# THE CENTRAL MEDICAL PROCUREMENT AUTHORITY ACT 2023

**Act No. 9 of 2023**

*I assent*

**PRITHVIRAJSING ROOPUN, G.C.S.K.**

*7th July 2023* *President of the Republic of Mauritius*

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# An Act

**To establish the Central Medical Procurement Authority for the procurement, warehousing, supply and distribution of medical supplies**

ENACTED by the Parliament of Mauritius, as follows –

## PART I – PRELIMINARY

### 1. Short title

This Act may be cited as the Central Medical Procurement Authority Act 2023.

### 2. Interpretation

In this Act –

"Authority" means the Central Medical Procurement Authority established under section 6;

"bid" includes a proposal submitted in response to a request made pursuant to section 21;

"bidder" means a participant or potential participant in procurement proceedings;

"bidding document" –

(a) means any document issued by the Authority 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 a security instrument required to ensure that a bid remains valid during the period specified in a bidding document;

"Board" means the Central Medical Procurement Board referred to in section 10;

"directive" means an official instruction issued by the Authority;

"Director" means the Director of the Authority appointed as such under section 11;

"foreign State" includes any Ministry, department, organ, statutory body, Government-owned or Government-controlled corporation, or other agency, of a foreign State;

"framework agreement" means an agreement or any other arrangement, between the Authority and one or more suppliers, which establishes the terms and conditions under which the supplier will enter into one or more contracts with the Authority for the period during which the agreement or arrangement applies;

"ICAC" means the Independent Commission Against Corruption established under the Prevention of Corruption Act;

"local manufacturer" means a locally registered manufacturer of medical supplies;

"medical supplies" –

(a) means products or materials used in the delivery of health services; and

(b) includes –

(i) pharmaceuticals, non-pharmaceuticals, nutraceuticals, vaccines and therapeutic antisera, medical device, medical equipment, medical appliances, medical materials, health technologies, laboratory supplies and reagents, dental materials, hospital consumables, and such other materials or equipments and their maintenance services as may be necessary for the delivery of health services;

(ii) services incidental to the supply and distribution of the medical supplies; and

(iii) such other medical supplies as may be prescribed;

"member" –

(a) means a member of the Board; and

(b) includes the Chairperson;

"Minister" means the Minister to whom responsibility for the subject of health is assigned;

"Ministry" means Ministry responsible for the subject of health;

"officer" –

(a) means an officer of the Authority appointed as such under section 12; and

(b) includes the Director;

"Policy Office" has the same meaning as in the Public Procurement Act;

"procurement" means the acquisition by the Authority, by purchase, lease or any other contractual means, of medical supplies;

"procurement contract" –

(a) means a contract between the Authority and a supplier resulting from procurement proceedings; and

(b) includes an agreement or any other arrangement under a framework agreement;

"public health institution" means a health institution which falls under the aegis of the Ministry, other than a private health institution which is licensed under the Private Health Institutions Act;

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

"safety stock" means a quantity of inventory that is determined and held by the Authority to mitigate the risk of stock-out or shortages of medical supplies;

"supervising officer" means the supervising officer of the Ministry;

"supplier" means a person who supplies medical supplies.

**3. Applicability of Public Procurement Act**

(1) The Authority shall, with respect to the procurement of medical supplies, be exempt from the application of the Public Procurement Act, except for Parts II insofar as it relates to sections 7 and 7A, VI, VII and VIII of that Act with such modifications, exceptions and adaptations as may be necessary.

(2) Any directive and regulations made under Part VI, VII and VIII of the Public Procurement Act shall, with such modifications, exceptions and adaptations as may be necessary, apply to the Authority.

(3) In the event of any inconsistency between this Act and the Public Procurement Act with regard to the procurement of medical supplies, this Act shall prevail.

(4) Notwithstanding subsection (1), the Public Procurement Act shall apply to any goods, works, consultancy services and other services, other than medical supplies, to be procured by the Authority.

**4. Functions and powers of Policy Office**

The Policy Office shall, for the purposes of this Act –

(a) formulate, after consultation with the Authority, policies relating to procurement of medical supplies, including directives, procedures, instructions, technical notes and manual, for the implementation of this Act;

(b) act as a focal point to guide the Board with a view to ensuring consistency in the application of this Act and any regulations made under this Act;

(c) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system; and

(d) conduct, from time to time, quality assurance to ensure that the Authority is discharging its functions effectively and efficiently.

**5. Powers of Ministry**

Where the Authority is, for any reason, unable to procure a medical supply, the Ministry shall, notwithstanding this Act and section 3B of the Public Procurement Act, procure the medical supply in accordance with the Public Procurement Act.

## PART II – CENTRAL MEDICAL PROCUREMENT AUTHORITY

### Sub-Part A – Establishment of Authority

**6. The Authority**

(1) There is established, for the purposes of this Act, the Central Medical Procurement Authority.

(2) The Authority shall be a body corporate.

(3) The principal place of business of the Authority shall be at such place as the Board may determine.

(4) Subject to this Act, the Authority shall, in the pursuit of its objects, discharge its functions independently and act without fear or favour.

**7. Objects of Authority**

The Authority shall be responsible for –

(a) the procurement of medical supplies for public health institutions;

(b) the warehousing of medical supplies;

(c) the supply and distribution of procured medical supplies to public health institutions; and

(d) ensuring that the stock level of medical supplies in public health institutions are maintained and are available at all times.

**8. Functions of Authority**

The Authority shall have such functions as are necessary to further its objects most effectively and shall, in particular –

(a) ensure efficiency and integrity in the procurement of medical supplies;

(b) devise innovative procurement methods to ensure efficiency and value for money;

(c) conduct diligently and judiciously needs and specifications requirements of medical supplies;

(d) select the procurement method and contracting approach and prepare the procurement plans for publication on the e-procurement system;

(e) prepare and publish bidding documents and invitation for bids on the e-procurement system;

(f) open and evaluate bids and select the bidder for the award of contract through the e-procurement system;

(g) award contracts and undertake proper and effective contract management;

(h) appoint a contract management team, if required, for contracts management;

(i) be responsible for the operation and management services for the warehousing, inventory control of medical supplies and their distribution to public health institutions;

(j) arrange for real-time inventory management of all medical supplies points, as well as their usage and consumption, using an appropriate information and communication system and tools;

(k) conduct market research to ensure availability of up-to-date medical supplies;

(l) ensure, at all times, safety stock level of medical supplies in public health institutions by carrying out regular physical inspection of the stock of the medical supplies;

(m) maintain real-time records of all the medical supplies;

(n) make use of appropriate information and communication tools for the fulfilment of its objects;

(o) conduct supplier ratings and initiate actions for the suspension, debarment or disqualification of defaulting suppliers;

(p) conduct market surveys for development of a price list for comparison purposes during tender evaluation;

(q) prepare, every year, comprehensive procurement reports including information such as tenders awarded, tenders in process, contract amount per tender, tenders delayed and reasons for the delay and challenges faced together with envisaged solutions; and

(r) do all such other acts and things as it may consider necessary for the purposes of this Act.

**9. Powers of Authority**

(1) The Authority may, in the exercise of its powers –

(a) issue directives to public health institutions and ensure compliance thereto;

(b) control, supervise and administer its assets in such manner as best promotes the purpose for which it has been established;

(c) enter into lease or rental agreements for the warehousing of medical supplies and the supply and distribution of medical supplies to public health institutions;

(d) enter into association with such other bodies or organisations, within or outside Mauritius, as it considers appropriate;

(e) take appropriate sanctions whenever required in cases of non-compliance with the process and procedures and on non-conformity of medical supplies delivered after award of contract;

(f) set up such technical committees as it thinks fit to assist it in the discharge of its functions;

(g) call for such information and document as it may require from a public health institution, and examine such documents and take copies or extracts thereof;

(h) commission any such study for the furtherance of its objectives;

(i) request any professional or technical assistance from any appropriate person in Mauritius or elsewhere.

(2) Where the Authority has issued a directive to a public health institution and any officer of that institution has deliberately failed to comply with such directive, the Authority shall refer the matter to the Secretary to Cabinet and Head of the Civil Service for such appropriate action as he deems appropriate.

**Sub-Part B – Administration and Management of Authority**

**10. The Board**

(1) The Authority shall be administered and managed by the Central Medical Procurement Board, which shall consist of –

(a) a Chairperson;

(b) 2 Vice-chairpersons; and

(c) 4 other members,

having wide experience in procurement, administrative, financial, legal, engineering or medical field.

(2) At least one of the members of the Board shall be from the Ministry.

(3) Every member shall be a person who has not been, or is not, actively engaged in any political activity.

(4) The members shall be appointed –

(a) by the President, acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition and the Minister; and

(b) on such terms and conditions as the Prime Minister may determine.

(5) Every member shall hold office for a period not exceeding 3 years and shall be eligible for reappointment.

(6) The President shall, on the advice of the Prime Minister and following a report from the Minister, at any time terminate the appointment of a member –

(a) whose performance appraisal is not satisfactory;

(b) who has been found guilty of any misconduct, default or breach of trust in the performance of his duties; and

(c) who has committed an offence of such nature as renders it desirable that his appointment should be terminated.

(7) The Board may co-opt other persons capable of assisting it with expert advice but that person shall not have the right to vote on any matter considered by the Board.

(8) At any meeting of the Board, 5 members shall constitute a quorum.

(9) A Board shall –

(a) meet as often as is necessary and at such time and place as the Chairperson thinks fit; and

(b) subject to this section, regulate its meetings and procedures as it may determine.

(10) A meeting of the Board shall be convened on a request made by at least 5 members.

(11) (a) The Board shall designate one of the officers to act as Secretary to the Board.

(b) The Secretary shall –

(i) prepare and attend every meeting of the Board;

(ii) keep minutes of proceedings of any meeting of the Board; and

(iii) have such other duties as may be conferred upon him by the Board.

(12) The Board shall, in the discharge of its functions, act without fear or favour and shall not be subject to the direction or control of any other person or authority.

**11. The Director**

(1) There shall be a Director who shall be responsible for the execution of the policy of the Board and for the control and management of the day to day business of the Authority.

(2) The Director shall be appointed by the Prime Minister on such terms and conditions as the Prime Minister may determine.

(3) The Director shall, in the performance of his duties –

(a) before the review of the recommendations of a bid evaluation committee by the Board, certify that all procurement procedures at the level of the Authority have been complied with in accordance with this Act;

(b) act in accordance with such directives as he may receive from the Board; and

(c) be accountable and answerable to the Board.

(4) The Director shall attend every meeting of the Board and may take part in its deliberations but shall not have the right to vote.

**12. Staff of Authority**

(1) The Director shall be assisted by such officers as may be necessary.

(2) Every officer shall be appointed by the Board on such terms and conditions as it may determine.

(3) The Secretary to Cabinet and Head of the Civil Service may, subject to the approval of the Public Service Commission, designate such public officers as may be necessary to assist the Authority in the discharge of its functions.

(4) Every officer shall be under the administrative control of the Director.

(5) The Board may make provisions to govern the conditions of service of the officers and, in particular, to deal with –

(a) the appointment, discipline, dismissal, pay and leave of, and the security to be given by, officers;

(b) appeals by officers against dismissal or other disciplinary measures; and

(c) the establishment and maintenance of provident and pension fund schemes and the contributions payable to those schemes and the benefits derived therefrom.

**13. Technical committees**

(1) The Board may set up such technical committees as may be necessary to examine and report on any matter referred to them by the Board or the Director.

(2) Every technical committee shall consist of not less than 3 and not more than 7 members, to be appointed by the Board on such terms and conditions as it may determine.

(3) A technical committee may co-opt, with the approval of the Board, any other person and may set up such sub-committees as it considers necessary.

(4) The Board may, at any time, terminate the appointment of any member of a technical committee for misconduct, default or breach of trust in the performance of his duties as member or for any other good or sufficient cause.

(5) A technical committee shall –

(a) meet as often as is necessary and at such time and place as the chairperson of the technical committee thinks fit;

(b) meet as and when required by the Board; and

(c) subject to this section, regulate its meetings and procedures as it may determine.

## PART III – PROCUREMENT OF MEDICAL SUPPLIES

### Sub-Part A – Procurement Policies and Planning

**14. Procurement policies**

(1) Subject to subsection (2), the Authority shall, in close collaboration with the Ministry, prepare, amend and implement such procurement policies and standard bidding documents as may be required.

(2) Any procurement policy and standard bidding document shall be approved by the Policy Office.

**15. Committee of needs**

(1) The Authority shall set up such committees of needs to diligently and judiciously prepare the needs and specifications of medical supplies for the public health institutions.

(2) The needs and specifications of medical supplies shall be prepared and submitted for approval of the Board by 31 March of each financial year for use in the forthcoming financial year.

**16. Procurement planning**

(1) The Authority shall prepare the annual procurement plan, based on the needs and specifications submitted by the committees of needs for the purchase of medical supplies.

(2) A procurement plan may, during the course of implementation, be revised or updated to suit current requirements of the Ministry.

(3) Any revision of the procurement plan, as approved by the Board, may include the addition of new medical supplies, change of dates, scope reduction, change of the procurement method, and such other issues as shall be deemed appropriate.

(4) (a) The Authority shall abstain from processing unplanned tenders.

(b) Notwithstanding paragraph (a), the Authority may, in exceptional circumstances and with the approval of the Board, consider unplanned tenders.

**Sub-Part B – Procurement Methods**

**17. Choice of procurement methods**

(1) The Authority shall, for the procurement of a medical supply, use the following procurement methods –

(a) manufacturer's solicitation;

(b) open competitive bidding;

(c) restricted bidding;

(d) request for quotations;

(e) competitive negotiation;

(f) direct procurement; or

(g) emergency procurement.

(2) The choice of a procurement method shall be subject to the prescribed threshold or circumstances of the requirement to procure.

**18. Manufacturer's solicitation**

(1) The Authority may, in accordance with this section, procure a medical supply from a manufacturer, including a local manufacturer, of the medical supply.

(2) Where there is a sole manufacturer of the medical supply, the Authority shall use the direct procurement method to procure the medical supply from the sole manufacturer or its authorised dealer.

(3) Where there is more than one manufacturer of the medical supply, the Authority shall use the restricted bidding procurement method amongst the manufacturers to –

(a) procure the medical supply; or

(b) enter into a framework agreement for the procurement of the medical supply.

(4) Notwithstanding this section, the Authority shall enter into a supply agreement with a local manufacturer –

(a) after conducting a competitive negotiation exercise amongst local manufacturers; or

(b) where there is a sole manufacturer, after negotiating the supply conditions including the price or the mode of determining the price and their compliance with required quality standards.

(5) In the absence of solicitation from manufacturers, the Authority shall use the open competitive bidding procurement method or any other procurement method to procure a medical supply.

**19. Open competitive bidding**

(1) Where the Authority uses the open competitive procurement method for the procurement of a medical supply, it shall invite, through publication, for pre-qualification of bidders who comply with international standards.

(2) An application for pre-qualification shall be evaluated based on evaluation criteria as indicated in the pre-qualification document.

(3) The pre-qualification of bidders for each medical supply shall be valid for a period of 3 years.

(4) The list of pre-qualified bidders shall be updated every 2 years or at such other interval as the Authority deems necessary.

**20. Restricted bidding**

The Authority may use the restricted bidding procurement method for the procurement of a medical supply –

(a) from manufacturers of the medical supply;

(b) from pre-qualified bidders;

(c) where the time and effort required to examine and evaluate a large number of bids would be disproportionate to the value of the procurement, subject that the estimated value of the procurement does not exceed the prescribed threshold;

(d) that are scarcely used or could not have been subject to anticipated forecast by their users;

(e) available only from a limited number of suppliers; or

(f) where the open competitive bidding procurement method has failed and the medical supply may be sourced from restricted suppliers such as habitual suppliers or potential identified suppliers.

**21. Request for quotations**

The Authority may use the request for quotations procurement method for the procurement of a medical supply where –

(a) the medical supply is readily available off the shelf, subject that the price is the determining factor for the selection of the supplier and the estimated value of the procurement does not exceed the prescribed threshold;

(b) the medical supply is urgently required and is not included in any existing framework agreement;

(c) unexpected events or circumstances have arisen which require immediate intervention;

(d) the medical supply is out of stock and recourse to request for quotation is the most appropriate procurement method; or

(e) the delivery of the medical supply has been delayed and the medical supply is urgently required.

**22. Competitive negotiations**

(1) The Authority may engage in competitive negotiations for the procurement of a medical supply from suppliers where –

(a) there is an urgent need for the procurement of the medical supply and engaging in any other method of procurement would be impractical and time-consuming, provided that the circumstances giving rise to the urgency were not foreseeable by the Authority or was not the result of any dilatory conduct on the part of the Authority;

(b) due to a catastrophe, there is an urgent need for the procurement of the medical supply and engaging in any other method of procurement would be impractical and time-consuming;

(c) all the bids received from the open competitive bidding or restricted bidding procurement method are classed as irregular or unacceptable;

(d) the Authority determines that the use of any other method of procurement is not appropriate for the interests of Mauritius; or

(e) it is required as a complementary procedure as –

(i) there is a tie in the lowest evaluated price by 2 or more bidders;

(ii) there is a tie in the highest combined score points; or

(iii) the lowest evaluated price substantially exceeds the estimated cost.

(2) For the purpose of subsection (1)(e), the Authority shall identify –

(a) the bidders affected by the tie; or

(b) the bidders who quoted prices which are substantially above the estimated cost.

(3) Where a bidder has quoted above the above estimated cost, the Authority shall –

(a) reveal the estimated cost to the bidder; and

(b) limit its invitation to bidders whose evaluated prices are not more than the prescribed thresholds.

(4) In subsection (1)(c) –

"irregular", in relation to a bid, means that –

(a) the bid does not comply with the bidding documents;

(b) there is evidence of collusion or corruption; or

(c) the bid is abnormally low;

"unacceptable", in relation to a bid, means that –

(a) the bid was submitted by a bidder who does not have the required qualifications; or

(b) the price quoted substantially exceeds the updated cost estimate.

**23. Direct procurement**

The Authority may procure a medical supply by soliciting for a bid, proposal, or price quotation, from a single qualified bidder where –

(a) the medical supply is protected by patent rights;

(b) the utilisation of the medical supply is subject to technical compatibility of equipment available;

(c) an emergency has occurred as a result of the performance failure of the successful bidder selected through other procurement methods;

(d) the medical supply is further required and it cannot be technically separated from the initial contract;

(e) purchases are made from the sole manufacturer of the medical supply or authorised dealer of the sole manufacturer; or

(f) there is need for spare parts, additions, maintenance of existing systems or any product upgrade, trouble shooting, testing and analysis.

**24. Emergency procurement**

(1) The Authority may, in cases of emergency, purchase a medical supply by any of the procurement method specified in subsection (5).

(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 method may be utilised at the conclusion of the emergency period.

(3) Where public interest demands the emergency procurement of a medical supply, the supervising officer shall evaluate the need for the emergency procurement and submit a request to the Authority.

(4) The Authority shall determine as to the manner to proceed in order to guarantee value for money, with due regard to prevailing circumstances.

(5) The Authority may, depending on the level of emergency and the time available, resort to the selection of the procurement method in the following order of hierarchy –

(a) call off from an existing framework agreement;

(b) extending or modifying an ongoing contract under the same terms and conditions;

(c) call for competition using a restricted or an open advertised procurement bidding with accelerated timescales;

(d) competitive negotiations;

(e) direct award due to the absence of competition or protection of exclusive rights; or

(f) direct award due to extreme urgency.

(6) The Authority shall, before authorising any procurement under this section, ensure that –

(a) recourse to emergency procurement is to efficiently and effectively deal with situations of emergency, which would otherwise not be possible by resorting to normal procurement;

(b) the quantities being purchased are for the duration of the situation of emergency, which should not exceed the lead time for obtaining delivery through a normal procurement method;

(c) the procurement contract is awarded to a supplier who has a track record of supplying the medical supply; and

(d) the contract price for the medical supply is fair and reasonable.

(7) The Authority shall, in relation to an award made in respect of a procurement under subsection (5) –

(a) maintain appropriate record;

(b) promptly publish a notice of award on its website; and

(c) thereafter, forthwith submit a report to the Policy Office specifying –

(i) details of the emergency situation;

(ii) the subject matter of the procurement;

(iii) the name of the supplier; and

(iv) the value of the contract awarded.

(8) A procurement under this section shall not be subject to challenge under section 43 of the Public Procurement Act or review under section 45 of the Public Procurement Act.

(9) In this section –

"emergency" includes a situation where –

(a) the country is either seriously threatened by or actually confronted with a disaster, a catastrophe, a war or an act of God; or

(b) life or the quality of life or environment may be seriously compromised.

**25. Alternative methods of procurement**

Notwithstanding this Sub-part, the Authority may resort to any of the following arrangements for the procurement of a medical supply –

(a) Government to Government purchase agreements, which may include the Authority as a partner in a framework agreement entered by the foreign State or by, or through, an entity designated by the foreign State;

(b) an agreement with regional or international groups for pooled procurements of commonly used medical supplies;

(c) a vendor-managed inventory;

(d) public private partnership arrangements; or

(e) such other arrangement as may be prescribed.

**Sub-Part C – Procurement Stages**

**26. Preparation of bidding documents**

(1) The Authority shall, based on the approved annual procurement plan under section 16, prepare the bidding documents in accordance with the most appropriate procurement method.

(2) Every bidding document prepared under subsection (1) shall be approved by the Board.

**27. Electronic bidding system**

(1) There shall be an electronic bidding system to receive and process bidding documents for evaluation, and for the award of any procurement contract, in accordance with such procedures as may be prescribed.

(2) Any reference in this Act to a document which has to be submitted in writing shall include reference to a document submitted electronically under the electronic bidding system.

**28. Bid security**

(1) The Authority shall, where applicable and in such manner as may be prescribed, include in a bidding document the requirements for bid security.

(2) The Authority may forfeit a bid security in the following circumstances –

(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 bid;

(c) failure by a successful bidder to sign a procurement contract in accordance with the terms specified in the bidding document; or

(d) major failure by a successful bidder to provide security for the performance of the procurement contract if required to do so in the bidding document.

**29. 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 document.

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

(3) Other methods for the submission of bids may be authorised in such manner as the Authority may determine.

**30. Deadline for submission of bids**

(1) The Authority shall set a deadline for the submission of bids, applications for pre-qualification and expressions of interest so as to allow sufficient time for their preparation and submission, for the purpose of 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.

**31. Modification, substitution or withdrawal of bids**

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

**32. Bid validity period**

(1) Every bid shall remain valid for the period of time indicated in the bidding document 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 for such period as may be prescribed.

(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.

**33. Non-performing suppliers**

(1) The Authority shall ensure that no disqualified supplier is allowed to receive a procurement contract or otherwise participate in procurement proceedings.

(2) The Authority may, in a bidding exercise, exclude a bidder –

(a) whose performance in a previous public contract has been deficient; or

(b) who has failed to perform satisfactorily, and has caused prejudice to the Authority with regard to contractual requirements notwithstanding that the bidder is not disqualified.

(3) The Authority may provide for such procedures and standards for the performance rating of suppliers as may be prescribed.

(4) The performance rating referred to in subsection (3) shall be made after the suppliers have been given the opportunity to comment and make representations to the Authority.

**34. 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) Notwithstanding subsections (3) and (4), bids submitted electronically shall be opened in such other manner as may be prescribed.

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

**35. Examination and evaluation of bids**

(1) The Authority may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall not request or authorise any bidder to change the price or substance of his bid.

(2) The Authority shall, following the opening of bid –

(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.

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

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

(5) 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.

(6) Where a bidder refuses to accept a correction made pursuant to subsection (4) or (5), his bid shall be rejected and the bid security forfeited.

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

(8) Every bid shall be evaluated according to the criteria and methodology specified 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.

(9) Where the bidding documents provide for a margin of preference to local suppliers or local small and medium enterprises, the applicable margin of preference shall be at such rate as the Authority may determine.

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

(11) Where the Authority –

(a) is of the view that the price, in combination with other constituent elements of the bid, is abnormally low in relation to the subject matter of the procurement; and

(b) has concerns as to the ability of the supplier to perform the procurement contract,

it may request the supplier, in writing, such information as it considers necessary.

(12) Where, after having considered any information furnished by the supplier under subsection (11)(a) and the information included in the bid, the Authority may, where it still has concerns as to the ability of the supplier to perform the procurement contract, reject the bid.

(13) (a) The Authority shall, in order to evaluate bids, set up a Bid Evaluation Committee, selected from a list of competent evaluators maintained by it.

(b) 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.

(c) The Bid Evaluation Committee shall, in the discharge of its functions, act without fear or favour and shall not be subject to the direction or control of any other person or authority.

**36. Post-qualification**

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

(2) Where the bid under subsection (1) fails to conform to the criteria specified in the bidding documents, the bid shall be rejected and the same evaluation shall be applied to the next ranked bid.

**37. Cancellation of bidding process**

(1) The Authority may, at any time prior to the acceptance of a bid, reject all bids or cancel any 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 medical supply is no longer required;

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

(e) in the public interest, the bidding documents require substantial modification, or mistakes are found in the bidding documents after the publication of an invitation for bids, making it more convenient to restart a new bidding process;

(f) after the closing date and time for submission of bids through the electronic bidding system and before the opening of bids, it is determined that one or more bidders were unable to submit bids due to such circumstances as may be prescribed; or

(g) defects or gaps in the specifications have been revealed, which prevent consideration of a substantially less expensive and functionally equivalent item other than the one called for in the bidding documents, or which prevent consideration of all items of cost to the Authority in the evaluation process.

(2) A written notice of the rejection of all bids, or cancellation of the 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 proceedings is made on a ground specified in subsection (1)(a), (b) or (f).

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

(5) Where procurement proceedings are cancelled by the Authority under this section, no challenge under section 43 of the Public Procurement Act and no application for review under section 45 of the Public Procurement Act shall be entertained in respect of the cancellation.

**38. Award of procurement contracts**

(1) A procurement contract shall be awarded by the Authority to the bidder who has submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents.

(2) The Authority shall, before awarding a contract under subsection (1), certify and keep on record that all the procurement procedures have been complied with in accordance with this Act.

(3) There shall be no negotiation between the Authority and a selected bidder or other bidders except in such special circumstances as may be prescribed or where the selected procurement method includes negotiations.

(4) Notwithstanding subsection (1), where the specificity of the subject matter of a procurement requires recourse to more than one bidder to execute the procurement contract and the Authority intends to award a procurement contract to more than one bidder based on rates, the Authority may award the contracts after the determination of a common rate and the pre-qualification exercise of the bidders.

(5) Notwithstanding subsection (1), the Authority may limit the award of the number of lots to suppliers provided that such limitations are based on non-discriminatory criteria for determining which lots shall be awarded to substantially responsive suppliers that shall be indicated in the bidding documents.

(6) The Authority shall, in relation to a procurement contract the value of which is above the prescribed threshold, 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.

(7) In the absence of a challenge by any other bidder within 7 days of the date of the notice referred to in subsection (3), the contract shall be awarded to the successful bidder.

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

(9) 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 Authority shall select another bidder from among the remaining valid bids, and subsections (3) to (5) shall apply to the new selection.

(10) The Authority shall promptly publish, in such manner as it may determine, notice of every procurement award.

**39. Debriefing of unsuccessful bidders**

The Authority shall, on request of an unsuccessful bidder, promptly inform the bidder of the reasons for which his bid, or his application for pre-qualification, was unsuccessful where the request for such debriefing was submitted within 30 days of the publication.

**40. Auditor's certificate**

The auditor of the Authority shall mention in his annual report whether the provisions of this Part has been complied with.

**PART IV – INVENTORY AND DISTRIBUTION MANAGEMENT**

**41. Electronic Inventory Management System**

(1) There shall be an electronic inventory management system for the management of the procurement and supply chain to be used by the Authority with regard to medical supplies.

(2) The Authority shall issue such guidelines and directives as may be necessary for the use of the electronic inventory management system.

(3) Any person who fails to comply with any guideline or directive issued under subsection (2) shall commit an offence.

**42. Warehousing and distribution practices**

(1) The Authority shall issue such guidelines and directives as may be necessary for good warehousing and distribution practices with regard to medical supplies.

(2) Any person who fails to comply with any guideline or directive issued under subsection (2) shall commit an offence.

**43. Outsourcing of warehousing and distribution facilities**

The Authority may, in such manner as may be prescribed, outsource the functions of warehousing and distribution of medical supplies, or enter into a lease or rental agreement for the warehousing and distribution of medical supplies on a competitive and commercial basis.

**44. Reverse logistics**

The Authority shall be responsible for all reverse logistics, including expired medical supplies, returns and faulty equipment.

**PART V – FINANCIAL PROVISIONS, ACCOUNTS AND AUDIT**

**45. General Fund**

The Authority shall establish a General Fund –

(a) into which all monies received from any source by the Authority shall be paid; and

(b) out of which all payments required to be made for the purposes of this Act by the Authority shall be effected.

**46. Estimates**

The Authority shall submit to the Minister, not later than 31 March in every year, an estimate of the income and expenditure of the Authority for the next financial year for his approval.

**47. Annual report**

(1) The Board shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Authority, in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Authority before the Assembly.

**48. Audit report**

The auditor of the Authority shall be the Director of Audit.

**PART VI – MISCELLANEOUS PROVISIONS**

**49. Confidentiality**

(1) Any officer involved in a procurement process shall be prohibited from communicating to any unauthorized party any confidential or official information obtained as a result of participating in the procurement process.

(2) (a) Any information related to the analysis, clarification and evaluation of bids shall, subject to paragraph (b), not be disclosed to bidders or any other person not officially involved in the tendering process.

(b) Where information is required in the interest of the Authority, by the Director or by any other officer, such information shall be disclosed for that purpose.

**50. Oath of Authority**

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

**51. Disclosure of interest**

Where any member or any person related to him by blood or marriage has a pecuniary or other material interest in relation to any matter before the Board, that member shall –

(a) disclose the nature of the interest at or before the meeting convened to discuss that matter; and

(b) not take part in any deliberations of the Board relating to that matter.

**52. Declaration of assets**

(1) Subject to subsection (2), every member and officer shall make a declaration of his assets and liabilities with ICAC –

(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 assets and liabilities of a member or an officer have been reduced or increased in value by not less than 500,000 rupees or such other amount as may be prescribed, the member or officer shall make a fresh declaration.

(3) Any declaration referred to in subsection (1) or (2) shall be made in such form and manner as ICAC may determine.

(4) No declaration of assets made 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.

**53. Undue influence**

Any person who directly or indirectly, in any manner, influences, or attempts to influence, a member or an officer in the performance of his duties under this Act, shall commit an offence.

**54. Protection from liability**

No action shall lie against the Authority, the Board, a member or an officer, for any act or omission, except insofar as the act or omission complained of was done in bad faith.

**55. Offences**

Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.

**56. Regulations**

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

(2) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding one year.

**57. Consequential amendments**

(1) The Public Procurement Act is amended –

(a) by inserting, after section 3A, the following new section –

**3B. Procurement of medical supplies**

(1) The Central Medical Procurement Authority shall, with respect to the procurement of medical supplies under the Central Medical Procurement Authority Act 2023, be exempt from the application of this Act, except for Parts II insofar as it relates to sections 7 and 7A, VI, VII and VIII with such modifications and adaptations as may be necessary.

(2) Notwithstanding subsection (1), this Act shall apply to any goods, works, consultancy services and other services, other than medical supplies, to be procured by the Central Medical Procurement Authority.

(3) In this section –

"Central Medical Procurement Authority" means the Central Medical Procurement Authority established under the Central Medical Procurement Authority Act 2023;

"medical supplies" has the same meaning as in the Central Medical Procurement Authority Act 2023.

(b) in section 7, by inserting, after paragraph (k), the following new paragraph, the word "and" at the end of paragraph (k) being deleted –

(ka) discharge such functions, and exercise such powers, as may be conferred upon it under the Central Medical Procurement Authority Act 2023; and

(c) in section 43 –

(i) in subsection (1), by deleting the words "and section 39(5)" and replacing them by the words "or section 39(5), or section 24(8) or 37(5) of the Central Medical Procurement Authority Act 2023";

(ii) in subsection (3)(a), by inserting, after the words "or 40(4),", the words "or section 38(7) of the Central Medical Procurement Authority Act 2023,";

(d) in section 45(1) –

(i) by inserting, after the words "section 39(5)", the words ", or section 24(8) or 37(5) of the Central Medical Procurement Authority Act 2023,";

(ii) in paragraph (c), by inserting, after the words "section 40(3),", the words " or section 38(6) of the Central Medical Procurement Authority Act 2023,".

(2) The Statutory Bodies (Accounts and Audit) Act is amended, in the First Schedule, by inserting, in the appropriate alphabetical order, the following new item and its corresponding entry –

| | |
|---|---|
| Central Medical Procurement Authority | Central Medical Procurement Authority Act 2023 |

**58. Transitional provisions**

(1) Any proceedings for the procurement of medical supplies initiated under the Public Procurement Act prior to the commencement of this Act shall, on the commencement of this Act, continue under the Public Procurement Act.

(2) The assets of the Ministry currently used for procurement, warehousing, supply and distribution of medical supplies shall be used by the Authority until such time as these assets are transferred to the Authority or otherwise.

(3) (a) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act up to 30 June of the next following year shall be deemed to be the first financial year of the Authority.

(b) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Authority.

(4) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

**59. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the fourth day of July two thousand and twenty three.

**Urmeelah Devi Ramchurn (Ms)**
*Acting Clerk of the National Assembly*

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