

THE PUBLIC PROCUREMENT BILL
(No. XXXIV of 2006)

Explanatory Memorandum

1. The object of this Bill is to establish a Central Procurement Board to cater for all forms of procurement by public bodies. The Bill contains detailed provisions setting out the various procurement options that may be available to a public body and lays down the principles and procedures for the procurement process. The Bill repeals and replaces the Central Tender Board Act.
2. Moreover, the Bill makes provision for the setting up of a Procurement Policy Office manned by a Director and two other independent persons, which will be responsible to formulate policies and issue directives for the operation of a transparent and efficient public procurement system.
3. Provision is also made to enable a bidder or potential bidder to challenge the procurement proceedings of a public body at any stage and request the Chief Executive Officer of the public body to consider his complaint and, where appropriate, take remedial action.
4. The Bill also establishes an Independent Review Panel to which appeals against decisions of a Chief Executive Officer may be brought. Thus a two-tier simplified process is available to dissatisfied persons to seek remedy.

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A BILL

To provide for the basic principles and procedures to be applied in, and regulate, the public procurement of goods, public works, consultant services, and other services and for the institutions responsible for those matters

ENACTED by the Parliament of Mauritius, as follows -

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Procurement Act 2006.

2. Interpretation

In this Act -

“bid” includes a proposal submitted in response to a request issued pursuant to section 24;

“bidder” means a participant or potential participant in procurement proceedings;

“bidding document” -

(a) means any document issued by a public body on the basis of which bidders prepare bids; and

(b) includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or other similar items;

“bid security” means the security instrument required to ensure that a bid will remain valid during the period stated in the bidding document;

“Board” means the Central Procurement Board established by section 8;

“Chairperson” means the Chairperson of the Board or of the Review Panel, as the case may be;

“challenge” means a challenge made pursuant to sections 24, 40 or 43;

“consultant” means a person under contract to provide consultant services to a public body in relation to a procurement contract;

“consultant services” means services of an intellectual and advisory nature, not incidental to the supply of goods or to the execution of works, such as design, supervision, training, analysis, auditing, software development, and similar services;

“contractor” means a person who has entered into a procurement contract with a public body;

“donor organisation” means an organisation based outside Mauritius which provides, or joins in providing, grants, credits or loans to the Government or its agencies;

“exempt organisation” means a body which is, by regulations, excluded from the application of this Act;

“goods” means objects of every kind and description including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the goods such as freight and insurance;

“local authority”-

- (a) has the same meaning as in the Local Government Act; and
- (b) includes the Rodrigues Regional Assembly;

“major contract” means a contract for the procurement of goods or services or the execution of works -

- (a) to which a public body is or proposes to be a party; and
- (b) the estimate of the fair and reasonable value of which exceeds the prescribed amount;

“member” -

- (a) means a member of the Policy Office, the Board or the Review Panel, as the case may be; and
- (b) includes the Director, or the Chairperson of the relevant body, as the case may be;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“officer” means a person who is assigned to, or employed by, the Policy Office, the Board or the Review Panel;

“other services” means any services other than consultant services or services incidental to the supply of goods or the execution of works;

“Policy Office” means the Procurement Policy Office established under section 4;

“Prescribed amount” means the amount specified in column 3 of the Schedule corresponding to the public body specified in column 1 in relation to the type of contract specified in column 2 of that Schedule.

“procurement” means the acquisition by a public body by any contractual means of goods, works, consultant services or other services;

“procurement contract” means a contract between a public body and a supplier, contractor or consultant resulting from procurement proceedings;

“public body” -

(a) means any Ministry or other agency of the Government;

(b) includes -

(i) a local authority;

(ii) a parastatal body; and

(iii) such other bodies specified in the Schedule; but

(c) does not include an exempt organisation;

“public official” means -

(a) an officer;

(b) a supplier, contractor or consultant or any of their agents; and

(c) a public officer or other person employed by a public body;

“responsive” in relation to a bid, means responsive to the basic requirements of a bid regarding ability to perform and complete on time;

“Review Panel” means the Independent Review Panel established under section 44;

“supplier” means a person delivering goods, works, consultancy services or other services;

“Vice Chairperson” means either of the two Vice-Chairpersons of the Board; and

“works” means any work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.

3. Application of Act

(1) Notwithstanding any other enactment, this Act does not apply to procurement undertaken to protect national security or defence, where -

- (a) the Prime Minister so determines by notice in the *Gazette*; and
- (b) the procurement is undertaken by the most competitive method of procurement available in the circumstances.

(2) This Act applies to any other procurement effected by a public body.

(3) Where any provision of this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Mauritius under any treaty or other form of agreement, those rules shall prevail.

(4) This Act shall bind the State.

PART II – PROCUREMENT POLICY OFFICE

4. Procurement Policy Office

(1) There shall be a Procurement Policy Office in the Ministry, which shall be administered by a Director and 2 other independent persons appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition on such terms and conditions as may be determined by the Prime Minister.

(2) The persons referred to in subsection (1) shall be appointed for a 3-year term and shall be eligible for re-appointment for one additional term.

(3) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of a member who has been guilty of -

- (a) any misconduct, default or breach of trust in the discharge of his duties;

- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

5. Staff of Policy Office

(1) The Policy Office shall appoint on contract terms and conditions its professional staff composed of persons of high integrity and substantial experience in the field of procurement, with a strong background in legal, financial and administrative matters.

(2) The Head of the Civil Service shall designate such public officers as may be required to assist the Policy Office and every person so designated shall be under the administrative control of the Director.

6. Policymaking responsibility

(1) The Policy Office -

- (a) shall serve as an independent procurement policy making and monitoring body;
- (b) shall not in any way be operationally involved in conducting procurement proceedings or resolving procurement disputes; and
- (c) may request information from, and consult with, the Board, the Review Panel, or any public body in the development of procurement policy for the Government.

(2) In the exercise of its functions the Policy Office shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.

7. Functions of Policy Office

The Policy Office shall -

- (a) issue instructions to public bodies concerning the coordination of their actions with the Policy Office, the Board and the Review Panel;
- (b) formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of this Act;
- (c) issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar

documents for mandatory use by every public body implementing procurement;

- (d) collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with this Act;
- (e) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement;
- (f) prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement;
- (g) solicit the views of the business community on the effectiveness of the procurement system;
- (h) present an annual report to the Minister regarding the overall functioning of the procurement system;
- (i) communicate and cooperate with international institutions and other foreign entities on matters of procurement;
- (j) advise on and monitor foreign technical assistance in the field of procurement;
- (k) advise the Financial Secretary regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and the annual review of such delegations; and
- (l) perform such other functions as may be assigned to it by the Financial Secretary.

PART III – CENTRAL PROCUREMENT BOARD

8. Central Procurement Board

(1) There is established a Central Procurement Board, which shall be a body corporate, to be responsible for the approval of the award of major contracts by public bodies and which shall consist of -

- (a) a Chairperson;
- (b) 2 Vice-Chairpersons; and

- (c) 3 other persons,

having wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition, on such terms and conditions as may be determined by the Prime Minister.

(2) Every member shall hold office for a period not exceeding 3 years and shall be eligible for re-appointment for one additional term.

(3) The President shall, at any time terminate the appointment of a member who has been guilty of -

- (a) any misconduct, default or breach of trust in the discharge of his duties;
- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

(4) The Board 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 Board.

9. Secretary of the Board

There shall be a Secretary of the Board who shall be a public officer and shall be entitled to attend the meetings of the Board and participate in its deliberations, but shall not have the right to vote.

10. Staff of the Board

(1) The Board shall, in the conduct of its business, be assisted by such public officers as may be designated by the Head of the Civil Service or by such persons as may be appointed by the Board under contract terms and conditions.

(2) Every person referred to in subsection (1) shall be under the administrative control of the Chairperson.

11. Functions of the Board

- (1) The Board shall, in respect of major contracts -
 - (a) establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
 - (b) vet bidding documents and notices submitted to it by public bodies;

- (c) receive and publicly open bids;
- (d) select persons from a list of qualified and independent evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids; and
- (e) review the recommendations of a bid evaluation committee and -
 - (i) approve the award of the contract; or
 - (ii) require the evaluation committee to make a fresh or further evaluation on specified grounds.

(2) The Board shall strive to achieve the highest standards of transparency and equity in the execution of its duties, taking into account –

- (a) the evaluation criteria and methodology disclosed in the bidding documents;
- (b) the qualification criteria and methodology disclosed in the bidding documents;
- (c) equality of opportunity to all bidders;
- (d) fairness of treatment to all parties;
- (e) the need to obtain the best value for money in terms of price, quality and delivery, having regard to set specifications; and
- (f) transparency of process and decisions.

(3) The Board shall have such powers, and exercise such functions, as may be assigned to it under any other enactment.

12. Powers of the Board

- (1) In the discharge of its functions, the Board may -
 - (a) call for such information and documents as it may require from any public body;
 - (b) examine such records or other documents and take copies or extracts from them;

- (c) commission any studies relevant to the determination of the award of major contracts;
- (d) request any professional or technical assistance from any appropriate person in Mauritius or elsewhere;
- (e) do all such acts and things as it may consider incidental or conducive to the exercise of its functions.

(2) Any person to whom a request is made under subsection 1(a) fails to comply with the request, or wilfully gives any false or misleading answer to any question lawfully put by the Board, shall commit an offence.

(3) Where -

- (a) any variation in a contract price subsequent to the conclusion of a procurement contract entered into by a public body causes the total contract amount to exceed the prescribed amount by more than 20 per cent; or
- (b) the lowest bid submitted in response to an invitation made by a public body exceeds the prescribed amount,

the matter together with all the bidding documents and the contract documents, if any, shall be referred to the Board for approval.

(4) Where it comes to the knowledge of the Board that a contract has been awarded or is about to be awarded in breach of this Part, the Board shall forthwith report the matter to Head of the Civil Service, with a copy to the Director, recommending such action as it may deem appropriate.

(5) The Head of the Civil Service may, where he considers appropriate, refer any matter reported to him under subsection (4) to the Police for enquiry.

13. Meetings of the Board

(1) The Board shall meet as often as is necessary and at such time and place as the Chairperson deems fit.

(2) Everything authorised or required to be done by the Board shall be decided by simple majority of the members present and voting.

(3) In the absence of the Chairperson at any meeting, the other members shall designate one of the 2 Vice-Chairpersons to preside over the meeting.

(4) At any meeting of the Board -

- (a) except where the Board meets for the purpose of opening bids, no person other than a member or a person referred to in section 8 (3) shall be present;
- (b) the Chairperson or one of the 2 Vice-Chairpersons and 2 other members shall constitute a quorum; and
- (c) each member shall have one vote on the matter in question and, in the event of an equality of votes, the person chairing the meeting shall have a casting vote.

(5) Where a member does not, for good cause, attend a meeting of the Board, the Secretary shall forthwith communicate to him the gist of every decision taken at the meeting, and he may, within 24 hours, request the Chairperson to reconvene the Board so as to reconsider the decision.

(6) Subject to this section, the Board shall conduct its proceedings in such manner as it thinks fit.

14. Procedure of the Board

(1) The chief executive officer of a public body shall inform the Board in writing of any major contract that the public body intends to enter into and shall submit all the relevant documents to the Board.

(2) The Board shall, within such time as may be prescribed after having been notified in accordance with subsection (1), authorise the public body to call for bids or utilise another appropriate procurement method.

(3) The Board shall approve the award of every major contract.

(4) No public body shall -

- (a) advertise, invite, solicit or call for bids in respect of a major contract unless authorised by the Board; or
- (b) award a major contract unless the award has been approved by the Board.

(5) No person shall sign a major contract with a public body unless the award has been approved by the Board.

PART IV – PROCUREMENT METHODS

15. Choice of procurement method

(1) Subject to subsection (2), the choice of procurement methods available to a public body shall be -

- (a) for the procurement of goods, other services and works, by -
 - (i) open advertised bidding;
 - (ii) restricted bidding;
 - (iii) request for sealed quotations;
 - (iv) direct procurement;
 - (v) community or end-user participation; or
 - (vi) departmental execution; and
- (b) for the procurement of consultant services, by -
 - (i) request for proposals on the basis of -
 - (A) quality and cost;
 - (B) quality alone;
 - (C) quality and fixed budget; or
 - (D) least cost and acceptable quality; or
 - (ii) direct procurement.

(2) (a) Except in the cases referred to in paragraph (d), procurement shall, in the case of goods, other services or works, be made by means of open advertised bidding, to which equal access shall be provided to all eligible and qualified bidders without discrimination.

(b) Open advertised bidding proceedings may include a prequalification stage, or post qualification procedures, before selection of the winning bidder.

(c) Open advertised bidding proceedings shall be carried out in a single stage or in two stages in the cases referred to in section 29.

(d) A method of procurement referred to in subsection (1) (a) (ii) to (vi) may be used only if the public body has reason to believe that open advertised bidding -

- (i) will not be efficient or practical for the procurement in question; or

- (ii) will be too costly to apply given the value of the procurement.

(e) Where a public body uses a method of procurement other than open advertised bidding or, in the case of the procurement of consultant services, a method other than one specified in subsection (1)(b)(i), it shall note in the record of the procurement proceedings the ground for the choice of the procurement method.

16. Open advertised bidding method

Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify, shall be published in a national newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well.

17. Open national bidding

A public body may limit participation in open advertised bidding proceedings to citizens of Mauritius or entities incorporated in Mauritius only where such limitation is stated in the invitation to bid or, for prequalification, in the bidding documents and is otherwise in accordance with such criteria as may be prescribed.

18. Open international bidding

- (1) Open advertised international bidding shall be used where -
 - (a) the estimated value of the procurement exceeds the prescribed threshold;
 - (b) the goods, works or other services are not available under competitive price and other conditions from more than one supplier in Mauritius; or
 - (c) there is no response to open national bidding and the goods, other services or works must be obtained from international bidders.

(2) A public body may, in appropriate cases and subject to any regulations to that effect, confer an advantage or preference to domestic or regional goods, services or contractors in the case of open international bidding proceedings.

19. Restricted bidding

- (1) Restricted bidding may be used -

- (a) where a public body has reason to believe that the goods, other services or works are only available from a limited number of bidders;
- (b) where the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to such thresholds as may be prescribed; or
- (c) by limiting the participation in a particular procurement to those suppliers included on pre-approved supplier eligibility lists drawn up and maintained by the public body, in such manner as may be prescribed, so as to ensure that suppliers of specialised goods and services have and maintain the necessary technical and financial capability to provide them.

(2) (a) Where restricted bidding is used on the ground referred to in subsection (1)(a), all known suppliers capable of supplying the goods, other services or works shall be directly solicited.

(b) Where restricted bidding is used on the ground referred to in subsection (1)(b), the public body shall, as far as reasonably possible, directly solicit bids from a minimum of 5 bidders.

20. Request for sealed quotations

(1) The request for sealed quotations method shall only be used for the procurement of -

- (a) readily available commercially standard goods not specially manufactured to the particular specifications of the public body;
- (b) small works; or
- (c) small other services,

where the estimated value of the procurement does not exceed the prescribed amount.

(2) Sealed quotations shall be requested in writing from not less than 3 bidders, unless the item in question is not available from 3 suppliers.

(3) The request shall contain a clear statement of the requirements of the public body as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as may be prescribed.

(4) Each bidder may submit one sealed quotation, which may not be altered or negotiated.

21. Emergency procurement

(1) A public body may purchase goods, other services or works from a single supplier without competition in cases of extreme urgency.

(2) The scope of the emergency procurement shall as far as possible be limited to the period of the emergency, so that appropriate competitive procurement methods may be utilised at the conclusion of the emergency period.

(3) For the purposes of this section, “extreme urgency” includes a situation wherein -

- (a) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war or Act of God;
- (b) life or the quality of life or environment may be seriously compromised;
- (c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorated unless action is urgently and necessarily taken to maintain than in their actual value or usefulness; and
- (d) an investment project may be seriously delayed for want of an item of a minor value.

22. Community and end-user participation

Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services in accordance with such procedure as may be prescribed.

23. Departmental execution

In the case of works which are carried out with government resources, procurement may be effected by the public body itself where one or more of the following conditions are present, namely where -

- (a) an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location or scattered location or financing or high mobilisation costs for outside suppliers;
- (b) an activity is such that, if carried out by a contractor, it would impose an unacceptable risk on the contractor because the cost cannot be determined in advance;
- (c) the risk of unavoidable work interruptions is better borne by the public body than by a contractor;
- (d) it has been demonstrated that departmental execution is the only practical method for construction, maintenance and conservation works under special circumstances;
- (e) an activity for a pilot project of a particular nature for the development of a technology work method cannot be carried out by a contractor;
- (f) works must be carried out without disrupting existing operations by the public body's staff because they are familiar with those operations; or
- (g) there is an emergency such as a natural disaster which calls for immediate action.

24. Request for proposals

(1) Where, in respect of consultant services, the request for proposals method is used, the public body shall draw up a shortlist of consultants, to ensure effective competition, from among those who have the capacity to perform the required services.

(2) (a) Where the estimated value of the procurement exceeds the prescribed threshold, the public body shall, in order to draw up the shortlist, seek expressions of interest by publishing a notice in a national newspaper of wide circulation and include in the list those who have expressed interest in the procurement.

(b) Where the estimated value of the contract does not exceed the prescribed threshold, the shortlist may be drawn up on the basis of the public body's own knowledge and information.

(3) The public body shall issue a request to the short-listed consultants, asking them to confirm their interest by submitting a proposal, which

shall include such information as may be prescribed that enables them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the public body.

- (4) The selection of the successful proposal shall be based on -
- (a) the technical quality of the proposal, the consultant's relevant experience, the expertise of his key staff, the proposed work methodology, as well as the price of the proposal;
 - (b) the quality of the technical proposal submitted within a predetermined fixed budget;
 - (c) the best financial proposal submitted by the candidates having obtained an acceptable technical score pre-disclosed in the request for proposals; or
 - (d) where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or national economy or may lead to the submission of proposals with prices which are not comparable, exclusively on the technical quality of the proposal.

(5) The public body shall evaluate each technical proposal on the basis of criteria which shall include -

- (a) the consultant's relevant experience for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualifications of the key staff proposed;
- (d) transfer of knowledge, if required in the request for proposals; and
- (e) in the case of international competition, the extent of participation by nationals among key staff in the performance of the assignment.

(6) The financial proposals of bidders who have secured the minimum pass mark in the technical evaluation shall then be considered and evaluated by the public body after a public announcement of the results of the technical evaluation.

(7) Where the choice of consultant services is made in accordance with section 15(1)(b)(i)(A), (C) or (D), the financial proposals of all consultants whose technical proposals attained the required minimum pass mark shall be

read out to the bidders who wish to attend, in accordance with the prescribed procedure.

(8) Where the choice of consultant services is made in accordance with section 15(1)(b)(i)(B) only the financial proposal of the consultant whose technical proposal achieved the highest ranking shall be evaluated.

(9) (a) The contract may be negotiated with the winning consultant with regard to the terms of the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided by the Government and, subject to paragraph (b), the financial proposal.

(b) Where price has been a factor the fee for services shall not be subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.

(c) Where the negotiations fail to result in an acceptable contract, the public body shall notify the consultant accordingly and proceed to the next ranked bidder, and so on.

(10) The consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for proposals, or the one with the least cost in the case of the least cost method of selection, shall be selected for award, subject to satisfactory conclusion of negotiations.

(11) The public body shall notify the successful consultant of its selection for award and shall simultaneously notify all other short-listed consultants of the decision.

(12) In the absence of a challenge by any other consultant within 15 days of a notice under subsection (11), the contract shall be awarded to the successful consultant indicated.

25. Direct procurement

(1) The direct procurement method allows a public body to purchase goods, other services or works from a single source without competition.

(2) Direct procurement is permitted -

(a) where the value of the procurement does not exceed the prescribed threshold;

(b) where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;

- (c) within the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public body to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;
- (d) within the prescribed limits, where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons;
- (e) where the nature of the consultant services requires that a particular consultant be selected due to unique qualifications; or
- (f) where continuity of consultant services is essential to meet the objectives of the consultancy assignment.

PART V – THE BIDDING PROCESS

26. Application of Part V

(1) Subject to subsection (2), this Part shall apply to bids for every procurement contract.

(2) (a) Section 40 shall apply to bids for major contracts subject to section 14.

(b) Sections 37 and 39 shall not apply to bids for major contracts.

27. Prequalification proceedings

(1) Prequalification shall be effected for the procurement of large or complex works.

(2) In other cases of particularly high value or complex procurement, such as industrial plant, a public body may engage in prequalification proceedings, with a view to identifying bidders that are qualified, before the invitation to bid.

(3) Where prequalification proceedings are held, the public body shall provide prequalification documents to all bidders responding to the invitation to pre-qualify, so as to provide them with the information required to prepare and submit applications for prequalification.

(4) On the completion of prequalification proceedings, the public body shall promptly make available to each applicant a list of the applicants who have been successfully pre-qualified.

28. Bidding documents

A public body shall provide the bidding documents to all bidders that respond to an invitation to bid or, if prequalification proceedings have taken place, to all bidders that have been pre-qualified.

29. Two-stage bidding

- (1) Open advertised bidding may be held in two stages where -
 - (a) it is not feasible to fully define the technical or contractual aspects of the procurement to elicit competitive bids; or
 - (b) because of the complex nature of the goods, other services or works to be procured, the public body wishes to consider various technical or contractual solutions, and to discuss with bidders the relative merits of those variants before deciding on the final technical specifications and contractual conditions.
- (2) In the first stage, the bidding documents shall -
 - (a) outline -
 - (i) the purpose;
 - (ii) the expected performance;
 - (iii) the broad specifications of the equipment or works to be procured; and
 - (iv) the qualifications required to perform the contract; and
 - (b) call upon bidders to submit technical bids without a bid price and their comments on the proposed contract conditions.
- (3) The public body may engage in discussions with any bidder with a view to understanding a technical bid or to indicating changes required to make it acceptable and seeking the bidder's willingness to make such changes.
- (4) At the end of the first stage, the public body may -

- (a) reject those bids which do not, and cannot be changed to, meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive; or
- (b) modify the technical specifications, evaluation criteria, and contract conditions in order to maximise competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

(5) In the second stage, the public body shall invite bidders whose bids have not been rejected to submit final bids with prices to the revised bidding documents.

30. Bid security

(1) A public body shall, where applicable and in such manner as may be prescribed, include in the bidding documents the requirements for bid security.

(2) Forfeiture of bid security shall be imposed by the public body only in the event of -

- (a) a modification or withdrawal of a bid after the deadline for submission of bids during its period of validity;
- (b) refusal by a bidder to accept a correction of an error appearing on the face of the bid;
- (c) failure by a successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
- (d) failure by a successful bidder to provide security for the performance of the procurement contract if required to do so by the bidding documents.

31. Submission of bids

(1) Subject to this section, a bid shall be submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents.

(2) Invitations for prequalification and bidding documents may contain provision that allows submission of applications to pre-qualify or bids by hand or mail or by courier at the option of the bidder.

(3) The bidding documents may authorise other methods for the submission of bids where it is so prescribed.

32. Deadline for the submission of bids

(1) A public body shall set a deadline for the submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximising competition, which shall not be less than such minimum period as may be prescribed.

(2) A bid in a sealed envelope received after the deadline for submission shall be returned unopened to the bidder.

33. Withdrawal and modification of bids

A bidder may modify, substitute, or withdraw its bid after submission, where the written notice of the modification, substitution or withdrawal is received by the public body before the deadline for the submission of bids.

34. Bid validity period

(1) Every bid shall remain valid for the period of time indicated in the bidding documents which shall not be more than 180 days.

(2) The validity period of a bid may be extended only with the agreement of the bidder concerned.

(3) A bidder who agrees to an extension of the validity period of his bid shall also furnish a corresponding extension of his bid security, if security was required for the original bid submission.

35. Disqualification of bidders and suppliers

(1) Every public body shall ensure that no disqualified supplier, contractor or consultant is permitted to receive a procurement contract or otherwise participate in procurement proceedings.

(2) The Policy Office shall, by regulations, make provision concerning the disqualification standards and procedures for suppliers, contractors and consultants.

36. Opening of bids

(1) Every bid shall be opened at the time and place indicated in the bidding documents.

(2) The time of bid opening shall coincide with the deadline for the submission of bids, or follow immediately thereafter, if this is necessary for logistic reasons.

(3) Every bidder or his representative shall be authorised to attend the bid opening.

(4) The name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, shall be read out and recorded, and a copy of the record shall be made available to any bidder on request.

(5) No decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.

37. Examination and evaluation of bids

(1) A public body may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.

(2) A public body shall, in order to evaluate bids, set up a bid evaluation committee, selected from a list of qualified and independent evaluators maintained by it.

(3) Following the opening of bids, a public body shall -

(a) examine the bids in order to determine whether they are complete and in accordance with the bidding documents; and

(b) ascertain whether -

(i) they are properly signed; and

(ii) the documents required to establish their legal validity and the required security have been furnished.

(4) Where a prequalification procedure is applicable, a bid received from an entity other than a pre-qualified bidder shall be rejected.

(5) Where a bid discloses an arithmetical error, the error shall be corrected and the bidder notified.

(6) Where there is a discrepancy between figures and words, the amount in words shall prevail, and the mistake shall be corrected and the bidder notified.

(7) Where a bidder refuses to accept a correction made pursuant to subsection (5) or (6) his bid shall be rejected and the bid security forfeited in accordance with section 30(2)(ii).

(8) Where there is a minor deviation in any bid that did not warrant rejection of the bid at an earlier stage, such minor variation shall be quantified in monetary terms, as far as possible.

(9) Every bid shall be evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid shall be compared with the evaluated cost of other bids to determine the lowest evaluated bid.

(10) Where a prequalification procedure is applicable, the qualifications of the lowest evaluated bidder shall be verified anew to take account of any change since the original prequalification.

(11) The bid evaluation committee shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the lowest evaluated bid that meets the qualification criteria.

(12) In the exercise of its function, the bid evaluation Committee shall act without fear or favour and shall not be subject to the direction or control of any other person or authority

38. Post-qualification

(1) Where there was no prequalification procedure, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents.

(2) Where the bid fails to conform to those criteria, the bid shall be rejected and the same check shall be applied to the next ranked bid.

39. Cancellation of bidding process

(1) A public body may, at any time prior to the acceptance of a bid, reject all bids, or cancel the public procurement proceedings where -

- (a) all the bids are non-responsive;
- (b) the lowest evaluated bid is substantially above the applicable updated cost estimate;
- (c) the goods, works or services are no longer required; or

(d) it has been established that there has been collusion among the bidders.

(2) Written notice of the rejection of all bids, or cancellation of the public procurement proceedings, shall be given to all bidders that submitted bids.

(3) There shall be no invitation to re-bid for the procurement on the same specifications and contract conditions unless the rejection of all bids or cancellation of procurement proceeding is made on a ground specified in subsection (1)(a) or (b).

(4) Where the invitation for the procurement is to be repeated, the reason for the rejection of all bids or the cancellation of the procurement proceedings shall be examined by the public body and the technical specifications, or contract conditions shall be suitably modified.

40. Award of procurement contracts

(1) A procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents, following the steps outlined in subsections (3) and (4).

(2) There shall be no negotiation between a public body and a selected bidder or other bidders except in such special circumstances as may be prescribed.

(3) A public body shall notify the successful bidder in writing of the selection of its bid for award and a notice in writing shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract.

(4) In the absence of a challenge by any other bidder within 15 days of that notice in the case of international procurement, and 7 days in the case of local procurement, the contract shall be awarded to the successful bidder.

(5) A successful bidder may be asked to submit a performance security and sign a contract within the period specified in the bidding documents.

(6) Where the bidder whose bid has been accepted fails to sign a contract, if required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the public body shall select another bidder from among the remaining valid bids, and subsections (3) to (5) shall apply to the new selection.

(7) A public body shall promptly publish, in such manner as may be prescribed, notice of every procurement award.

41. Debriefing of unsuccessful bidders

A public body shall promptly, on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful where the request for such debriefing was submitted within 30 days of the publication referred to in section 40(7).

42. Auditor's Certificate

The auditor of every public body shall state in his annual report whether the provisions of this Part has been complied with.

PART VI – CHALLENGE AND APPEAL

43. Challenge

(1) A bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by this Act may challenge the procurement proceedings at any time before the entry into force of the procurement contract.

(2) A challenge shall be in writing to the chief executive officer of the public body concerned and identify the specific act or omission alleged to contravene this Act.

(3) A challenge shall not be entertained unless it is submitted -

(a) in the case of a challenge under section 24(12) or 40(4), within the time specified in the relevant subsection; or

(b) in any other case within such time as may be prescribed.

(4) Unless the challenge is resolved, the chief executive officer of the public body shall suspend the public procurement proceedings and shall, within such time period as may be prescribed, issue a written decision, stating his reasons, and, if the challenge is upheld, indicating the corrective measures to be taken.

44. Independent Review Panel

(1) There shall be an Independent Review Panel which shall consist of

-

(a) a Chairperson; and

(b) 2 other persons,

having wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and appointed by the President of the Republic,

acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition, on such terms and conditions as the Prime Minister thinks fit.

(2) The Chairperson and the 2 other members shall hold office for three years, except that during the existence of the first panel one person will be replaced after the first year and another after the second year, so that over time a regular rotation of persons serving on the Review Panel will be set up.

(3) The President shall, at any time terminate the appointment of a member who has been guilty of -

- (a) any misconduct, default or breach of trust in the discharge of his duties;
- (b) an offence of such nature as renders it desirable that his appointment should be terminated.

(4) The Review Panel shall seek to avoid formality in its proceedings and may conduct them in such manner as it thinks fit.

45. Right of review

(1) An unsatisfied bidder shall be entitled to ask the Review Panel to review the procurement proceedings where -

- (a) the chief executive officer of the public body does not issue a decision within the time specified in section 43(4);
- (b) he is not satisfied with the decision; or
- (c) before or after the entry into force of a procurement contract the value of which is above the prescribed threshold, he is not satisfied with the procurement proceedings on a ground specified in section 43(1).

(2) An application for review under subsection (1) shall -

- (a) be in writing;
- (b) specify the reasons for making the application; and
- (c) be made within such time as may be prescribed.

(3) (a) An applicant for a review shall be required to make a deposit as may be prescribed for filing the application.

(b) Where the Review Panel determines that the application was frivolous, the deposit made shall be forfeited.

(4) Where an application for review is made in accordance with this section, the procurement proceedings shall, subject to subsection (5), be suspended until the appeal is heard and determined by the Review Panel.

(5) The suspension provided by subsection (4) shall not apply where the public body certifies that urgent public interest considerations require the procurement proceedings to proceed.

(6) A certificate issued by a public body pursuant to subsection (5) shall expressly state the grounds of the urgent public interest considerations and shall be made a part of the record of the public procurement proceedings.

(7) A certificate issued by a public body pursuant to subsection (5) shall be binding on the Review Panel and the procurement proceedings shall proceed unless an application for leave to seek a judicial review is successful.

(8) The Review Panel shall make a decision under this section within 1 month of the date of submission of an application for review under subsection (2).

(9) Where the procurement proceedings have not been suspended under subsection (5), and the application for review of an unsatisfied bidder is determined in his favour, the Review Panel shall award him compensation limited to the recovery of the costs of bid preparation and participation in the procurement proceedings.

(10) The Review Panel may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies -

- (a) prohibit the public body from acting or deciding in an unauthorised manner or from following an incorrect procedure;
- (b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body;
- (c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; or
- (d) recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.

PART VII – PROCUREMENT CONTRACTS

46. Contents of contracts

(1) A procurement contract shall include the terms and conditions that are set out in the bidding documents or request for proposals as well as -

- (a) the names, addresses and telephone and fax numbers, of the contact persons of the parties to the contract;
- (b) the scope of the work;
- (c) the order or priority of contract documents;
- (d) the contract price or its mode of determination;
- (e) the conditions of acceptance;
- (f) the conditions and mode of payment;
- (g) the modalities of 'force majeure';
- (h) the price adjustment mechanisms;
- (i) the provisions for termination of the contract;
- (j) the procedure for dispute resolution; and
- (k) the applicable law.

(2) Any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed by the parties in writing.

(3) An amendment to the contract that will increase the contract value by more than 25 percent shall require fresh procurement proceedings except where the amendment must be effected for a reason specified in section 25(c) or (d).

(4) No formal amendment of the contract shall be required where the public body wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract.

47. Payment

(1) Subject to such specific terms of a procurement contract, as may be prescribed, payment shall be made on the basis of the submission of a proper invoice.

(2) Payments due to a supplier shall be made in accordance with the deadlines set out in the procurement contract and the supplier shall be compensated for late payment by payment of interest in accordance with the rate specified in the contract or, if no such rate is specified, at the legal rate.

48. Termination and breach

Notwithstanding any other enactment –

- (a) a public body may terminate a procurement contract for its convenience at any time upon a determination that because of changed circumstances the continuation of the contract is not in the public interest; and
- (b) upon such a termination, the contractor will be entitled to reimbursement of expenses incurred in the performance of the contract, but will not be entitled to recover anticipated profits on the completion of the contract.

PART VIII – PROCUREMENT INTEGRITY

49. Artificial division

No public body may artificially divide the modalities of procurement in such a way as to avoid any monetary thresholds laid down in this Act or in an instrument drawn up pursuant to this Act.

50. Duties of public bodies

(1) Every public body shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Policy Office.

- (2) Every public body shall -
 - (a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act;
 - (b) make an annual plan for budgeting purposes and plan each step of procurement for major contracts in such manner as may be prescribed.

(3) Every public body shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.

(4) Subject to this Act, all documents, notifications, decisions and other communications referred to in this Act shall be in writing.

(5) Where it is so prescribed, a public body may authorise the use of other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payment.

(6) Where other means of communication are used in accordance with subsection (5), the public body shall ensure that -

- (a) a record of the content of the communication is preserved;
- (b) an adequate level of security and confidentiality is provided;
- (c) the bidders' access to the records of the procurement proceedings is preserved; and
- (d) any other requirement of this Act is complied with.

51. Conduct of public officials

(1) A public official involved in planning or conducting public procurement proceedings or contract administration, shall -

- (a) discharge his duties impartially so as to ensure fair competitive access to procurement by suppliers;
- (b) act in the public interest, and in accordance with the objectives and procedures set out in this Act;
- (c) avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself;
- (d) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;
- (e) keep confidential any information that comes into his possession relating to procurement proceedings and to bids, including bidders' proprietary information;
- (f) for a period of 2 years after leaving the public service not accept a position of authority in any private concern with which he had official dealings; and

(g) declare his assets in such manner as may be prescribed.

(2) (a) No public official, or his close relative, shall participate as a bidder in procurement proceedings of that public body and no award of a procurement contract shall be made directly to such official or to any body in which he or his close relative, is employed in a management capacity or has a substantial financial interest.

(b) In the subsection, "close relative" includes spouse, child, grandchild or parent.

52. Conduct of bidders and suppliers

(1) A bidder or a supplier shall not engage in or abet any corrupt or fraudulent practice, including the offering or giving, directly or indirectly, of improper inducements, in order to influence a procurement process or the execution of a contract, including interference in the ability of competing bidders to participate in procurement proceedings.

(2) A bidder or a supplier shall not engage in any coercive practice threatening to harm, directly or indirectly, any person or his property to influence his participation in a procurement process, or affect the execution of a contract.

(3) A bidder shall not engage in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive a public body of the benefit of free and open competition.

(4) A public body shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) and promptly notify the rejection to the bidder concerned and to the Policy Office.

(5) (a) Subject to paragraph (b), a bidder or supplier who is responsible for preparing the specifications or bidding documents for, or supervising the execution of a procurement contract, or a related company of such a bidder or supplier, shall not participate in such bidding.

(b) Paragraph (a) shall not apply to the several bodies (consultants, contractors or suppliers) that together may be performing the supplier's obligations under a turnkey or design-build contract.

53. Suspension and debarment of bidders and suppliers

(1) Subject to subsection (2), the Policy Office may, under such conditions as may be prescribed, suspend or debar a potential bidder or supplier from participation in procurement on the following grounds -

- (a) supplying false information in the process of submitting a bid or prequalification application;
- (b) collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;
- (c) interference by a supplier with the participation of competing bidders;
- (d) misconduct relating to the submission of bids, including corruption, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
- (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract; or
- (f) conviction for an offence related to dishonesty or fraud in his professional activity.

(2) A suspension or debarment of a bidder or supplier under subsection (1) shall not be effected unless the Policy Office -

- (a) reviews and considers the factual record developed by the public body that proposes the action;
- (b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and
- (c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.

(3) A period of debarment under subsection (1) shall not exceed 5 years.

PART IX – MISCELLANEOUS

54. Oath of office

Every member and officer shall, on assumption of duty, take such oath as may be prescribed.

55. Disclosure of interest

A member or officer having any direct or indirect interest in any matter brought before the Policy Office, the Board or the Review Panel -

- (a) shall immediately inform the Director or the Chairperson, as the case may be; and
- (b) shall not participate in the deliberations or any part of the decision-making process in relation to that matter.

56. Declaration of assets

(1) Subject to subsection (2), every member and officer shall file with the Secretary to the Cabinet a declaration of his assets and liabilities in such form and manner as may be prescribed -

- (a) within 30 days of his appointment; and
- (b) on the termination of his appointment.

(2) Where, subsequent to a declaration made under subsection (1), the state his assets or liabilities is so altered as to be reduced or increased in value by not less than 500,000 rupees, the member or officer shall make a fresh declaration.

(3) No declaration of assets filed under this section shall be disclosed to any person except with the express consent of the member or officer concerned or by order of a Judge on reasonable cause shown.

57. Funds

The Policy Office, the Board and the Review Panel shall derive their funds from the Consolidated Fund and from any fees and charges levied by the respective institutions.

58. Undue influence

Any person who directly or indirectly, in any manner, influences, or attempts to influence, any member or public official or any member of the Policy Office, the Board, the Review Panel or a public body in the performance of his duties under this Act, shall commit an offence.

59. Immunities

No action shall lie against the Policy Office, the Board or the Review Panel, or any member or officer, for any act or omission, except in so far as the act or omission complained of was done in bad faith.

60. Offences

Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 8 years.

61. Regulations

(1) The Minister may, on the recommendation of the Policy Office, make such regulations as it thinks fit for the purpose of this Act.

(2) Regulations made under subsection (1) may provide for -

- (a) detailed procedures;
- (b) competent authorities;
- (c) operational thresholds;
- (d) time limits and other deadlines; and
- (e) the levying of fees or charges by the Policy Office, the Board or the Review Panel;
- (f) the amendment of the Schedule; and

(3) Regulations made under subsection (1) may provide that any person who contravenes its shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

62. Repeal

The Central Tender Board Act is repealed.

63. Consequential amendment

(1) The Public Private Partnership Act 2004 is amended in section 2, by deleting the definition of “Board” and replacing it by the following new definition -

“Board” has the same meaning as in the Public Procurement Act;

(2) Section 128 of the Local Government Act 2003 is repealed.

64. Transitional provisions

(1) Every act done by, or in relation to, the Central Tender Board established under the repealed Act shall be deemed to have been done, or commenced, as the case may be, under this Act.

(2) Any tender invited under the repealed Act, shall be deemed to have been invited as required under this Act.

(3) Any tender or contract that was approved under the repealed Act shall be deemed to have been approved under this Act.

(4) In this section, “repealed Act” means the Act referred to in section 62.

65. Commencement

This Act shall come in operation on a day to be fixed by Proclamation.

FIRST SCHEDULE
(section 2)

Column 1
Public body

Column 2
Type of Contract

Column 3
**Prescribed
Amount**

PART I

Ministries/Government/ Departments	All Contracts	5 million rupees
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PART II

Local Authorities	All Contracts	5 million rupees
Rodrigues Regional Assembly	All Contracts	5 million rupees
Mauritius Qualifications Authority	All Contracts	5 million rupees

PART III

Goods, Civil Engineering Works and capital goods	25 million rupees
Consultancy Services	5 million rupees
Other Services	10 million rupees

Agricultural Marketing Board
Export Processing Zone Development Authority
Farmer's Service Corporation
Financial Services Commission
Industrial & Vocational Training Board
Irrigation Authority
Mahatma Gandhi Institute
Mauritius College of the Air
Mauritius Educational Development Company Ltd
Mauritius Film Development Corporation
Mauritius Examinations Syndicate
Mauritius Institute of Health
Mauritius Institute of Public Administration and Management
Mauritius Meat Authority
Mauritius Oceanography Institute
Mauritius Standards Bureau
Mauritius Tourism Promotion Authority
National Computer Board
National Handicraft Centre
Outer Islands Development Corporation
Private Secondary Schools Authority
Public officers Welfare Council
Rodrigues Educational Development Company Ltd
Road Development Authority
Sir Seewoosagur Ramgoolam Botanic Garden Trust
Small and Medium Industries Development Organisation
Sugar Industry Labour Welfare Fund
Sugar Planter's Mechanical Pool Corporation
Tea Board
Tertiary Education Commission
University of Mauritius
Airport Development Corporation Ltd

Beach Authority
 Cargo Handling Corporation Ltd
 Central Electricity Board
 Central Water Authority
 Development Bank of Mauritius Ltd
 Information and Communication Technologies Authority
 Mauritius Broadcasting Corporation
 Mauritius Export & Investment Authority
 Mauritius Freeport Authority
 Mauritius Housing Company Ltd
 Mauritius Marine Authority
 Mauritius Shipping Corporation Ltd
 Mauritius Sugar Authority
 Mauritius Telecom Limited
 National Housing Development Company Ltd
 National Transport Corporation
 State Informatics Ltd
 State Investment Corporation Limited
 State Property Development Company Ltd
 State Trading Corporation
 Waste Water Management Authority

PART IV

Mauritius Revenue Authority	Goods, Civil Engineering Works and Capital Goods Consultancy Services Other Services	50 million rupees 5 million rupees 10 million rupees
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