

PART II – BODIES INVOLVED IN THE REGULATION OF PUBLIC PROCUREMENT

A — Public Procurement Oversight Authority

Establishment of Authority.

8.(1) The Public Procurement Oversight Authority is hereby established as a body corporate.

(2) The Authority shall have all the powers necessary or expedient for the performance of its functions.

(3) Without limiting the generality of subsection (2), the Authority shall have perpetual succession and a common seal and shall be capable of —

- (a) suing and being sued in its corporate name; and
- (b) holding and alienating moveable and immovable property.

Functions of Authority.

9. The Authority shall have the following functions —

- (a) to ensure that the procurement procedures established under this Act are complied with;
- (b) to monitor the public procurement system and report on the overall functioning of it in accordance with section 20(3)(b) and present to the Minister such other reports and recommendations for improvements as the Director-General considers advisable;
- (c) to assist in the implementation and operation of the public procurement system and in doing so —
 - (i) to prepare and distribute manuals and standard documents to be used in connection with procurement by public entities;
 - (ii) to provide advice and assistance to procuring entities;

- (iii) to develop, promote and support the training and professional development of persons involved in procurement; and
 - (iv) to issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements; and
 - (v) to ensure that procuring entities engage procurement professionals in their procurement units.
- (d) to initiate public procurement policy and propose amendments to this Act or to the regulations; and
 - (e) to perform such other functions and duties as are provided for under this Act.

Director-General
of the Authority.

10.(1) The Authority shall have a Director-General who shall be the chief executive officer of the Authority and who shall be responsible for its direction and management.

(2) The Director-General shall be appointed by the Advisory Board with the approval of Parliament.

(3) To be appointed as the Director-General, a person must —

- (a) have a university degree in commerce, business administration, economics, engineering or a related field of study from a recognised university;
- (b) have a professional qualification in supply management from a reputable organisation;
- (c) have experience in management; and
- (d) be of outstanding honesty and integrity.

Term of office of

11.(1) The term of office of the Director-General

Director-General.

shall be five years.

(2) A person who has held office as Director-General may be reappointed for one further term of five years.

Restrictions on activities of Director-General.

12. During the period of his or her appointment, the Director-General shall not —

- (a) be employed in any other work or business; or
- (b) hold any other public office.

Terms and conditions of service of Director-General. Cap.446

13. The terms and conditions of service of the Director-General shall be determined by the Advisory Board in accordance with the State Corporations Act.

Resignation of Director-General.

14.(1) The Director-General may resign by a written resignation addressed to the Advisory Board.

(2) A resignation is effective upon being received by the Advisory Board.

Removal of Director-General.

15.(1) The appointment of the Director-General may be terminated only in accordance with this section.

(2) The Advisory Board may terminate a person's appointment as the Director-General if the person —

- (a) is incompetent;
- (b) is unable to perform the functions of his office by reason of a mental or physical infirmity;
- (c) is convicted of an offence under the Penal Code or this Act or an offence involving dishonesty;
- (d) was involved in a corrupt transaction;
- (e) contravenes section 12; or
- (f) is adjudged bankrupt.

Cap. 63.

Staff.

16. The Authority may, upon such terms and conditions of service as the Authority may determine,

employ such staff or hire the services of such consultants, experts or independent investigators as may be necessary for the proper performance of its functions.

Acting Director-General.

17. The Advisory Board may designate a member of the staff of the Authority to act as the Director-General during the illness or absence of the Director-General or during a vacancy in the office.

Financial arrangements.

18.(1) The financial year of the Authority shall be the period of twelve months ending on 30th June in each year.

(2) At least three months before the commencement of each financial year, the Director-General shall cause estimates of the revenue and expenditures of the Authority for that year to be prepared and submitted to the Advisory Board for approval.

(3) The estimates shall make provision for all the estimated expenditures of the Authority for the financial year and, in particular, shall provide for expenditures for —

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of former staff of the Authority;
- (c) the proper maintenance of buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) the payment of allowances and expenses of the Advisory Board.

(4) The Authority shall make provision for the renewal of depreciating assets and the payment of pensions and other retirement benefits by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(5) The funds of the Authority shall consist of -

- (a) money appropriated by Parliament for the purpose of running the Authority;
- (b) loans or grants received by the Authority for its activities;
- (c) revenue or fees collected for services rendered by the Authority; and
- (d) capacity building levy of such amount of the contract price as may be prescribed.

Audit.
No. 12 of 2003.

19. The Authority shall be audited in accordance with the Public Audit Act, 2003.

Quarterly and
annual reports.

20.(1) For each financial year, the Director-General shall cause four quarterly reports and one annual report to be prepared.

(2) The Director-General shall submit each report to the Advisory Board and to the Minister —

- (a) in the case of a quarterly report, within one month after the end of the quarter to which the report relates; or
- (b) in the case of an annual report, within four months after the end of the year to which the report relates.

(3) Each report shall contain, in respect of the period to which it relates —

- (a) a description of the activities of the Authority;
- (b) a report on the overall functioning of the public procurement system;
- (c) a list of each procurement for which a procurement procedure was specially permitted under section 92;
- (d) a report on the extent of positive bias to local

participation.

(4) In addition to what is required under subsection (3), each annual report shall include the financial statements of the Authority for the year to which the report relates.

(5) The Minister shall, within thirty days after receiving a report, transmit it to the National Assembly.

B – Public Procurement Oversight Advisory Board

Establishment of
Advisory Board.

21. The Public Procurement Oversight Advisory Board is hereby established as an unincorporated body.

Composition of
Advisory Board.

22.(1) The Public Procurement Oversight Advisory Board shall consist of —

- (a) nine members appointed by the Minister and approved by Parliament from persons nominated by the prescribed organisations; and
- (b) the Director-General.

(2) The First Schedule shall apply in respect of the members of the Advisory Board.

Functions of
Advisory Board.

23. The functions of the Advisory Board are —

- (a) to advise the Authority generally on the exercise of its powers and the performance of its functions;
- (b) to approve the estimates of the revenue and expenditures of the Authority;
- (c) to recommend the appointment or termination of the Director-General in accordance with this Act;
- (d) to perform such other functions and duties as are provided for under this Act.

Procedures of
Advisory Board.

24.(1) The business and affairs of the Advisory Board shall be conducted in accordance with the Second

Schedule.

(2) Except as provided in the Second Schedule, the Advisory Board may regulate its own procedure.

(3) Five nominated members of the Advisory Board shall constitute a quorum for the transaction of any business of the Board.

(4) The Advisory Board may invite any person to attend any of its meetings and to participate in its deliberations, but such an invitee shall not have a vote in any decision of the Board.

C – Public Procurement Administrative Review Board

Review Board.

25.(1) The Public Procurement Complaints, Review and Appeal Board established under the Exchequer and Audit (Public Procurement) Regulations, 2001 is continued under this Act as the Public Procurement Administrative Review Board.

L.N. 51/2001.

(2) The composition and membership of the Review Board shall be in accordance with the regulations.

(3) The Authority shall provide administrative services to the Review Board.