capacity of the procuring entity to conduct procurement, which may be measured by factors including—

(i) the availability of officers to carry out procurement,

(ii) the number of officers trained or experienced in procurement, and

(iii) the availability of information technology and communication facilities of the procuring entity; and

(b) the conformity of the procuring entity's contract award procedures and practices with the Act.

(2) In addition to carrying out the functions enumerated in regulation 4(2), the designated alternative procuring entity or the Government Procurement Services appointed under section 10(5) or 11(2) of the Act, as the case may be, shall in coordination with the procuring entity—

(a) develop and finalise the procurement requirements;

(b) conduct any early market engagement;

(c) apply the contract valuation methodology under section 17 of the Act;

(d) select the appropriate procurement method;

(e) select the appropriate eligibility criteria;

(f) select the appropriate evaluation criteria;

(g) decide on the rejection of tenders or cancellation of procurement procedures;

(h) conduct any debriefing;

(i) respond to any challenge under Part 9 of the Act;

(j) keep records of all procurement conducted under this provision; and

(k) perform any other functions as the Financial Secretary may direct.

6. Early Market Engagement

(1) Early market engagement means market testing and research for information from the market in order to—

(a) inform the procuring entity of the capability of the market; and

(b) generate interest among the market ahead of formal an invitation or request to participate in a procurement process to increase competition in the procurement process.

(2) For this purpose, procuring entities may seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of equality of treatment and transparency.

(3) Results of early market engagement shall be recorded and, where used to establish or inform a specific procurement process, shall be disclosed to all tenderers.

(4) Early market engagement shall under no circumstances lead to a binding commitment on the part of the procuring entity.

7. Financial Thresholds

(1) For the purposes of sections 8(1)(c) and 11(4) of the Act, the approving authority shall be—

(a) the Public Procurement Board for contracts with an estimated value of EC$200,000 and above;

(b) the Departmental Procurement Committee for contracts with an estimated value of below EC$200,000.

(2) Facilitation by the Government Procurement Services shall be provided in accordance with section 10(4) of the Act whenever the estimated value of the contract exceeds EC$100,000.

(3) For contracts with an estimated value —

(a) equal to or exceeding EC$125,000 procuring entities shall use open tendering unless the conditions for using restricted tendering or direct contracting are fulfilled;

(b) below EC$125,000 procuring entities may use the request for quotations method; and

(c) below EC$15,000 procuring entities may use the direct contracting method.

(4) For the purposes of sections 17(5) of the Act, suppliers for lots may be identified through the register of suppliers for contracts with an estimated value below EC$125,000.

8. Procurement Planning

(1) Every procuring entity shall plan for its annual procurement requirements for the following year with reference to —

(a) its operational requirements for goods, works, services and consulting services;

(b) its available financial resources;

(c) the required delivery times for goods and completion times for works, services and consulting services; and

(d) the benefits which are planned to accrue to the procuring entity from the planned procurement.

(2) Without limiting the generality of subregulation (1), a procuring entity shall, where appropriate, before commencing the procurement of goods, works, services or consulting services—

(a) plan the quantity and quality of its procurement requirements to meet but not to exceed its operational requirements;

(b) prepare a detailed cost estimate for each procurement in accordance with the rules on procurement contract valuation in section 17 of the Act;

(c) commit the amount of the total estimated cost of its procurement requirements in the budget of the procuring entity in accordance with the Public Finance (Management and Accountability) Act;

(d) plan to procure its requirements using the most appropriate procurement method as specified in Part 5 of the Act;

(e) record the justification for each use of a procurement method other than open tendering in the record of procurement proceedings; and

(f) record its justification for the use of prequalification or two-stage tendering.

(3) In accordance with section 14 of the Act, procuring entities shall prepare an annual procurement plan in the form provided by the Head of Government Procurement Services and shall forward a copy to the Public Procurement Board.

(4) For the purpose of forewarning potential tenderers of the contracts likely to be awarded over the forthcoming financial year, the Head of Government Procurement Services shall in accordance with section 14(3) of the Act and not less than 14 days after the beginning of each financial year, arrange for the publication on the dedicated public procurement website established in accordance with regulation 4(1)*(d)*, a summary of the annual procurement plan in the form of a planned procurement notice on behalf of each procuring entity.

(5) The planned procurement notice shall consolidate the annual requirements of the procuring entity either—

(a) by product area or category using appropriate customs or other codes used in the definition of product categories; or

(b) by identifying products with similar characteristics or a range of related products and services likely to be provided by individual tenderers.

(6) A procuring entity shall retain all documents relating to the determination of its annual procurement requirements and its annual procurement plan in its record of procurement proceedings.

(7) A procuring entity shall ensure that, to the fullest extent practicable, all public procurement is conducted in accordance with its annual procurement plan.

9. Procurement requirements

(1) The procuring entity's detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements shall be set out clearly in the tender documents.

(2) All relevant tender and pre-qualification documents shall provide objective descriptive information that does not unnecessarily favour a particular tenderer by stating the desired performance or output requirements of the object of the procurement wherever possible rather than design or descriptive characteristics.

(3) The statement of a procuring entity's requirements shall include, where appropriate—

(a) the purpose and objectives of the procurement;

(b) a full description of the requirement;

(c) a generic specification to an appropriate level of detail;

(d) a functional description of the requirements, including any environmental or safety features;

(e) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be judged;

(f) process and materials descriptions;

(g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;

(h) inspection and testing requirements; and

(i) any applicable standards.

(4) If available, a procuring entity shall use standardised features, requirements, symbols or terminology relating to the technical and quality characteristics of the goods, services or works to be procured, in formulating the specifications, plans, drawings or designs to be included in the prequalification documents or tender documents.

(5) A procuring entity shall use standardised trade terms in formulating the terms and conditions of the prequalification documents, tender documents or procurement contract.

(6) References to standards shall where possible be references to international standards or national standards incorporating international standards.

10. Evidence of tenderer qualifications

(1) The procuring entity may require the tenderers to furnish evidence of their financial capacity to fulfil the requirements of the contract. The procuring entity shall set out the level of financial capacity required from the tenderers in the tender documents. Such evidence may be furnished by—

(a) certified statements from financial institutions including, if necessary, details of available lines of credits;

(b) presentation of the tenderer's financial statements or extracts from the balance sheets for the last three years; and

(c) overall turnover and the turnover in respect with works, supply of goods or services similar to those required in the contract for the three previous years.

(2) Depending on the nature, quantity and purposes of the goods, services or works, evidence of technical ability may be furnished by means of—

(a) the professional and educational qualifications of the tenderer and/or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;

(b) in the case of works: a list of works carried out over a stated number of years, together with certificates of satisfactory execution for similar works, issued by previous clients. Such certificates will indicate the value, date and site of the works and shall specify whether they were properly executed;

(c) in the case of goods and services: a list of supplied goods and services in a stated number of years with the sums, dates and purchasers (public and private). Such list is to be evidenced by certificates issued or signed by the purchaser;

(d) in the case of works, a list of the tenderer's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting;

(e) in the case of goods: detailed descriptions and/or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified;

(f) in the case of goods incorporated into works: certificates drawn up by official quality control institutes or agencies of recognised competence attesting conformity to specifications or standards for products. The procuring entity shall state in the tender documents the references required.

(3) The procuring entity shall indicate the references it requires in the tender documents.

11. Joint ventures

Where a tenderer is constituted in the form of a joint venture—

(a) all parties to the joint venture shall be jointly and severally liable for the contract; and

(b) the joint venture shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all parties of joint venture during the tendering process and, in the event the joint venture is awarded the contract, during the contract execution.

12. Registered suppliers

(1) In respect of a register of suppliers established in accordance with section 29 of the Act—

(a) the Head of Government Procurement Services shall, every three years, invite applications to register by a notice published in accordance with regulation 44 and indicating the address from which the application documents may be obtained;

(b) the application documents shall detail the procedures for submitting applications and set out the criteria to be applied to registration;

(c) suppliers already registered need only update their relevant information in respect of the criteria identified in subregulation (1)*(b)* at the time of a procurement;

(d) initial admission to the register shall remain open for one month from the date of notification;

(e) any subsequent requests to register made after the initial one month period may thereafter be made at any time before the next application to register process in accordance with subregulation 1*(a)* and a decision on admission will be taken within one month;

(f) applicants shall apply for admission to the register in writing enclosing all relevant information and documentary evidence demonstrating their compliance with the identified criteria;

(g) reasons for the rejection of any applicant must be notified promptly and, in any event, within one month of the application, to the unsuccessful applicant;

(h) suppliers will be issued with a Certificate of Registration which will be valid for three years or until the next registration process where the supplier was admitted later than the initial admission period; and

(i) the list of registered suppliers may be consulted by any interested party upon request.

(2) Registration in accordance with section 29 of the Act constitutes a presumption of general compliance only with those criteria adopted for the registration process and qualifies registered suppliers to participate in a subsequent procurement procedure without further investigation of those criteria.

(3) Suppliers who are not registered do not benefit from such a presumption of general compliance and will be required to demonstrate their qualifications to participate in the procurement process. These suppliers may only be excluded from the procurement procedure on the basis of the criteria listed in section 18 of the Act.

(4) Notwithstanding the general compliance of registered suppliers, procuring entities shall establish contract specific criteria in accordance with regulations 9 and 10 for each procurement requirement and shall assess the suitability of all suppliers for the specific contract in question. Such criteria shall be set out in the pre-qualification document or tender document, as appropriate.

13. Sustainable procurement

(1) The Head of Government Procurement Services shall work with the Government to develop a sustainable procurement policy to promote the economic, social and environmental development of Montserrat.

(2) Such policy may apply domestic margins of preference and, where established, may be applied in accordance with regulation 30.

(3) Such policy may also establish set asides, under which a percentage of a procuring entity's procurement may be reserved for defined target groups of suppliers which may include—

(a) small enterprises or micro enterprises; or

(b) special groups including women, youth, the elderly and persons with disabilities; and

(c) any other group identified by the policy.

(4) Any policy issued pursuant to subregulation (4) shall clearly state the—

(a) definition of the target group benefitting from the set aside;

(b) eligibility requirements for benefitting from the set aside;

(c) types of goods, works and services set aside for specified target groups;

(d) percentage of contracts set aside;

(e) the way the set aside will be applied through procurement proceedings, and

(f) means of measuring its effectiveness in achieving the objectives sought.

(5) A procuring entity may encourage the procurement of environmentally friendly goods, works and services, within the limits of the adopted policy, by—

(a) developing and applying environmentally friendly product specifications and processes for product compliance verification;

(b) devising appropriate qualification and evaluation criteria enabling it to consider the environmental characteristics and benefits of submitted tenders; and

(c) ensuring that contract conditions include compliance with the relevant environmental standards and legislation applicable in Montserrat and any regional or international agreements to which Montserrat is a party; and

(d) establishing a mechanism of measuring the effectiveness in achieving the objectives sought.

14. Invitation to tender

(1) If a procuring entity is using open tendering it must publish a tender notice in accordance with regulation 44.

(2) If a procuring entity is using open tendering with pre-qualification under section 23(5) of the Act, the tender notice is not published but sent directly to all those suppliers who met the criteria for pre-qualification.

(3) The invitation to tender shall contain the following information—

(a) the name and address of the procuring entity;

(b) the nature, quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;

(c) the desired or required time for the supply of the goods or for the completion of the works or for the provision of the services;

(d) the means or conditions of obtaining the tender documents and the place from which they may be obtained;

(e) price if any, to be charged by the procuring entity for the tender document, such price being limited to the costs of reproduction and distribution;

(f) the address for the submission of tenders;

(g) the deadline for the submission of tenders;

(h) the place, hour and date for opening of tenders; and

(i) if relevant, the source of financing.

(4) The procuring entity shall, immediately after the first publication of the tender notice, issue the tender documents to all tenderers who have responded to the tender notice in accordance with the procedures and requirements specified in the invitation to tender.

15. Tender documents

(1) In open and restricted tendering, the procuring entity shall issue tender documents containing—

(a) the name and address of the procuring entity;

(b) the name, functional title and address of an officer or employee of a procuring entity who is authorised to communicate directly with and to receive communications directly from tenderers in connection with the procurement;

(c) a description of the procurement requirement in accordance with regulation 9, in the case of the procurement of—

(i) goods, the quantity (including unit of measurement), technical specifications, required time and place of delivery;

(ii) works, the scope and nature of the works, bills of quantities and materials or schedule of activities, location and work programme and schedule for the completion of the works;

(iii) non-consulting services, a definition of the required scope, performance and outputs of the services;

(d) the procedure and time limits for submission by tenderers of a request for clarification of the tender documents;

(e) the criteria and procedures relating to the qualifications of tenderers;

(f) the requirements as to documentary evidence or other information that has to be submitted by a prospective tenderer to demonstrate his qualifications;

(g) in the case of set asides and preferences, where applied, the eligibility requirements for participation;

(h) in the case that alternatives to the characteristics of the goods, works, services, contractual terms and conditions or other requirements set out in the tender documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared;

(i) in the case of a division into lots, any conditions applying to the award of lots;

(j) the period of time during which tenders shall be valid;

(k) the time, date, place and manner for the submission of tenders;

(l) the criteria to be used in the evaluation of tenders and the manner in which the criteria will be applied, including any proposed margin of domestic preference, in accordance with section 34(1)*(a)* of the Act;

(m) the terms and conditions of the procurement contract;

(n) notice of the right for review of an unlawful act, decision of, or procedure followed by, the procuring entity in relation to the procurement procedures;

(o) any formalities required where a tender is accepted for a procurement contract to enter into force, where applicable, the execution of a written contract, approval requirements and the estimated period of time following the dispatch of the notice of acceptance that requires approval; and

(p) any other prescribed information.

(2) Any fee charged to suppliers for the documents referred to in subregulation (1) shall reflect only the cost of producing the documents and providing them to suppliers.

(3) The tender documents shall be formulated to permit and encourage competition and such documents shall set out clearly and precisely all information necessary for a prospective tenderer to prepare a tender.

(4) A procuring entity shall use the appropriate standard tender documents and contract forms issued by the Head of Government Procurement Services.

(5) Any changes to the standard tender documents shall be introduced only through tender data sheets, or through special conditions of contract.

16. Requests for clarification

(1) Any request for clarification made in accordance with section 30(2) of the Act and regulation 20(6) may be made by a tenderer within the time period stated in the pre-qualification or tender documents but not less than five days before the deadline for the submission of applications to pre-qualify or tenders.

(2) The procuring entity shall respond to any request for clarification received from a tenderer within a reasonable time prior to the deadline for the submission of applications to prequalify or to tender and the time period provided shall be—

(a) sufficient to enable the tenderer to present its application to prequalify or tender in a timely manner;

(b) stated in the pre-qualification or tender documents; and

(c) not less than two days before the deadline for the submission of applications to pre-qualify or tenders.

(3) The time periods stated in subregulation (2) shall be subject to any extension of time granted for the submissions of applications to pre-qualify or tenders in accordance with section 30(3) of the Act.

17. Electronic government procurement

(1) All public procurement conducted under the Act and these Regulations may be undertaken using electronic means.

(2) A procuring entity may use electronic means to conduct all stages of the procurement proceedings, including publication of invitations to participate in public procurement, distributing the prequalification or tender documents to tenderers by free-of-charge download, inviting tenderers to submit their applications to prequalify, expressions of interest, tenders, quotations or proposals electronically; opening of tenders and proposals, evaluation of tenders, quotations and proposals and awarding procurement contracts.

(3) In carrying out a procurement through electronic means, a procuring entity may only use, or require the use of, electronic communication systems that are—

(a) free of charge and readily accessible to suppliers,

(b) generally available, or interoperable with other generally available systems, and

(c) accessible to people with disabilities.

(4) Specific regulations shall be issued under section 45 of the Act to give effect to subregulations (1), (2) and (3).

PART 3— PROCEDURAL PROVISIONS

18. Selection of procurement method

(1) In selecting a procurement method, the procuring entity shall consider—

(a) the estimated value of the procurement;

(b) the potential sources for the procurement, notably the competitiveness of the domestic and international market for the goods, works or services and the likely interest of potential domestic and international tenderers, given the size and nature of the requirement;

(c) the nature of the goods, works or services required; and

(d) the circumstances surrounding the procurement.

(2) When a procuring entity uses a procurement method other than open tendering to conduct public procurement of goods, works or services, the procuring entity shall —

(a) ensure that one or more of the conditions for use of the procurement method are met; and

(b) record the choice of the procurement method in writing in the annual procurement plan, if known, and in the record of procurement proceedings.

(3) A procuring entity shall, to the extent practicable, seek to promote competition irrespective of the procurement method used.

19. Procedure for open tendering

(1) In establishing the minimum tender submission period of section 23(4) of the Act, a procuring entity shall calculate the period of time provided to tenderers to submit their tenders from the date of publication of the invitation to tender or, where no invitation to tender is published, from the date of issuance of the tender documents.

(2) A procuring entity shall ensure that the minimum time periods provided to tenderers for submission of their tenders is not less than—

(a) for applications to prequalify in advance of open tendering: 21 days.

(b) for open tendering and request for proposals limited to domestic tenderers: 21 days.

(c) for open tendering and request for proposals advertised internationally: 30 days.

(d) for restricted tendering: 21 days.

(e) for requests for quotations: seven days.

(3) In application of section 30(4) of the Act, a procuring entity shall open tenders in public and all tenderers have the right to attend the public opening of the tenders.

(4) A procuring entity shall—

(a) open in public all tenders received by the deadline for submission of tenders;

(b) read aloud and record the name of each tenderer that submitted a tender, the total tender price of each tender, any discounts offered in the tender and the same information relating to any alternative tender offered if such has been requested or permitted by the tender documents; and

(c) record the information disclosed under *(a)* and *(b)* in the record of public opening in the prescribed form.

(5) A procuring entity shall not discuss the merits of any tender or reject any tender that has been received by the deadline for submission of tenders during the public opening of the tenders.

(6) A procuring entity shall promptly send a copy of the record of public tender opening to all tenderers whose tenders were opened during the public opening of tenders.

20. Procedure for pre-qualification

(1) If a procuring entity is using the open tendering with pre-qualification, it shall publish an invitation to pre-qualify in accordance with regulation 44.

(2) An invitation to pre-qualify must contain—

(a) the name and address of the procuring entity;

(b) a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, the required time for the supply of the goods, the completion of the construction or the provision of the services;

(c) the criteria, requirements and procedures to be used for establishing the qualifications of tenderers, in conformity with section 18 of the Act;

(d) the means and location by which interested tenderers may obtain the prequalification documents; and

(e) the manner, place and deadline for submitting applications to prequalify and, if already known, the manner, place and deadline for submitting tenders.

(3) A procuring entity shall provide a set of prequalification documents to every supplier that requests them in response to the invitation to prequalify and that pays the fee, if any, charged by the procuring entity for those documents.

(4) Any fee charged to suppliers for the documents referred to in subregulation (3) shall reflect only the cost of producing the documents and providing them to suppliers.

(5) A procuring entity shall ensure that the prequalification documents include the following information—

(a) instructions for preparing and presenting prequalification applications;

(b) any documentary evidence or other information that tenderers must present to demonstrate their qualifications; and

(c) the name, functional title and address of one or more officers or employees of the procuring entity who are authorised to communicate directly with and to receive communications directly from tenderers in connection with the prequalification proceedings without the intervention of an intermediary.

(6) The procuring entity shall respond to any requests received from a supplier for clarification of the prequalification documents in accordance with section 30(2) of the Act.

(7) The procuring entity shall take a decision with respect to the qualifications of each supplier presenting an application to prequalify and shall apply only the criteria and procedures set out in the invitation to prequalify and in the prequalification documents.

(8) Only suppliers that have been prequalified shall be entitled to participate further in the procurement proceedings.

(9) A procuring entity shall promptly notify each supplier that submitted an application to prequalify whether or not it has been prequalified and, in so doing, shall communicate to each supplier that has not been prequalified the reasons for its failure to prequalify.

(10) A procuring entity shall invite all prequalified suppliers to submit a tender in the subsequent procurement proceedings.

21. Procedure for two-stage tendering

(1) The provisions of the Act and these Regulations for open tendering shall apply to two-stage tendering procedures except in so far as this regulation provides.

(2) The tender documents shall call upon tenderers to present, in the first stage of two-stage tendering procedures, initial tenders containing their proposals without a tender price.

(3) The tender documents may solicit tenders relating to the technical, quality or performance characteristics of the subject matter of the procurement, contractual terms and conditions of supply and, where relevant, the professional and technical competence and qualifications of the tenderers.

(4) A procuring entity may, in the first stage, engage in discussions with tenderers whose initial tenders have not been rejected pursuant to the provisions of the Act or these Regulations concerning any aspect of their initial tenders.

(5) Without prejudice to subregulation (4), when a procuring entity engages in discussions with any tenderers, it shall extend an equal opportunity to participate in discussions on their tenders to all tenderers.

(6) In the second stage of two-stage-tendering procedures, a procuring entity shall invite all tenderers whose initial tenders were not rejected in the first stage to present final tenders with prices in response to a revised set of terms and conditions of the procurement, if any.

(7) In revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by—

(a) deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of the Act and these Regulations; or

(b) deleting or modifying any criterion for examining or evaluating tenders initially provided and adding any new criterion that conforms to the requirements of the Act and these Regulations, only to the extent that the deletion, modification or addition is required as a result of changes made in the technical, quality or performance characteristics of the subject matter of the procurement.

(8) Any deletion, modification or addition made pursuant to subregulation (7) shall be communicated to tenderers in the invitation to present final tenders.

(9) A tenderer who does not wish to present a final tender may withdraw from the tendering procedures without penalty.

(10) The final tenders shall be evaluated with a view to ascertaining the successful tender.

22. Procedure for restricted tendering

(1) The procuring entity shall invite tenders by writing directly, on the same day, to—

(a) all the tenderers who can supply the subject matter of procurement in accordance with the provisions of section 25(1)*(a)* of the Act; or

(b) an adequate number of tenderers who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition, in case of section 25(1)*(b)* of the Act.

(2) For the purposes of subregulation (1)*(b),* the procuring entity may select tenderers to be invited from a register of registered suppliers established in accordance with section 29 of the Act.

(3) In all other respects, the provisions relating to open tendering apply.

23. Procedure for requests for quotation

(1) Quotations shall be solicited from at least three suppliers, in so far as there are sufficient suppliers.

(2) The letter of request for quotations and any attachments shall contain—

(a) the full name and address of the procuring entity;

(b) a full description of the goods, works or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;

(c) the quantities of any goods to be supplied and the required time and place of delivery, any requirements for such goods;

(d) in the case of works, bills of quantities, the location and the required time for their completion;

(e) in the case of services, a list of targets to be achieved by a service provider, list of specific tasks or duties to be performed, a schedule of deliverables or outputs against which the achievements of the services shall be measured, the duration of the services and method of measuring the performance of services delivered;

(f) the qualification requirements a tenderer must meet to be awarded the contract;

(g) information of any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges customs duties and taxes, that are to be included in the price;

(h) the period during which the quotations are to remain valid;

(i) the form of contract or Purchase Order, to include all conditions and terms of payment;

(j) all documents and information requirements that shall be submitted as part of the quotation;

(k) a statement that the procuring entity does not bind itself to accept any quotation and may reject all quotations;

(l) the manner in which tenderers may seek clarification on the request for quotations;

(m) the manner in which the quotations shall be submitted; and

(n) the place, date and time for the submission of quotations.

(3) All prospective tenderers shall be provided with the same information and shall be assured of equal opportunities to obtain additional information on a timely basis.

(4) Each tenderer is permitted to give only one price quotation and is not permitted to change its quotation and no negotiations shall take place between the procuring entity and a tenderer with respect to a quotation presented by the tenderer.

(5) The successful quotation shall be the lowest-priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

24. Procedure for direct contracting

(1) In the case of direct contracting, following the approval of the Public Procurement Board of the use of direct contracting, the letter of invitation shall be sent to the selected tenderer and shall contain—

(a) the full name and address of the procuring entity;

(b) instructions for submission of an offer;

(c) a full description of the goods or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;

(d) the quantities of any goods, or the desired results of any service to be supplied or provided and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods or management and reporting requirements of a service provider;

(e) whether any alternatives to the required specifications or characteristics of the goods or services, or to other contractual conditions, are to be permitted;

(f) the period during which the offer is to remain valid;

(g) the form of contract, to include all conditions and terms of payment;

(h) a statement of the currency in which the supplier or service provider will be paid; and

(i) a statement that the procuring entity does not bind itself to accept the offer.

(2) The procuring entity shall scrutinise any offer received and, where necessary, negotiate with the supplier with a view to ensuring that the requirements for the goods or services are complied with, and the price quoted is not excessive and is in line with reasonable expectations.

(3) The procuring entity shall not make any reductions in the quality of the goods or services in order to achieve cost savings.

(4) In accordance with section 27(2) of the Act, the letter of invitation shall where time permits be sent to as many suppliers as practicable.

(5) If a procuring entity awards a public contract by direct contracting in the event of a declared public emergency in accordance with section 27(1)*(d)* of the Act, without prior approval of the Public Procurement Board, the procuring entity shall, as soon practicable after the end of the declared public emergency, submit to the Public Procurement Board a report setting out the—

(a) declaration reference;

(b) details of the good or service procured;

(c) supplier who was awarded the contract;

(d) rationale for the award of the contract;

(e) scope or value of the contract;

(f) time limits imposed; and

(g) steps taken by the procuring entity to ensure fairness and value for money.

(6) If a procuring entity intends, with the approval of the Public Procurement Board, to award a public contract by direct contracting owing to a circumstance of extreme urgency in accordance with section 27(1)*(c)* of the Act, the procuring entity shall—

(a) seek offers from as many capable suppliers as practicable in the time available;

(b) record the facts and reasons relied upon for the award; and

(c) limit the scope, value, and duration of any resulting contract to what is strictly necessary to address the immediate need until a competitive process can reasonably be undertaken.

25. Examination of tenders

(1) Prior to the detailed evaluation of tenders, the Evaluation Panel shall carry out a preliminary examination of the tenders to determine whether or not —

(a) each tender is substantially responsive to the requirements of the tender documents;

(b) the documents have been properly signed; and

(c) the tenders are otherwise generally in order.

(2) Where only price-related criteria have been selected, the Evaluation Panel shall evaluate on a common basis opened tenders in order to determine the cost or price to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs or prices.

26. Substantial responsiveness

(1) All tenders shall be checked for substantial responsiveness to the terms and conditions of the tender documents.

(2) For the purposes of this section, a tender is considered to be substantially responsive if it conforms to all the terms, conditions and specifications of the tender document without material deviation or reservations.

(3) Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following—

(a) failure to sign the tender form and price schedules by the authorised person or persons;

(b) failure to satisfy eligibility requirements;

(c) failure to satisfy the tender validity period;

(d) inability to meet the critical delivery schedule or work schedule clearly specified in the tender documents, where such schedule is a crucial condition with which tenderers must comply;

(e) failure to comply with minimum experience criteria as specified in the tender documents;

(f) conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;

(g) inability to accept the price adjustment formulae of the tender documents;

(h) stipulating price adjustment when fixed price tenders were invited;

(i) subcontracting in a substantially different amount or manner than that permitted; or

(j) failure to submit major supporting documents required by the tender documents to determine substantial responsiveness of a tender.

(4) Material deviations to the technical requirements of the tender documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a tender include the following —

(a) failure to tender for the required scope of work as instructed in the tender documents and where failure to do so has been indicated as unacceptable;

(b) failure to quote for a major item in the package;

(c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended; or

(d) presentation of unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.

(5) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence.

(6) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

27. Request for clarification of tender

(1) A procuring entity may request a tenderer to clarify its tender in order to assist in the examination, evaluation and comparison of tenders but no advantage shall be sought, offered or permitted to change any matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive.

(2) Notwithstanding subregulation (1)—

(a) a procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders and the procuring entity shall give prompt notice of any such correction to a tenderer that submitted the tender;

(b) a procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the tender documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the tender; and

(c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

28. Evaluation of tenders

(1) The most advantageous tender under section 31(2) of the Act means a compliant tender that achieves the best combination of price together with any of the following criteria appropriate to the nature and method of procurement—

(a) quality, including technical merit, functional characteristics, accessibility, social or environmental characteristics and trading conditions;

(b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned have a significant impact on the level of performance of the contract;

(c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion;

(d) cost-effectiveness based on life-cycle costing including costs relating to acquisition, costs of use, such as consumption of energy and other resources, maintenance costs, and end of life costs such as collection and recycling costs; or

(e) any other objective price or cost related criteria linked to the subject matter of the contract.

(2) Non-price award criteria shall whenever possible be quantified in monetary terms or expressed in the form of pass or fail requirements and set out in full in the bidding documents. Where it is not possible to quantify those criteria in such terms, the bidding documents shall either —

(a) specify the relative weighting which it gives to each of the criteria chosen to determine the best value for money, expressed by providing for a range with an appropriate maximum spread, or when not feasible;

(b) specify the criteria in descending order of importance.

(3) All evaluation criteria to be applied and the method for their evaluation shall be set out clearly and unequivocally in the tender document.

29. Abnormally low tenders

(1) Subject to subregulation (2), a procuring entity may, in the procurement of goods, works and services, reject a tender if it has determined that the price, in combination with other constituent elements of the tender, is abnormally low in relation to the subject matter of the procurement such that it raises material concerns on the part of the procuring entity as to the ability of the tenderer to perform the procurement contract satisfactorily for the offered price.

(2) A procuring entity shall not reject a tender as abnormally low under subregulation (1) unless the procuring entity—

(a) requested in writing from the tenderer a written clarification of its tender, including a detailed price analysis of its tender price in relation to the subject matter of the procurement contract, scope, methodology,

schedule, allocation of risks and responsibilities and any other requirements of the tender documents; and

(b) having taken account, the information provided by the tenderer in response to a request under paragraph *(a)* and the information included in the tender,

the procuring entity determines that the tenderer has failed to demonstrate its ability to perform the procurement contract satisfactorily for the offered price.

(3) The procuring entity shall promptly communicate to the tenderer concerned its decision to reject the tender, including the reasons for the decision.

(4) The procuring entity shall include all communications with the tenderer under this regulation in the record of the procurement proceedings.

30. Application of domestic preferences

(1) Where so indicated in the tender documents and strictly in accordance with any policy for national preference issued by the Head of Government Procurement Services, a margin of preference may be applied to eligible tenders whenever a procuring entity uses the open tendering internationally.

(2) Any policy issued under section 34 of the Act shall clearly state the —

(a) eligibility for the margin of preference, in terms of ownership, location of tenderer or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;

(b) documentation required as evidence of eligibility for the margin of preference; and

(c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(3) The procuring entity may only apply the preference where it is satisfied that the tenderers benefiting from the limitation have the capacity and experience necessary to provide the required goods, works or services, and are able to submit responsive tenders which, in particular, meet the terms and conditions, qualification criteria and technical specifications set out in the tender documents.

(4) In the case of goods contracts, preference may be applied to tenders that contain —

(a) goods manufactured exclusively in Montserrat, or

(b) goods partially manufactured or assembled in Montserrat where the tenderer establishes to the satisfaction of the procuring entity that the proportion of national value

added to the total value of those goods is equal to or greater than 30% of the ex-works (EXW) price of the goods offered.

(5) In establishing the national value added in accordance with subregulation (4)(b), the procuring entity shall take account of the value of national labour, raw materials or components manufactured within Montserrat as well as the value of any manufacturing and/or assembly carried out in facilities within Montserrat.

(6) As part of their tenders, tenderers are required to certify that the necessary manufacturing capacity exists where national value is to be added.

(7) In the case of works contracts, preference may be applied to tenders that employ 50% or more of national labour. 'National labour' includes—

(a) skilled or unskilled labour and may include management input; and

(b) may be provided by the tenderer directly where that is a national contractor or indirectly by foreign contractors through sub-contracting of Montserrat labour or through association with national contractors that employ Montserrat labour.

(8) The methods for applying such preferences shall be set out clearly in the bidding document.

31. Notice of intention to award

(1) Subject to subregulation (3), when a procuring entity identifies a successful tender the procuring entity shall promptly issue a notice to each tenderer that submitted a tender of its intention to award a procurement contract at the end of the standstill period of ten days from the date of notification of its intention.

(2) A notice issued under subregulation (1) must contain the following information—

(a) the name and address of the tenderer that submitted the successful tender;

(b) in respect of each tenderer whose tender was evaluated as unsuccessful, a brief explanation of the reason(s) for the tender being evaluated as unsuccessful;

(c) a brief description of the goods, works or services;

(d) the procurement contract price or, where the successful tender was determined on the basis of price and other non-price criteria, the procurement contract price and a summary of other characteristics and relative advantages of the successful tender; and

(e) the specific end date of the ten-day standstill period specified in the tender documents.

(3) Subsection (1) does not apply if—

(a) the procurement contract price is less than EC$100,000;

(b) the procuring entity used the direct contracting method;

(c) the procuring entity awards a call-off procurement contract under a framework agreement that has already been awarded in accordance with section 23(7) of the Act; or

(d) the procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period.

(4) Notwithstanding subregulation (3)*(d)*, a procuring entity shall not proceed without a standstill period unless the procuring entity has obtained the prior written approval of the Financial Secretary, and the procuring entity shall record its reasons for proceeding without a standstill period in the record of the procurement proceedings.

(5) Where there is no challenge of the decision of the procuring entity under Part 9 of the Act before the expiry of the standstill period or where there is no standstill period, the procuring entity may dispatch a notice of acceptance to the successful tenderer.

(6) When dispatching a notice of acceptance to the successful tenderer, the procuring entity shall instruct the successful tenderer to complete any contractual requirements within a specified period of time and to sign the procurement contract.

(7) The procuring entity shall dispatch the notice of acceptance to the successful tenderer during the tender validity period.

32. Supplier Debriefing

(1) A procuring entity shall, upon request, communicate promptly to a tenderer the reason for the rejection of its application to pre-qualify, or of its tender.

(2) Any debriefing shall be provided in writing, within a reasonable period of the receipt of the request and in any case before the end of the standstill period, if there is one.

(3) The debriefing shall state the stage of the evaluation at which the submission was rejected and —

(a) provide brief details of any material deviation, reservation or omission leading to rejection of the submission; or

(b) state that a submission was substantially responsive, but failed to offer the most advantageous tender, as required.

(4) Except in so far as they are identified, the debriefing shall not provide details of any other submission, other than information that is publicly available from tender openings or published notices.

33. Contract award notice

(1) The procuring entity shall, within 14 days of the signature of the contract, publish a contract award notice in accordance with regulation 44, where the contract award value is greater than EC$100,000.

(2) Contract award notices must contain—

(a) the name of the successful supplier;

(b) the names of all tenderers submitting tenders;

(c) the contract commencement and expiry dates;

(d) the date of contract signature;

(e) a short description of the contract;

(f) the procurement process used; and

(g) contract award value.

PART 4— PROCEDURES FOR PROCUREMENT OF CONSULTANCY SERVICES

34. Procedure for requests for proposals

Where a procuring entity uses a request for proposals for the procurement of consulting services from consulting firms, it shall—

(a) invite expressions of interest by publishing an invitation to participate in public procurement in accordance with regulation 44 which shall set out the objectives, goals, and scope of the assignment and provide background information to facilitate preparation of expressions of interest;

(b) prepare a shortlist of no fewer than three, where available, and no more than six fully qualified consulting firms from among those firms that expressed interest; and

(c) ensure that all shortlisted firms have the necessary staffing, managerial and organisational capabilities and relevant experience required to perform the services satisfactorily.

35. Terms of reference

The scope of the consultancy services shall be described in terms of reference. These shall—

(a) define clearly the objectives, goals, and scope of the assignment and provide background information to facilitate the consultants' preparation of their proposals;

(b) list qualifications and experience required and the services and activities necessary to carry out the assignment and the expected outputs;

(c) specifically outline, if transfer of knowledge or training is a required component of the services, sufficient details of the training needs to enable consultants to estimate the required resources;

(d) be sufficiently flexible to allow consultants to propose their own methodology and staffing; and

(e) be commensurate with the available budget.

36. Shortlisting

(1) In establishing the short list pursuant to Regulation 33(1)*(b)*, the procuring entity shall, to the greatest extent possible, ensure that such short list comprises consultants of the same category and similar capacity and business objectives

(2) For assignments with an estimated value below than EC$75,000, the short list may be established from market knowledge or any registered suppliers or other sources of information.

37. The request for proposals

(1) The request for proposals shall provide shortlisted tenderers and consultants with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity including, in particular the —

(a) nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;

(b) criteria to be used in evaluating and comparing proposals, and their relative weights as compared to price;

(c) contractual terms of the procurement and the manner of entry into force of the contract;

(d) instructions for preparation and submission of proposals and the place and deadline for submission of proposals;

(e) final evaluation procedures to be applied; and

(f) such matters as may be prescribed in the standard bidding documents.

(2) The price of a proposal shall be considered only after completion of the technical evaluation.

38. Opening of proposals

(1) Unless otherwise stated, a procuring entity shall require tenderers simultaneously to submit the technical and financial components of their proposals in separately sealed envelopes by the deadline stipulated in the request for proposals in accordance with Regulation 37(1)*(d).*

(2) During the public opening of proposals, the procuring entity shall open only the envelope containing the technical component of each duly submitted proposal.

(3) Following the evaluation of the technical components of the proposals, the procuring entity shall conduct a second public proposal opening, at which it shall publicly open the envelopes containing the financial components of those proposals that have been evaluated as technically response, read aloud the technical scores of those proposals, open the envelopes containing the financial components of those proposals and read aloud the prices of those proposals and record them in the record of public opening.

39. Evaluation based on quality and cost

(1) The request for proposals shall provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

(2) The evaluation of proposals shall be carried out in two stages—

(a) the quality of the proposals is evaluated on the basis of the technical envelope, and

(b) the cost of the proposals is evaluated on the basis of the financial envelope.

(3) Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded.

(4) In assessing the quality, the evaluators shall consider each technical proposal, taking into account —

(a) the consultant's relevant experience for the assignment,

(b) the quality of the methodology and/or workplan proposed,

(c) the qualifications of the key staff proposed, and

(d) transfer of knowledge, if required in the terms of reference.

(5) Each criterion shall be marked on a scale of 1 to 100 and then the marks shall be weighted to become scores. The weights to be used shall be appropriate to the specific assignment and shall be set out in the request for proposals.

(6) A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the terms of reference or it fails to achieve a minimum technical score specified in the request for proposals.

(7) The consultants whose technical proposals do not meet the minimum qualifying mark or are considered non-responsive to the request for proposals and terms of reference shall be notified by the procuring entity that their financial proposals will not be evaluated and their financial proposals shall be returned to them unopened after the signature of the contract with the successful consultant or at the conclusion of the process.

(8) The procuring entity shall simultaneously notify the consultants that have secured the minimum qualifying mark, of the date, time, and place set for opening the financial proposals.

(9) The financial proposals shall be opened publicly, in the presence of representatives of the consultants and any member of the public who choose to attend and the name of the consultant, where the technical points and the total prices shall be read aloud and recorded when the financial proposals are opened.

(10) In considering the financial proposals, any arithmetical errors shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency as stated in the request for proposals.

(11) The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the request for proposals.

(12) The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. The weight for cost may be 20 points out of a total score of 100 but shall depend on the nature of the services to be procured. The proposed weightings for quality and cost shall be specified in the request for proposals. The firm obtaining the highest total score shall be invited for negotiations.

(13) Negotiations shall include discussions of the terms of reference, the methodology, staffing, the government entity's inputs and special conditions of the contract. These discussions shall not substantially alter the original terms of reference or the terms of the contract.

(14) Negotiations shall not include price unless the selection method is based on quality only or direct contracting.

(15) If the negotiations fail to result in an acceptable contract within a period of 14 days, the procuring entity shall terminate the negotiations and invite the next ranked firm for negotiations. The first-ranked consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the procuring entity shall not reopen the earlier negotiations.

(16) After negotiations are successfully completed, the procuring entity shall, immediately at the end of the standstill period, where such applies, notify other firms on the short list that they were unsuccessful.

40. Evaluation based on quality within a fixed budget

(1) This evaluation method shall be used when the assignment is simple and can be precisely defined, and when the budget is fixed.

(2) The request for proposals shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget.

(3) Evaluation of all technical proposals shall be carried out first as set out in regulation 39(5)-(8). The priced proposals shall then be opened in public, and prices shall be read out aloud.

(4) Proposals that exceed the indicated budget shall be rejected.

(5) The consultant who has submitted the highest ranked technical proposal among the remaining proposals shall be selected and invited to negotiate a contract.

41. Evaluation based on least cost

(1) This method shall be used for assignments of a standard or routine nature (financial audits, architectural and engineering design for non-complex works, etc.) where well-established practices and standards exist, and in which the contract amount is less than EC$100,000.

(2) A minimum qualifying mark for the quality is established on the basis that all proposals above the minimum compete only on cost. The minimum qualifying mark shall be stated in the request for proposals.

(3) Technical proposals are opened in public first and evaluated. Those securing less than the minimum qualifying mark are rejected and the financial component of the proposals which are have passed technical evaluation are opened publicly.

(4) The firm whose proposal offers the lowest price is selected and the contract is awarded without negotiations.

42. Selection of individual consultants

(1) Individual consultants shall be employed on assignments for which—

(a) a team of experts is not required,

(b) no additional outside (home office) professional support is required, and

(c) the experience and qualifications of the individual are the paramount requirement.

(2) The procuring entity shall prepare the terms of reference and request for expressions of interest requesting information on the consultants' experience and competence relevant to the assignment.

(3) Submissions shall be evaluated and the consultant with the most appropriate qualifications and experience and references shall be asked to submit a concise combined technical and financial proposal.

(4) The proposal shall be assessed to ensure that the requirements of the terms of reference are still met and that the proposal is acceptable given the estimated budget.

(5) If the proposal is acceptable, the consultant will be invited to negotiate the contract.

(6) No contract award notice is required to be published for the selection of individual consultants.

43. Direct contracting of consulting services

(1) The Public Procurement Board may approve the procurement of consulting services through direct contracting—

(a) where only one consultant is qualified, or only one consultant has experience of exceptional worth for the assignment;

(b) where an existing procurement contract for consulting services may be extended to provide additional consulting services of a similar nature where such extension is properly justified, the performance of the consultant is satisfactory, and no advantage may be obtained by competition; or

(c) for a task that represents a natural continuation of previous work recently carried out by a consultant, where continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the original consultant preferable to a new competition and the performance of the consultant in the original assignment is satisfactory.

~~where~~ **(2)** In the case of direct contracting, a request for proposal shall be sent to the selected consultant in accordance with regulation 37.

(3) In the case of an individual consultant, he shall be asked to prepare a proposal.

(4) The procuring entity shall scrutinise any proposal received and, where necessary, negotiate with the consultant with a view to ensuring that the requirement for the consulting services are complied with, and the price quoted is not excessive and is in line with reasonable expectations.

(5) The procuring entity shall not make any reductions in the quality of the services in order to achieve cost savings.

PART 5— TRANSPARENCY AND INTEGRITY

44. Publication of notices

(1) Where a notice is required to be published under section 36(1) of the Act, the requirement for publication is satisfied if the contents of the notice are disseminated through both of the following means—

(a) electronic means, including the Government of Montserrat website; and

(b) a local public radio station.

(2) A notice that is required to be published under the Act shall also be notified in the next issue of the Official Gazette or any other Government of Montserrat information channel after publication and shall include a statement of the date, place and method in which the notice was published.

(3) Advertising may be limited to domestic suppliers where the works, goods and services are available on competitive terms and the estimated value of the contract does not exceed [EC$5,000,000] in the case of works, [EC$100,000] in the case of goods or services or [EC$75,000] in the case of consulting services.

(4) Where subregulation (3) does not apply, invitations to tender or to pre-qualify under open tendering, requests for proposals shall also be in published in any media required by an international or regional agreement entered into by Montserrat in respect of public procurement and in any event in at least one English language newspaper, specialised journal or other printed media with adequate circulation to attract foreign competition or on widely read internet websites.

45. Records and Reporting

(1) The procuring entity shall maintain an easily accessible and retrievable individual record for each procurement requirement, which shall be marked with the relevant procurement reference number.

(2) Where appropriate, the record shall contain the originals and/or copies of all information, documents and communications related to that procurement proceeding and shall include at least the following—

(a) a brief description of the subject matter of the procurement;

(b) the names and addresses of every supplier who presented applications to pre-quality, tenders or expressions of interest the name and address of the supplier who entered the procurement contract and the procurement contract price;

(c) copies of published invitations to prequalify, requests for expressions of interest or tender;

(d) the prequalification documents, tender documents, requests for proposals, quotations or offers used in the conduct of the procurement proceedings, as well as all modifications and clarifications thereto;

(e) in procurement proceedings in which the procuring entity limits the participation of suppliers, a statement of the reasons and circumstances relied upon by the procuring entity for imposing such a limit;

(f) if the procuring entity uses a method of procurement other than open tendering, a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of such other method;

(g) in the case of procurement by means of an electronic reverse auction, a statement of the reasons and circumstances relied upon by the procuring entity for the use of the auction and information about the date and time of the opening and closing of the auction;

(h) in the case of a framework agreement procedure, a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected;

(i) if the procurement is cancelled under section 33 of the Act, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision to cancel the procurement;

(j) if no standstill period was applied, a statement of the reasons and circumstances relied upon by the procuring entity in deciding not to apply a standstill period;

(k) in the case of a challenge or appeal, a copy of the complaint and the appeal, as applicable, and a copy of all decisions taken by the procuring entity and the Independent Adjudicator in the relevant challenge and review proceedings and the reasons therefor;

(l) information relating to the qualifications, or lack thereof, of suppliers that presented applications to pre-qualify or tenders;

(m) if a submission is rejected on the basis of an abnormally low tender, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;

(n) if a supplier is excluded from the procurement proceedings on the basis of a prohibited practice or collusive practice, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;

(o) for each tender, proposal or quotation submitted, the price and a summary of the other principal terms and conditions;

(p) a report of the evaluation of tenders, including the application of any domestic preference, and the reasons on which the procuring entity relied to justify any rejection of tenders submitted during the tendering or auction;

(q) the procurement contract or, in the case of a framework agreement procedure, in addition a summary of the principal terms and conditions of the framework agreement or a copy of any written framework agreement that was concluded and any amendments thereto;

(r) a declaration of interests disclosed by a procurement officer, member of the Public Procurement Board or Evaluation Panel disclosed under section 38(2) of the Act; and

(s) copies of contract award notices published.

(3) The period of time during which the record of procurement proceedings shall be maintained shall be in accordance with the applicable legislation of Montserrat.

(4) The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(5) The record or selected parts of the record shall, on request, be made available to any person having a legitimate interest after a tender has been awarded, unless any portion of the record is required to be disclosed earlier pursuant to law, or by order of the Head of Government Procurement Services, the Public Procurement Board, the Independent Adjudicator or a competent court.

(6) Procuring entities shall submit report summaries on their procurement activities to the Head of Government Procurement Services in accordance with templates and instructions issued by the Head of Government Procurement Services.

46. Conflict of interest declaration

(1) The Head of Government Procurement Services shall prepare a declaration of interests form for completion by—

(a) a member of the Public Procurement Board;

(b) a member of a Departmental Procurement Committee;

(c) a member of an Evaluation Panel;

(d) the Independent Adjudicator

in any matter that comes before them or in any tender to be evaluated.

(2) The persons listed in subregulation (1) shall sign the declaration immediately on appointment or reappointment.

(3) The declaration shall include at least —

(a) a statement that the person does not currently have any conflict of interest as identified in section 38(3) of the Act; or

(b) the disclosure of any existing potential conflicts of interest as identified in section 38(3) of the Act; and

(c) a statement that the person understands that if any such conflict of interest arises during the course of the procurement in question, it shall be disclosed.

(4) Any disclosure made under subregulation (3)*(b)* or *(c)* shall be forwarded immediately to the accounting officer or, in respect of the Independent Adjudicator, the Head of Government Procurement Services.

(5) In respect of the persons listed in subregulation (1)*(a)*-*(c)*, the declaration shall include—

(a) a statement that the person undertakes to abide by any decision of the accounting officer in respect of a disclosure made pursuant to subregulation (3)*(b)* or *(c);*

(b) an undertaking not, without the approval of the Chairperson, to vote on a matter in which they declare an

interest or have their vote disregarded if they vote without the approval of the Chairperson; and

(c) a statement that they accept that they may be subject to disciplinary proceedings under the public service law for infringements of section 39 of the Act.

(6) In respect of the Independent Adjudicator the declaration shall include a statement that he or she undertakes to abide by any decision of the Head of Government Procurement Services in respect of a disclosure made pursuant to subregulation (3)*(b)* or *(c)*.

PART 6— CHALLENGE PROCEDURES

47. Independent Adjudicator

(1) The Independent Adjudicator shall be a legally qualified individual appointed by the Financial Secretary in consultation with the Attorney General for a period of three years and shall be eligible for reappointment for one additional term.

(2) The office of Independent Adjudicator shall become vacant if the Independent Adjudicator dies, resigns by instrument in writing addressed to the Financial Secretary or whose appointment is revoked where he or she —

(a) becomes bankrupt;

(b) is convicted of an offence under the Act;

(c) has engaged in or is engaging in conduct which, in the opinion of the Financial Secretary, disqualifies the appointee from holding office, including conduct reasonably considered to be prejudicial to the interest of the Government; or

(d) otherwise fails to carry out the functions of the office in accordance with the Act and Regulations.

(3) The Independent Adjudicator shall—

(a) conduct the review independently and impartially in accordance with this Part; and

(b) in all respects relating to their status and ethical standards, be bound by the rules applicable to public servants; and

comply with regulation 46.

(4) The Independent Adjudicator may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Independent Adjudicator.

(5) The Head of Government Procurement Services shall provide—

(a) a Secretariat to the Independent Adjudicator which shall be responsible for the organisation and management of any appeal; and

(b) an appropriate meeting venue, equipment and machinery and other supplies necessary for the performance of the functions of the Independent Adjudicator.

48. Appeal procedure

(1) Where, following review by the procuring entity under section 43(2) of the Act, a tenderer decides to appeal to the Independent Adjudicator in accordance with section 44 of the Act, the tenderer may submit an appeal to the Independent Adjudicator through the Secretariat maintained by the Head of Government Procurement Services.

(2) A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Independent Adjudicator as suitable for the purposes of such representation.

(3) The appeal shall be in writing and must —

(a) be provided in the form provided by the Secretariat;

(b) set out the grounds of the appeal;

(c) state whether the procuring entity has issued a decision in accordance with section 43(2) of the Act, and if it has done so, the reasons why the tenderer is dissatisfied with them; and

(d) contain copies of any documentary evidence relied upon in support of the appeal.

(4) The Secretariat shall record receipt of the appeal in a register and assign it a case reference number.

(5) Upon recording receipt, the Secretariat shall immediately notify the procuring entity against whom the appeal has been made (the respondent) of the appeal and provide a complete copy of the appeal and attachments.

(6) Within five working days of the receipt of the notification from the Secretariat, the respondent shall submit to the Secretariat a reply containing the following documents —

(a) a written reply to the appeal in the form provided by the Secretariat; and

(b) copies of any documentary evidence relied upon in support of the reply.

(7) The failure of a respondent to submit a reply within the specified period shall not prevent the conduct of the appeal and the respondent shall remain bound by any decision of the Independent Adjudicator.

(8) The Independent Adjudicator shall, if it is satisfied that the appeal was duly served on the respondent and the party has failed to serve a reply without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

(9) Following receipt of the reply, the Secretariat shall collate all the relevant documents into a single case file and —

(a) notify the commencement of the appeal to the parties and provide them with a copy of the case file and the procedural instructions for the appeal; and

(b) submit the case file to the Independent Adjudicator

(10) The Secretariat shall simultaneously notify suppliers and any governmental authority whose interests are affected or are likely to be affected by the review in accordance with section 44(5) of the Act.

49. Conduct of appeal

(1) The Independent Adjudicator shall, taking into account the nature of the case defined in the appeal and the reply, determine the order, time and place of its any hearing it intends to hold and this shall be communicated to the parties by the Secretariat.

(2) At the request of the parties, the Independent Adjudicator may, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties proceed to make its decision in the absence of a hearing.

(3) Any hearing shall take place in the manner provided for by the Independent Adjudicator.

(4) If one of the parties, despite having received notice of the hearing, fails to appear, the Independent Adjudicator, if satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.

(5) The hearing shall be closed to the public save that, with the consent of the Independent Adjudicator, persons having a justifiable interest in the proceedings may be admitted.

(6) The Secretariat shall, for each hearing, take and keep minutes or ensure that such are taken and kept, recording the time, place and the names of those attending together with a summary record of the meeting or hearing.

(7) The Independent Adjudicator shall, when satisfied that all contentions and evidence of the parties have been submitted, conclude the proceedings.

(8) The Independent Adjudicator shall deliver its decision to the Secretariat within fifteen working days of the date of commencement, subject to any adjournment that proves necessary in the opinion of the Independent Adjudicator which may not exceed a further ten working days.

(9) The decision of the Independent Adjudicator shall be confined to the issues raised by the appeal and reply.

(10) The Secretariat shall immediately notify all parties of the decision delivered by the Independent Adjudicator.

(11) The decision of the Independent Adjudicator shall be final and binding on the parties, without prejudice to the rights of the parties to bring a subsequent claim before the High Court.

50. Evidence

(1) All relevant documentary evidence relied upon by the parties in support of their claims and replies shall be put before the Independent Adjudicator in the form of copies of the appeal and reply.

(2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Independent Adjudicator, it is relevant and only with the Independent Adjudicator's prior written consent.

(3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.

(4) The Independent Adjudicator may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

PART 7—DEBARMENT

51. Grounds for debarment

The Public Procurement Public Procurement Board may debar a tenderer who participates, seeks to participate, or has participated in, a procurement in Montserrat if it is satisfied that a supplier has—

(a) been convicted under the laws of Montserrat involving a prohibited practice or other similar offence that calls into serious question the honesty of the person in accordance with section 40(6) of the Act; or

(b) in or in relation to a submission made in Montserrat, has provided false or misleading information or has failed to disclose material information concerning its eligibility in accordance with section 18(7) of the Act.

52. Initiating Debarment

(1) If any officer of a procuring entity suspects that a supplier participating in a procurement procedure or an affiliate of such supplier falls within the scope of regulation 51 they shall bring this to the attention of the Head of Government Procurement Services together with any documentary evidence at his disposal.

(2) For the purposes of this Part, an 'affiliate' shall mean business concerns, organisations or individuals which, directly or indirectly—

(a) either control or have the power to control the supplier, or

(b) is controlled by or may be subject to the control of the supplier, and

(3) indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organised following the debarment or proposed debarment of a supplier which has the same or similar management, ownership, or principal employees as the supplier that was debarred or proposed for debarment.

(4) The Head of Government Procurement Services shall consider and/or investigate the allegations and, if as a result of the information provided or of his own investigation, the Head of Government Procurement Services is satisfied that there is sufficient evidence to support debarment on the grounds of regulation 51, may prepare a Draft Notice of Proposed Debarment and submit the same to the Public Procurement Board.

(5) Within 10 days of receiving the Draft Notice of Proposed Debarment, the Chairman of the Public Procurement Board shall convene a meeting of the Public Procurement Board to review its contents and decide whether or not to proceed or, where no meeting of the Public Procurement Board is scheduled within this period, circulate the Draft Notice of Proposed Debarment to the members of the Public Procurement Board by electronic means.

(6) If the Public Procurement Board determines that the Draft Notice of Proposed Debarment does not contain sufficient evidence to support the proposed debarment or sanction, it —

(a) may seek further information before continuing; or

(b) notify the Head of Government Procurement Services of its decision and of the reasons for the decision.

(7) If new facts or evidence come to light, the Head of Government Procurement Services may, at his discretion, amend and resubmit a revised Draft Notice of Proposed Debarment for consideration by the Public Procurement Board.

(8) Where, on the basis of a referral by the Head of Government Procurement Services, the Public Procurement Board is satisfied that sufficient evidence may exists to debar a person, the Public Procurement Board may establish a Debarment Committee to determine whether there is sufficient evidence in each case to debar a supplier accused of a prohibited practice and to issue a Notice of Debarment

(9) The Debarment Committee shall consist of three members as follows—

(a) the Chairman of the Public Procurement Board who shall also be the chairman of the Debarment Committee; and

(b) two other members of the Public Procurement Board.

53. Procedure of the Debarment Committee

(1) The Debarment Committee shall send to the supplier (known as the 'Respondent') a Notice of Proposed Debarment in the same terms as the Proposal submitted by the Head of Government Procurement Services. If an accusation is made against an affiliate of a supplier, such affiliate must also be named.

(2) The Notice of Proposed Debarment shall set out—

(a) the grounds for debarment;
(b) the terms of the proposed debarment;
(c) the period of time from the date of service within which a written response or submission may be made but, subject to subregulation (3), such period of time must be no less than seven days and no more than 28 days from the date of service; and
(d) a statement indicating that the person has the right to—
(i) put forward a defence in the debarment proceedings;
(ii) have an oral hearing before the Debarment Committee; and
(iii) request the evidence on which the Head of Government Procurement Services relies on for the proposed debarment.

(3) The Debarment Committee may extend the time under subregulation (2)*(c)* for up to 14 more days after the expiration of the 28^{th} day from the date of service.

(4) The Debarment Committee must, on the request of the supplier, disclose the evidence on which the Public Procurement Board relies for the proposed debarment.

(5) If within 28 days the Respondent does not inform the Debarment Committee of its intention to contest the allegations or respond to the Notice admitting all or part of the allegations, the Debarment Committee will and without need of a hearing issue proceed to consider the evidence available and consider the sanction recommended in the Notice of Proposed Debarment, taking into account any mitigating factors disclosed by virtue of regulation 54(3).

(6) If the Respondent informs the Debarment Committee that it intends to contest the allegations contained in the Notice of Proposed Debarment, the Committee shall, within five days inform the Respondent of the procedure to be followed, including any hearing proposed.

(7) Any Hearing shall take place in the manner provided for by the Debarment Committee which shall include the following characteristics—

(a) A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Debarment Committee as suitable for the purposes of such representation.

(b) The Hearing shall be closed to the public save that, with the consent of the Debarment Committee, persons having a justifiable interest in the proceedings may be admitted.

(c) The Debarment Committee shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

(d) Formal rules of evidence shall not apply and any type of evidence may form the basis of arguments presented. The Debarment Committee retains the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

(8) The Debarment Committee must report their findings and recommendations to the Public Procurement Board in a manner and at a time which is determined by the Public Procurement Board.

54. Recommendation of the Debarment Committee

(1) At the conclusion of the hearing, the Debarment Committee shall recommend to the Public Procurement Board whether the proposed debarment is in the interests of the procuring entity and the Government on the basis of the evidence presented.

(2) The existence of a proven cause for debarment does not necessarily require that the supplier be debarred or receive the sanction proposed in the Notice of Proposed Debarment. The seriousness of the supplier's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. The burden rests on the Respondent to provide evidence of mitigating factors which might tend to reduce or remove the desirability for debarment.

(3) Before arriving at any debarment recommendation, the Debarment Committee should consider factors such as the following —

(a) the severity of the Respondent's conduct;

(b) the degree of involvement of the Respondent in the prohibited practice or collusive practice (including whether the conduct involved was "active" or "passive") and whether it reported its involvement;

(c) the magnitude of any losses caused by the Respondent and damage caused by the Respondent to the credibility of the procurement process;

(d) the past conduct of the Respondent involving a prohibited practice or collusive practice;

(e) the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the procuring entity;

(f) whether the Respondent has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Debarment Committee and/or taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(g) whether the Respondent's management recognises and understands the seriousness of the misconduct giving rise to the cause for debarment and has instituted or agreed to institute new or revised review and control procedures and ethics training programs or other programmes to prevent recurrence; and

(h) any other factor that the Debarment Committee deems relevant.

(4) Where the Debarment Committee determines that there is insufficient evidence to support the proposed debarment sanction, it shall recommend to the Public Procurement Board that no debarment sanction be imposed.

55. Decision of the Public Procurement Board to impose sanctions

(1) Where the Debarment Committee determines that there is sufficient evidence to support the proposed debarment sanction, the Public Procurement Board may, depending on the gravity of the offence and taking into account any mitigating circumstances, impose one of the following sanctions —

(a) Reprimand: a formal "Letter of Reprimand" based on the Respondent's conduct but which falls short of debarment.

(b) This may be used where it is the Respondent's first offence and where the offence is relatively minor or where there are sufficiently compelling mitigating factors. It should not be used for a second or subsequent offence.

(c) Suspended Debarment: a sanction which threatens debarment where certain conditions are not met.

(d) Based on the gravity of the offences and the existence of mitigating factors, the Debarment Committee may decide that the Respondent be required to comply with certain remedial, preventative or other measures as a condition to avoid debarment. In the event the Respondent fails to demonstrate compliance with the conditions within the time periods established by the Debarment Committee, a debarment would automatically become effective for a period of time established by the Debarment Committee, i.e. it would be converted into a Temporary Debarment.

(e) Temporary Debarment: the primary sanction which debars the Respondent from participation for a specific period of time not to exceed three years.

(f) Based on the gravity of the offence and of any mitigating factors, the Debarment Committee may impose a temporary debarment of one, two or three years. Whilst this is dependent on the circumstances of the case, it would be expected that a first offence would attract the shortest duration with subsequent offences attracting longer periods of debarment. Sufficiently serious offences could, however and in the absence of mitigating factors, attract longer periods of debarment even where they are first offences.

(g) Permanent Debarment: this is the most serious sanction and will be used rarely.

(h) It is appropriate only in cases of particularly egregious offences where the Respondent has consistently failed to correct its practices following at least two orders of temporary debarment, at least one of which must have been accompanied by a compliance programme of remedial, preventative or other measures intended to assist the Respondent in overcoming any institutional impediments to improvement.

(2) Other than in the case of permanent debarment, the debarment decision of the Public Procurement Board will be final and will take effect immediately, without prejudice to any other action taken by any other government organisation under applicable law.

(3) In the case of permanent debarment, the decision shall automatically be referred to the Independent Adjudicator appointed pursuant to Article 44 of the Act who shall review the facts and evidence presented during the investigation and/or hearings before confirming or rejecting the proposed Notice of Debarment in accordance with regulation 57(4)-(5).

(4) The Head of Government Procurement Services shall serve a written notice from the Public Procurement Board on the Respondent—

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

(b) indicating that the person may appeal under regulation 57.

56. Scope and consequences of debarment

(1) The Public Procurement Board may extend the effect of the Notice of Debarment to include any affiliates of the supplier provided they are—

(a) specifically named in the Notice of Proposed Debarment; and

(b) given an opportunity to respond.

(2) Following debarment, the name of the debarred supplier, affiliates, joint venture partner, officer, director, shareholder, partner, employee or other individual, as appropriate, shall be included in the List of Debarred Suppliers maintained by the Head of Government Procurement Services and any registered supplier shall be removed from the Register of Suppliers.

(3) In respect of suppliers and other persons properly included in the List of Debarred Suppliers, all procuring entities shall —

(a) exclude such suppliers and other persons from receiving contracts awarded by them;

(b) not solicit applications to prequalify or tenders from, award contracts to, or consent to subcontracts with them;

(c) reject any applications or tenders received from them in response to an application to prequalify, invitation to tender, request for proposals, request for quotation or invitation to participate in direct contracting;

(d) not evaluate any applications or tenders received from them or enter into discussions with them during the period of ineligibility; and

(e) not consent to their appointment as a sub-contractor to a supplier which has not been debarred.

(4) If the period of ineligibility expires or is terminated prior to award, the procuring officer may, but is not required to, consider such tenders.

(5) Notwithstanding the debarment of a supplier or other person, procuring entities may continue contracts or subcontracts in existence at the time of the debarment unless the accounting officer of the procuring entity directs otherwise.

57. Review and appeals

(1) A debarred supplier may seek review of a debarment with the Public Procurement Board at any time when —

(a) newly discovered material evidence or facts come to light which tend to exculpate the debarred supplier;

(b) a conviction or civil judgment upon which the debarment was based has been reversed;

(c) there has been a *bona fide* change in ownership or management of the supplier; or

(d) the supplier has successfully complied with any remedial, preventative or other measures imposed by the Public Procurement Board in the context of a Suspended Debarment or Temporary Debarment.

(2) A request for review shall be made in writing and the procedure for review shall be determined by the Public Procurement Board at its discretion.

(3) Where a supplier is not satisfied with the decision of the Public Procurement Board in respect of a Suspended Debarment or Temporary Debarment only, it may apply in writing to the Public Procurement Board who will refer the case to the Independent Adjudicator within five days of the receipt of the request.

(4) The procedure for the appeal shall be determined by the Independent Adjudicator at his or her discretion but a decision must be finalised within a reasonable period of time and, in no case, more than 30 days after the request has been received by the Independent Adjudicator.

(5) The Independent Adjudicator shall review the facts and evidence presented during the investigation and/or hearings before confirming or rejecting the Notice of Debarment adopted by the Public Procurement Board. The Independent Adjudicator shall—

(a) not rehear the case or allow any further written or oral submissions but shall carry out an objective assessment of the evidence; and

(b) only reject the proposed Notice where, in his opinion, the preponderance of the of the evidence does not establish that the Respondent engaged in a prohibited practice or collusive practice.

PART 8—CONTRACT MANAGEMENT AND ADMINISTRATION

58. Appointment of contract manager

(1) The procuring entity shall designate a contract manager for each procurement, as appropriate.

(2) The contract manager shall administer the conclusion and implementation of the contract and thereafter manage the contract in accordance with the terms and conditions of the contract, Act and Regulations and the procedures prepared by the Head of Government Procurement Services, but shall not agree to any change in the contract price or the material terms of a procurement contract without the prior approval, in writing, of the accounting officer, Departmental Procurement Committee or Public Procurement Board depending on the value of the contract.

(3) Without limiting the generality of subregulation (2), the contract manager shall—

(a) keep an accurate record of all dealings with the supplier including minutes of every meeting with the supplier and the details of any matter discussed or decision made; and

(b) represent the interests of the Government and the procuring entity under every procurement contract.

(4) The contract manager shall not permit any performance to commence before a procurement contract has been executed.

(5) The contract manager shall report any substantial breach of contract to the head of the procuring entity.

59. Duties of the contract manager

(1) The contract manager shall—

(a) manage the obligations and duties of the procuring entity specified in the contract; and

(b) ensure that the supplier performs the contract in accordance with the terms and conditions of the contract.

(2) The contract manager shall be responsible for—

(a) monitoring the performance of the supplier to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;

(b) ensuring that the supplier submits all required documentation;

(c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;

(d) ensuring that there is adequate costs, quality and time control, where required;

(e) preparing any required contract variations or modifications and obtaining, as appropriate, approval of the accounting officer, Departmental Procurement Committee or Public Procurement Board, as the case may be, before their issue;

(f) managing any handover or acceptance procedures;

(g) making recommendations for contract termination, where appropriate, and obtaining all required approvals and managing the termination process;

(h) ensuring that the contract is complete, prior to closing the contract file;

(i) ensuring that all contract management records are kept and archived as required; and

(j) ensuring that the supplier and the procuring entity act in accordance with the Act, these Regulations and the contract.

60. Contract performance evaluation

(1) In application of regulation 59(1)*(b)*, the contract manager shall evaluate the performance of each procurement contract with an estimated value exceeding EC$100,000 —

(a) in the case of short-term contracts, as soon as the contract has ended and

(b) in the case of long-term contracts, at intervals agreed with the Head of Government Procurement Services,

and submit a performance evaluation report to the accounting officer and the Head of Government Procurement Services.

(2) The contract manager must ensure that —

(a) the contract is monitored throughout the contract period and

(b) that the performance of the supplier is regularly reviewed and recorded in writing.

(3) The contract manager must record and as soon as is practical, report to the accounting officer any incidences of non-performance by the supplier.

(4) The contract manager must also at intervals not exceeding three months, provide the Head of Government Procurement Services with a written report on the performance of contracts with a value exceeding EC$50,000 for which that contract manager is responsible, using the template(s) provided by the Head of Government Procurement Services.

(5) The Head of Government Procurement Services shall, at periods not exceeding 12months, provide a written report to the Public Procurement Board on the performance of all contracts.

(6) The Head of Government Procurement Services may develop a policy guiding the format and frequency of the performance evaluation report.

61. Inspection and verification

(1) The contract shall state that the procuring entity has the right to inspect goods or works at any reasonable time or place clearly state all requirements relating to inspection.

(2) The procuring entity shall ensure that all goods, works and services are subject to inspection and verification by the contract manager, supervising engineer or inspection and receipt committee, as appropriate, prior to their acceptance.

(3) The inspection and verification shall ensure that—

(a) the correct quantity has been received;

(b) the goods, works or services meet the technical standards defined in the contract;

(c) the goods, works or services have been delivered or completed on time, or that any delay has been noted;

(d) all required deliverables have been submitted; and

(e) all required manuals or documentation have been received.

(4) The contract manager, supervising engineer or inspection and receipt committee responsible for inspecting the goods, works or services shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

Made by the Governor acting on the advice of Cabinet this 16th day of October, 2025.

Alasdair Bain
CABINET SECRETARY

Published by exhibition by the Cabinet Secretary at the Office of the Legislature, Farara Plaza, Brades, Montserrat, MSR1110, this 29th day of October, 2025.

Alasdair Bain
CABINET SECRETARY