

**GUYANA
TENDER BOARD SYSTEM**

REVIEW AND RECOMMENDATIONS

BY

CONSULTANT

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GUYANA BUILDING EQUITY AND ECONOMIC PARTICIPATION
PROJECT

USAID-IGI INTERNATIONAL, INC.
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SUMMARY

The Guyana tender board system is viewed with suspicion by the contracting community and by the Guyanese public because they are unable to tell whether the tendering process in Guyana is carried out fairly and aboveboard and whether the Government is contracting for its needs efficiently and at a reasonable price.

Reforms in the tender board system and its governing laws (a) which will help the system function more *efficiently*, (b) to make the system more *transparent* so that prospective contractors and the public can be confident that they know what is going on at every step of the process without needing *inside* information, and (c) to inhibit *conflicts of interest* by the contracting community and by the Government's procurement officials are necessary to minimize the lack of faith in the system.

To enable the tendering system to function more *efficiently*, replacement of the tender board system (at first only the Central Tender Board) by an adequately staffed Central Procurement Secretariat headed by a professional director, who would consult with an Advisory Board on important matters, and the establishment of a group of professional evaluators, both Government and private, and a group which would monitor and audit contract performance are recommended. The Central Procurement Secretariat would guide the group of professional evaluators and the monitoring and auditing group and establish for all Government procurement (including the training of and a manual for those involved in the procurement process) (a) a systematic

prequalification and qualification procedure for contractors and consultants, (b) standardized procedures, documents, and bid packages to be used, (c) uniform rules for tender evaluation, contract award, handling of protests by unsuccessful tenderers, and monitoring and audit of contract performance, (d) procedures for contractor bonding and security, (e) different methods of procurement and the rules for their employment, and (f) a Government-wide database on contracts, tenders, contractors, and consultants.

To make the system more *transparent* the information given the contracting community about proposed tenders and the process by which they will be received, opened, evaluated, and adjudicated should be expanded, standardized, and followed consistently so that the system is clear and consistent and adheres to good commercial practice. This would necessitate expanding the information given in public advertisement of tenders, in the bid package, in the *Gazette*, and in the contract file, which should be available for public inspection.

To inhibit *conflicts of interest* new laws should be enacted which will prohibit (a) the involvement of Government officials in the tendering process when they have ties by marriage or blood, from business, from friendship, or from financial inducements with any tendering consultant or contractor and (b) contractors from tendering for a contract when a consultant with whom they have any of the foregoing ties participated in earlier stages of the process.

1. PROJECT

This activity forms part of the USAID Building Equity and Economic Participation Project. The activities of the consultant pursuant to the Terms of Reference were carried out in Georgetown from April 9-May 5, 1996.

2. TERMS OF REFERENCE

2.1 REVIEW PROCEDURES AND LEGAL FRAMEWORK AND RECOMMEND CHANGES. The Terms of Reference required the consultant to review the procedures and practices, administration, and legal and regulatory framework of the Guyana tender-board system and to provide recommendations for changes to both procedures and organizational structures of the tender-board system and to draft amendments to the existing laws of the tender-board system.

2.2 METHODOLOGY. To carry out the consultancy, the consultant met with Government officials, contractors, consultants, and multilateral-agency representatives (see list at Appendix A), attended a Ministry of Finance symposium for contractors and consultants on procurement issues, and read and analyzed laws and regulations of Guyana, reports, and other relevant materials.

3. A GOOD TENDERING SYSTEM SHOULD MAXIMIZE COMPETITION AMONG AND PARTICIPATION BY QUALIFIED TENDERERS

A public or governmental tendering system is part of a system for government purchases (a procurement system), the purpose of which is to maximize the probability of the Government obtaining its needs efficiently and at a reasonable price. To achieve this purpose the system should (a) maximize competition among and participation in the tender process by qualified tenderers (this is the purpose a tender-board system should serve) and (b) ensure that the government receives the promised performance. Maximization of competition among and participation by qualified tenderers can be achieved if the procurement system is clear and consistent, adheres to good commercial practice, and is fair and "*transparent*," i.e., if prospective contractors and the public can be confident that they know what is going on at every step of the process without needing *inside* information and that *monkey business* and *hanky panky* are unlikely, that is that each offeror and its tender or offer will be treated fairly on its own merits and no one will be given favorable consideration by virtue of corrupt influence, whether through collusion, nepotism, abuse of friendship, bribery, kickbacks, payoffs, or other illegal or unethical action.

4. THE EXISTING TENDER BOARD SYSTEM

The existing law of Guyana governing the tender-board system is contained in the Financial (Amendment) Regulations, 1958, No. 8; the Tender Board Regulations, 1958, No. 9; the Procedures for the Guidance of Tender Boards, Attachment to Ministry of Finance Circular No. 4/1983; and Increased Limits of Contracts for Supplies, Services and Works to be approved by Tender Boards, Ministry of Finance Circular No. 4/1991.

4.1 TENDER BOARD COMPOSITION AND JURISDICTION AND RELATED LAWS. The law provides that:

4.1.1 the CENTRAL TENDER BOARD ("CTB"):

4.1.1.1 shall consist of the Secretary to the Treasury, or in his absence the Deputy Secretary to the Treasury, as Chairman; the Chief Works Officer; the Head, Central Projects Unit, State Planning Secretariat; the Regional Executive Officer of the Region in which the particular Project is located; the Permanent Secretary, Ministry of Regional Development, and a representative nominated by the Vice-President, Economic Planning and Finance, as members. The Chairman and three other members shall constitute a quorum. In the event of a tie, the Chairman shall have a casting vote in addition to his ordinary vote.

4.1.1.2 shall arrange by public tender (a) contracts for supplies exceeding \$6¹ million subject to the approval of Cabinet and for works/services

exceeding \$9 million subject to the approval of Cabinet; (b) contracts for supplies for Ministries/Departments exceeding \$600,000 (except that for the Ministry of Agriculture Hydraulics Division the amount shall be exceeding \$2 million) subject to the approval of the Minister of Finance and for contracts for works/services exceeding \$900,000 (except for the Ministry of Communications and Works and for the Ministry of Agriculture Hydraulics Division) subject to the approval of the Minister of Finance; and (c) contracts for national projects.

4.1.2 REGIONAL TENDER BOARDS:

4.1.2.1 shall consist of the Regional Executive Officer, or in his absence the person acting for him, as Chairman; the Senior Engineer or the most senior person with engineering skills; a representative of the Regional Democratic Council ("RDC") nominated by the Chairman of the Council; a representative nominated by the Minister responsible for Regional Development; and the Officer-in-charge of the Sub-Treasury, Accountant General's Department in the Region, as members. Where the tender exceeds \$100,000 for supplies and \$300,000 for services/works, the Minister of Finance shall nominate an additional person to be a member of the Board. The Chairman and two other members shall constitute a quorum. In the event of a tie, the Chairman shall have a casting vote in addition to his ordinary vote.

4.1.2.2 shall arrange by public tender contracts for supplies exceeding \$180,000 to \$6 million subject to the approval of the RDC's Finance Committee and for works/services exceeding \$450,000 to \$9 million subject to the approval of the RDC's Finance Committee.

4.1.3 MINISTERIAL/DEPARTMENTAL TENDER BOARDS:

4.1.3.1 shall consist of the Accounting Officer (Permanent Secretary/Head of Department or other designated Accounting Officer), or Finance Officer (Principal Assistant Secretary, Finance) in the Accounting Officer's absence, as Chairman; the Chief Technical Officer in the Ministry/Department; a Head of Division in the Ministry/Department; and an Accounting Officer from another Ministry/Department or his representative, who should be at the level of Principal Assistant Secretary, but when the project is located in a Region, then the Accounting Officer should be the Regional Executive Officer or his representative, as members. The Chairman and two other members shall constitute a quorum.

4.1.3.2 shall arrange by public tender contracts for supplies

¹ In this paper all amounts expressed in "\$" or "dollars" refer to Guyana dollars unless otherwise specified.

exceeding \$180,000 to \$600,000 (except that contracts for supplies by the Ministry of Agriculture Hydraulics Division Tender Board are authorized up to \$2 million) and for works/services exceeding \$450,000 to \$900,000 (except that contracts for works/services by the Ministry of Communications and Works Tender Board and by the Ministry of Agriculture Hydraulics Division Tender Board are authorized up to \$6 million).

4.1.4 a PERMANENT SECRETARY, REGIONAL EXECUTIVE OFFICER, OR HEAD OF DEPARTMENT may arrange for contracts for:

4.1.4.1 supplies exceeding \$90,000 to \$180,000 on written quotations from at least three suppliers if there are that many and not exceeding \$90,000 without written quotations; and

4.1.4.2 works/services exceeding \$180,000 to \$450,000 on written quotations from at least three contractors if there are that many and not exceeding \$180,000 without written quotations.

4.1.5 CO-OPTATION. Chairmen of tender boards are authorized to co-opt the services of anyone who can assist the board in its consideration of any tender but not in the selection of the tenderer.

4.1.6 VARIATIONS exceeding 10% of the original value of a contract arising from a deliberate change in design or structure shall be referred to the tender board which arranged the contract subject to the approval of Cabinet or the Finance Committee of a Regional Democratic Council, as the case may be. Variations due to engineering necessity and variations due increases in wages and salaries or in the prices of materials (to the extent the Government is contractually obligated to compensate the contractor for such increases) need not be submitted to the tender board, but Accounting Officers should approve such increases in writing, copies to the Secretary to the Treasury, Accountant General, and Auditor General.

4.1.7 CONFLICTS OF INTEREST. Government officers are prohibited from sponsoring tenders for Government contracts. Regional Democratic Councilors may submit tenders but may not participate in the adjudication of tenders by the Regional tender board or participate during Regional Democratic Council Finance Committee consideration of such tenders.

4.2 PROCEDURES

4.2.1 ADVERTISING. The law requires advertising of invitations to tender in the *Gazette* (except for Ministerial/Departmental tenders), newspapers, and suitable public places and shall specify clearly the date and time when tenders will be received and that tenderers may be present at the opening.

4.2.2 QUALIFICATION OF CONTRACTORS. The law has no provision with respect to qualifications of contractors except that (a) tenders must be accompanied by a certificate from the Commissioner of Inland Revenue that the tenderer has fulfilled its income-tax obligations for the three years immediately preceding the year of the tender and a statement of NIS compliance and (b) tender boards must compile (and update every six months) lists of "sole suppliers" and lists of "sole agents" for equipment sold only by such agents and submit copies of such lists to the Secretary to the Treasury, the Auditor General, and the Accountant General

4.2.3 METHODS OF PROCUREMENT. There is no provision in the law for different methods of procurement than *public tender* except for:

4.2.3.1 Written Quotations. (See 4.1.4 above) the authorization to Permanent Secretaries, Regional Executive Officers, and Heads of Departments to procure with or without written quotations from at least three suppliers or contractors.

4.2.3.2 Variations. (See 4.1.6 above) the authorization to Accounting Officers to contract for variations not arising from a deliberate change in design or structure, and the implicit authorization to contract for variations of 10% or less of the original value of the contract arising from a deliberate change in design or structure.

4.2.3.3 Supplies. for supplies, when purchases must be attempted from Government agencies. If not available from them, such supplies should be tendered for if within the limits of the Central Tender Board or the Regional Tender Boards.

4.2.4 NO SUBDIVISION OF CONTRACTS. The law provides that contracts shall not be subdivided for the purpose of bringing them below one of the jurisdictional thresholds specified in 4.1 above.

4.2.5 SECURITY FOR BIDS AND PERFORMANCE. The law does not require that tenderers and contractors give any security against withdrawal of the bid after opening nor for performance of a contract. The practice among those who draft tender packages varies.

4.2.6 SUBMISSION OF TENDERS. The law requires that each tender be submitted in duplicate, state prices, conform with the specifica-

tions set out in the advertisement, be addressed to the Chairman of the particular tender board, sealed, and clearly marked "Tender for", but the name of the tenderer must not be stated on the envelope. The law does not, however, specify what the tender package which is issued to tenderers shall contain.

4.2.7 OPENING OF TENDERS. The law provides that tenderers may be present at the opening of tenders, that the Chairman of the tender board, in the presence of at least one other member, shall, "on the date and at the appointed hour," open the tenders received, and, after each tender has been dated and each tender (and its envelope) has been numbered, dated, and initialled by the Chairman and the other members present, a list shall be prepared of all tenders and signed by the chairman.

4.2.8 EVALUATION OF TENDERS AND AWARD OF CONTRACTS.

4.2.8.1 Considerations. The law requires tender boards to consider the tenders listed and submit schedules of the tenders and the names of the tenderers recommended for approval to Cabinet (by the CTB) or to the Finance Committee of the Regional Democratic Council (by regional tender boards) and provides that if the lowest tender is not recommended for award, the reasons for preferring another shall be given and recorded in the minutes. Under present procedures special evaluators chosen by the tender boards are supposed to be given the tenders and each is to make his or her separate evaluation. Then the evaluators meet as a group, discuss the separate evaluations, and submit a report to the tender board with comments from each evaluator on evaluations which differ markedly from those of other evaluators.

4.2.8.2 Engineer's Estimate. At present the law does not deal with how the Engineer's estimate of the cost of the contract should be treated and what role it should play in the evaluation of tenders. The present practice is supposedly to keep the Engineer's estimate secret, though this practice is apparently often more honored in the breach, as the Engineer's estimate is allegedly often known to favored tenderers. How the Engineer's estimate is used in evaluations, however, apparently differs from evaluation to evaluation -- some evaluators use it as the all-important benchmark, markedly downgrading tenders which substantially deviate from it, while others simply view it as a significant factor which should be considered along with others and operate on the basis that the lowest responsive bid should still be awarded the contract notwithstanding any substantial difference from the Engineer's estimate.

4.2.8.3 Criteria for Evaluation At present the law does not specify the criteria, or weighting thereof, which should be used in evalua-

tion of tenders. In practice, such criteria, and their weighting, may or may not be specified in the package of tender documents issued to tenderers in advance of preparation of their tenders.

4.2.8.4 Evaluators. At present there is apparently no standard method of selecting evaluators, who are normally Government servants who are not compensated for their work as evaluators even though they have to do their normal

work as well. As a result, evaluators apparently often procrastinate, letting the evaluations take second place to their normal workload, and questions arise as to their competence and/or impartiality.

4.2.9 RECORDKEEPING AND PUBLIC INFORMATION. Besides the advertising requirement (see 4.2.1 above), the approval of some variations (see 4.1.6 above), and the required submission of lists of sole suppliers and agents (see 4.2.2 above), the only provisions in the tender regulations with respect to recordkeeping and public information are that certified copies of all contracts shall be furnished the Director of Audit and (if a department has not been constituted a self-accounting department) the Accountant General, that the envelope in which a tender is received be preserved with the tender for audit purposes, and that all minutes and other correspondence of a tender board shall be preserved until the accounts to which they relate have been examined by the Auditor General.

5. SHORTCOMINGS OF THE EXISTING SYSTEM AND HOW THEY CAN BE RECTIFIED. (Legislation to carry out the recommendations of this section is set forth in Appendix B.)

5.1 TENDER BOARDS. Problems with the functioning of tender boards at present appear to fall into different categories: (a) their functions, membership, and procedures and (b) their secretariats (based on review of the functioning of the CTB secretariat). Except with respect to the procedures discussed in 5.2 below, no problems, comparable to those of the CTB, in the functioning of other tender boards and contracting authorities have been suggested to this consultant. The recommendations in 5.1.2.2 below with respect to the CTB secretariat are equally applicable to other tender boards and contracting authorities *mutatis mutandis*. Although some suggest that the present *dollar thresholds* on contract awards at different levels of tender boards and other contracting authorities have resulted in too much work for the CTB, it is not clear that this is a case. No change in the present dollar limits is recommended until the results of carrying out the changes recommended in 5.1.3 below can be analyzed -- it seems likely that those changes will make the tendering workload at each level more manageable.

5.1.1. FUNCTIONS AND MEMBERSHIP AND A POSSIBLE ALTERNATIVE TO TENDER BOARDS

5.1.1.1 Functions. Besides the evaluation of tenders, which is normally delegated to special evaluators, it's unclear that tender boards have any substantive functions² -- the functions of opening tenders, appointing the evaluators, and of receiving the evaluations and forwarding them to Cabinet are essentially

ministerial.

5.1.1.2 Membership. The membership of the tender boards is specified in the law as the holders of certain Governmental offices. The CTB apparently meets formally only once a week for half a day -- meetings should be frequent enough to handle the CTB's workload, but the determining factor slowing the work of the CTB (which by all reports is significantly backlogged in its work) is, apparently, the inadequately staffed and equipped secretariat (see 5.1.2 below) rather than infrequent meetings of the Board. The Board apparently also conducts some of its business informally by "round-robin" sessions (the file is circulated outside of a formal meeting from member to member, each member's comments are given to the secretariat, and a formal meeting is convened only if there is a strong variation among the comments of the members). If, as some allege, some of the members are incompetent or corrupt, there are different ways to rectify the situation:

(i) One way would lie not in changing the legal composition of the tender boards but, rather, in dismissing any members who are incompetent or corrupt from the Government offices they hold.

(ii) Another would be to make membership on the Central Tender Board, at least, a fulltime job and appoint as members highly qualified persons of unquestioned integrity and competence in financial, technical, managerial, planning, and legal matters and compensate them sufficiently to attract persons of such calibre; (query, though, whether the CTB has sufficient work, if special evaluators are used, to warrant fulltime members, though some have suggested that the Chairman does have enough work so that that position, at least, should be fulltime).

(iii) A third method would be to change the composition of the tender boards by naming other offices as those from which members of the tender boards are drawn.

5.1.1.3 An Alternative to Tender Boards. A preferable solution would be to abolish the CTB (and eventually all other tender boards) and have their functions performed by a special tendering or procurement secretariat, which would have additional functions, as described in detail in 5.1.3 below; (preference for this solution would be strengthened if in fact the CTB has no substantive functions).

5.1.2 EXISTING CTB SECRETARIAT

² The CTB says that the function of the special evaluators is only advisory -- the CTB receives the evaluations of the special evaluators, considers them, and, if there are wide disparities among them, it makes its own evaluations, which it forwards to the Minister of Finance and Cabinet. The consultant has requested minutes of recent (March and April, 1996) CTB meetings so that he can make his own judgment as to whether or not the CTB does perform substantive functions.

5.1.2.1 Present Functioning. The CTB secretariat, because of a lack of resources, both in equipment and staff, apparently hardly functions at all. It has no office, doesn't prepare meeting schedules for the CTB, doesn't prepare agendas in advance of meetings, doesn't keep adequate minutes of each meeting. The CTB files are in horrendous condition, missing many of the documents essential to understanding how and why contract awards are proposed.

5.1.2.2 The Contract File. At a minimum each contract file should contain: copies of all advertisements; the invitation to tender; the Engineer's estimate; each tender received at the opening; the original envelope of each tender and the tender initialled by the CTB members in attendance; minutes of the opening showing all those in attendance, the total prices bid for each tender (except in case of two-stage or two-envelope proposals); whether a bid guaranty has been provided; minutes showing the appointment of the evaluation committee and its membership; each evaluator's rating of each tender; the agenda for and the minutes of the CTB meeting at which the evaluators' ratings were received and considered; the views of each member of the CTB on the evaluation committee report; the decision of the CTB on the award, including its reasons for recommending the award and, if different from the evaluation committee recommendation, the reason for the difference; the recommendation of the CTB to the Minister and Cabinet, signed by each member of the CTB; the actions taken by the Minister and Cabinet; a copy of the signed contract; and all covering memoranda. The complete file should go to the Minister under cover of the CTB memo.

5.1.2.3 Tender Box. The law should provide that there must be a *separate tender box for each contract being tendered for* into which tenderers deliver their tenders. The box should have two locks, with the keys held by the head of the secretariat and the Chairman of the CTB. This locking procedure is apparently being followed, although there are allegations to the contrary -- there are not, however, separate tender boxes for each contract being tendered for.

5.1.3 REPLACEMENT OF TENDER BOARDS WITH A CENTRAL PROCUREMENT SECRETARIAT. Here is a fuller description of the procurement secretariat recommended in 5.1.1.3 above:

5.1.3.1 Director. The Central Procurement Secretariat ("CPS") should be headed by a senior civil servant with excellent managerial and procurement experience.

5.1.3.2 Advisory Board. The Director would be required to lay important substantive matters, including tender evaluations, before a five -member Advisory Board composed of highly qualified, and well-compensated, persons, appointed for three-year terms by the President of the Republic. Members of the Board should be persons of unquestioned integrity and competence in financial, technical,

managerial, planning, and legal matters.

5.1.3.3 Functions. The CPS should have an adequate and qualified staff, including the panel of public and private evaluators (see 5.2.7.2[iii] below) and a group of engineers, investigators, and auditors who would be charged with monitoring the performance of contracts after their award. The CPS could then perform, not only the ministerial functions of handling the tendering for contracts and the substantive function of evaluation of tenders, now under the management of the CTB, but could also develop guidance (including the training of and a manual for those involved in the procurement process) and standard procedures and documents for carrying out Government tendering and contracting at all levels, including prequalification and qualification, contract forms and clauses, tendering packages, different methods of procurement and the rules for their employment, contractor bonding and guaranties, tender evaluation, contract award, protests, and monitoring and enforcement of the performance of contracts and audit and assessment of the performance after completion of the contracts. The CPS could also manage the Government-wide database on contractors and contracting (see 5.2.2.2 below).

5.1.4 CONFLICTS OF INTEREST. The public perception of the tendering process is that it's riven with conflicts of interest; e.g., many assume that Engineer's estimates are being leaked, contracts are being awarded to favored parties, and consultants are skewing their work so as to favor certain contractors. To dispel this perception, the law on conflicts of interest should be broadened so that it's clear that those involved in adjudicating tenders and awarding contracts and consultants involved in preparing specifications and other parts of the tender package may not be interested in any of the contending parties or potential tenderers, whether by family relationship, business relationship, or friendship, or in consideration of any bribe, kickback, payoff, or other inducement.

5.1.5 DEFAULTS BY THE GOVERNMENT IN CONTRACT PERFORMANCE. Contractors allege that the Government is often slow in making payments due under contracts, arbitrarily withholds payments, and often does not perform other of its contractually promised obligations but that a contractor may complain of such defaults only at its peril, for the Government will take arbitrary retaliatory action against such a contractor. If the Government expects qualified contractors and consultants to participate in Government tenders, then those contractors and consultants must have a reasonable expecta-

tion that the Government will uphold its side of any contractual bargain and that they (the contractors and consultants) will have and may pursue adequate contractual remedies against the Government without fear of arbitrary and unwarranted retaliation. Government contracts should, therefore, contain provisions for payment of interest to contractors for overdue payments and should explicitly provide methods of dispute resolution, e.g., arbitration, which do not require expensive and long drawn out judicial litigation.

5.2 PROCEDURES

5.2.1 ADVERTISING

5.2.1.1 Present Shortcomings. The present legal requirement for advertising has several shortcomings. There does not seem to be good reason to exclude Ministerial/Department tenders (which may amount to as much as \$6 million in the case of Communications and Works and Hydraulics Division contracts) from the publication requirements. And much information important to prospective tenderers in deciding whether to spend their time and money in bidding for a contract is omitted from the present requirements and in present practice (see examples of advertisements at Appendix C).

5.2.1.2 Purpose and Remedy. The purpose of advertising tenders is, of course, to obtain maximum competition among and participation by contractors in the tender. Prospective tenderers want to know as much as possible about the nature of the project, the tendering procedures, how the contract award will be determined, and what will be the requirements of the contract before they decide whether or not to tender -- for example, is the project too big for them to handle or too small to be worth their while, is it funded, what terms and conditions will apply to the successful bidder, what does the bill of quantities provide, would the tender authority consider them qualified to perform the prospective contract, would their tender price be safeguarded from leakage before it's opened? The tender advertisement should, therefore, include, in addition to the items presently required by law, a description of the goods, services, and works, identification of the project, and information on the source of financing, the amount of the Engineer's estimate, requirements for contractor and materials eligibility, how and when the tender documents may be obtained (which should be well in advance of the closing date so that tenderers will have ample time to prepare their bids), information on site visits, the cost for such tender documents (which should be fairly nominal, not exceeding the Government's costs to make copies of the documents for potential tenderers), the procedure for delivery of tenders or proposals, the time and procedure for public opening, and how to obtain the tender package. The advertisement should be published early enough so that prospective tenderers have sufficient time to obtain the tendering documents and prepare and submit their tenders by the deadline for receipt.³

5.2.2 QUALIFICATION OF CONTRACTORS.

³ If a prospective contract exceeds a certain amount, say \$40 million for consultancies and \$150 million for works, or is for a large, complex, or technologically-advanced project, it should be advertised not only locally but also internationally, beginning with the *UN Development Forum* (which is free of charge to developing-country governments) and international publications specializing in the subject matter of the proposed contract, e.g., the *Engineering News Record*. The procedure specified should make it relatively simple for foreign bidders to participate in the tendering, i.e., there should be provision for mail or express submission of tenders and there should be an ample period for preparation and submission of tenders by international express services.

5.2.2.1 Prequalification. Tendering authorities should be explicitly authorized to develop registers of prequalified consultants and contractors (based on qualification statements, in a form specified by the tender authorities, filed by consultants and contractors to substantiate their professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, reputation, personnel, and legal capacity to perform contracts), perhaps of different levels of capability, or, for specific contracts, lists of prequalified consultants and contractors and to restrict invitations to such prequalified consultants and contractors so as to speed the procurement process (prequalification of contractors and consultants should substantially reduce the time otherwise required by postqualification to evaluate and award tenders, and prequalification is fairer to tenderers by not requiring unqualified contractors and consultants to undergo, unnecessarily, the effort, expense, and time required to tender) and demystify as much as possible the contractor selection process. Such registers should be gazetted and updated periodically.

5.2.2.2 Government-Wide Database. When a tendering authority is considering the qualifications of tenderers, it cannot easily learn of the experience of the Government with such tenderers on other contracts -- when one agency *blacklists*⁴ a contractor for nonperformance or faulty performance of a contract, other Governmental entities do not normally know of such action. Consideration should be given, therefore, to the creation and maintenance of a Government-wide database containing relevant information from all parts of the Government with respect to contractor qualifications, including all contracts performed or being performed, and Government agency experience with the actual performance of contracts by contractors.

5.2.2.3 Encouragement of Guyanese Contractors and Consultants. Since the supply of qualified Guyanese contractors and consultants to perform very large, complex, or technologically-advanced contracts is limited, ways to increase such local contracting capability should be explored:

(i) Tender packages for such contracts should encourage the prime contractors to joint venture with Guyanese contractors and consultants and to employ Guyanese contractors and consultants as subcontractors.

(ii) Consultants retained for the preparation of such projects should be instructed to divide the project into smaller subprojects when possible without materially driving up the cost of the projects, delaying their completion, or

⁴ If blacklisting or other adverse action which will have punitive and lasting consequences for the contractor or consultant is to be taken against a contractor or consultant, there should be a fair opportunity for the contractor or consultant to answer charges against him or her; i.e., the contractor or consultant should be afforded due process by adequate notice and hearing.

making their management too complex so as to enlarge the opportunities for Guyanese contractors and consultants. The law with respect to subdividing contracts (see 4.2.4 above) should be modified so that it's clear that subdivision to permit Guyanese contracting is permissible.

(iii) When Guyana is likely to regularly need to buy advanced technology in the future, then the Government should consider creating an indigenous capability in the technology in question by training Guyanese abroad or in-country, by technology licensing, or by some form of technology transfer.

(iv) Instead of hiring expensive foreign technical consultants for a project because the necessary technical capabilities for planning the project are not available in Guyana, the Government might consider using a nonprofit international purchasing agency (as opposed to a profit-making agency such as the Crown Agents), e.g., the Canadian International Development Agency. The Government should, however, require that such agencies competitively tender for the contract.

5.2.3 METHODS OF PROCUREMENT. Since the present law does not clearly differentiate among different types of public tendering and procurement, each type of tendering and procurement should be clearly defined and the pre-conditions for their use clearly specified so that contractors and consultants, the Government, and the public will not be confused as to the applicable rules.

5.2.3.1 Competitive Tendering. Competitive tendering requires public advertisement of the tender, a complete tender package including detailed specifications, public opening of bids, and evaluation of bids and award of the contract to the lowest qualified (or prequalified) bidder who has complied with all the requirements of the tender package. This is the procedure that should normally be followed unless the record includes a detailed justification for using another method which is to be followed.

5.2.3.2 Requests for Proposals or Competitive Negotiation may be justified if competitive tendering is not feasible because: (a) the Government cannot formulate detailed specifications for the needed goods or works or cannot identify the characteristics of the needed services; (b) a contract for research, experiment, study, or development not including the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs is needed; (c) tendering was tried but no acceptable tenders were received and new re-tendering would be unlikely to result in acceptable tenders; or (d) there is an urgent need for the goods, works, or services and such need was neither foreseeable nor the result of dilatory conduct on the part of the Government.

(i) *Requests for proposals* may call for proposals giving the technical, quality, or other characteristics of the goods, works, or services as well as contractual terms and conditions and, where relevant, if not already prequalified, the professional and technical competence and qualifications of the tenderers. (a) In

two-stage requests for proposals tenderers are invited to submit proposals without prices in the first stage. The Government may then negotiate with any responsive tenderers. In the *second stage* tenderers are invited to submit final priced proposals which are evaluated on the basis of the criteria and weighting specified in the tender package. (b) Requests for proposals may, instead, call for only *one-stage, one-envelope* submissions, in which price proposals are submitted with technical proposals, or for *one-stage, two-envelope* submissions, in which price proposals are submitted in different envelopes from the technical proposals but at the same time. Both of these *one-stage* request for proposal procedures impose the onerous responsibility of safeguarding the price proposals until after evaluation of the technical proposals has been completed. In addition, the *one-stage, one-envelope* submission inevitably results in the evaluators being undesirably influenced by the price proposal in their evaluation of the technical proposal. For these reasons, *two-stage request for proposal* tendering is normally to be preferred.

(ii) In *competitive negotiation*, the Government negotiates with enough suppliers or contractors to ensure effective competition. The Government must equally inform all suppliers and contractors involved in negotiation of the same procurement of any requirements, guidelines, documents, clarifications, or other information relating to that procurement. Following completion of negotiations, the Government requests all suppliers or contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals. The Government then makes the award of the contract on the basis of such best and final offers.

5.2.3.3 Cost of Tendering Disproportionate to Value of Procurement. When the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works, or services to be procured, the Government may invite tenders from a sufficient number of suppliers or contractors, selected in a non-discriminatory manner, to ensure effective competition, and it should gazette a notice of the procurement.

5.2.3.4 Readily Available Goods or Services. When procuring readily available goods or services that are not specially produced or provided to the particular specifications of the Government and for which there is an established market, so long as the estimated value of the contract is less than \$_____, the Government may procure by a request for quotations from as many suppliers or contractors as practicable, but no less than three if possible. Each supplier or contractor from whom a quotation is requested should be informed whether any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges, customs duties, and taxes, are to be included in the price. Each supplier or contractor may give only one price quotation, which it may not change. No negotiations should take place between the Government and a supplier or contractor with respect to the quotation. The contract should be awarded to the supplier or contractor that gave the lowest-priced quotation meeting the

needs of the Government.

5.2.3.5 Sole-source procurement may be employed by soliciting a proposal or price quotation from a single supplier or contractor when:

(i) The goods, works, or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights to the goods, works, or services and no reasonable alternative or substitute exists;

(ii) There is an urgent need for the goods, works, or services and engaging in tendering or any other method of procurement would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the Government nor the result of its dilatory conduct;

(iii) Owing to a catastrophic event, there is an urgent need for the goods, work, or services, making it impractical to use other methods of procurement because of the time involved in using those methods;

(iv) The Government, having procured goods, equipment, technology, or services from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, or services, taking into account the effectiveness of the original procurement in meeting the needs of the Government, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price, and the unsuitability of alternatives to the goods or services in question; or

(v) The Government seeks to enter into a contract with a supplier or contractor for the purpose of research, experiment, study, or development, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs.

5.2.4 THE TENDER PACKAGE given to prospective tenderers should contain all provisions and information relevant to obtaining the contract, including the procedures to be followed, documents to be submitted by tenderers, evaluation criteria and weighting, and method of contract award. A good tender package maximizes competition among and participation by tenderers because it builds their confidence in the fairness and transparency of the tender process.

5.2.4.1 Contents. In more detail, the package should contain a table of contents, instructions to bidders (including information on the criteria for the evaluation and award, what the package includes, the procedure, deadline, and place for submission and time and place of opening, the required language of the tender, currency of tender, required period of validity, listing of what tenders must include,

number of copies required, partial and alternative tenders, amendments, bid and performance security required, clarifications and interpretations, late bids, modification and withdrawal, site visits, pre-tender conference), contractor qualification forms if contractors have not been prequalified, conditions of contract, scope of work and specifications, bid forms, bill of quantities for pricing, bond and guaranty forms, and the contract form. The contract form should be so drafted that, with bid forms and price schedules, bond and guaranty forms, and the contract form properly filled in by the tenderer, a contract can be formed simply by Government acceptance of the tender on the contract form itself, which was signed by the tenderer before submission of the tender, if the tender has been accepted without change. For examples of intelligently prepared (though still far from perfect) bid packages, see the World Bank *Sample Bidding Documents for Procurement of Goods, Procurement of Works, Procurement of Commodities, Procurement of Works (Smaller Contracts)*, and the Bank's *Sample Form of Contract for Consultants' Services*, all of which should be available from the Bank or the Inter-American Development Bank.

5.2.4.2 Drafting and Standardization. Such packages should be as simply and clearly drafted as feasible to avoid confusion and mistakes by bidders, contractors, and the Government. This means that standard clauses should be employed as much as possible and that standard bid packages for different types of contracts, e.g., consultant, works, supply of commodities, equipment, services, employment, lease, design, loan, technology, licensing, management, turnkey, should be developed. When the project, bid package, or contract requires special clauses, however, the special clauses should *not* be attached in a separate document (often called "Special Conditions") but should be *physically inserted* in the standard clauses themselves so that the necessary changes are made right in the wording of the document itself. Annexes, protocols, side letters, etc. should be as few as possible. Pagination and clause numbering should be consistent and coherent.

5.2.5 SECURITY FOR BIDS AND PERFORMANCE.

5.2.5.1 Specify When Security Required. The law should specify the cases in which (a) tenderers must post bid security (and the amount thereof) to maintain the validity of their bids for the specified validity period, usually until the Government has determined the award of the contract and the contractor has provided any required performance and other security, and in which (b) contractors must provide security (and the amounts thereof) for performance of the contract and other matters.

5.2.5.2 Difference Between Guaranties and Bonds. The posting of security by tenderers and contractors in the form of Treasury deposits or bank guaranties gives the Government more protection than surety bonds provide -- such

⁵ The caveat of adequate notice and a fair hearing raised in Footnote 4 above would, of course, apply to any proposal to call a

deposits and guaranties can be forfeited by the Government by simple written demand alleging default by the bidder or the contractor,⁵ while calling surety bonds requires that the Government convince the surety that the contractor has defaulted; getting the surety of a bond to act may take a long time or even require litigation. On the other hand, while bonds are relatively inexpensive for contractors to provide, deposits and guaranties are expensive, for they tie up the contractor's money, which means that the tenderers must raise their bid prices accordingly. The lesson to be drawn is that while the Government may want to give contractors the choice as to whether they will provide guaranties or deposits, it should not permit them to give a bond in only the same amount it requires for a guaranty; e.g., the Government should probably not require a guaranty or deposit of more than 1-2%, but it should probably require a 100% bond; (although this latter is the practice of the U.S. Government for its own contracts, some Guyanese contractors allege that a 100% bonding requirement will be impossible for them to meet and so would put all Guyanese contractors out of business).

5.2.6 SUBMISSION AND OPENING OF TENDERS. In addition to the present law, in order to maximize transparency and confidence in the fairness of the tendering process, the required instructions to bidders should specify that when bids are submitted they must be placed in the tendering authority's locked tender box located at the address for submission given in the advertisement, that upon request the tendering authority will provide the tenderer a receipt showing the date and time when the tender was received, that a tender received after the deadline for submission shall be returned to the tenderer unopened, that tenders will be opened at the time specified as the deadline for submission, that the public may attend the bid opening, and that for each tender the overall price bid (unless it concerns the first stage of a two-stage or two-envelope proposal tendering) and apparent compliance or non-compliance with the requirements of the tendering package, e.g., posting of bid security, filling in prices on the bill of quantities, submission of consultants' c.v.'s, signed bid and contract forms, should be checked, reported *viva voce*, and recorded in the minutes of the tendering authority.

5.2.7 EVALUATION OF TENDERS AND AWARD OF CONTRACTS.

5.2.7.1 Secrecy and Distrust at Present. The evaluation of tenders and the award of contracts is the essence of the tendering process, and any suspicion that these actions are not carried out in the open and on the up-and-up fatally infects the whole process -- good contractors and consultants become reluctant to participate in competitive tenders because they doubt that they will be treated fairly, and, as a result, the Government doesn't get its contract needs met efficiently and at a reasonable price. At present the procedure for evaluation of tenders and award of

contractor's guaranty for default.

contracts is often shrouded in secrecy, giving rise to distrust of the whole tendering process and, consequently, reduced participation by competent contractors and consultants in competition for Government contracts.

5.2.7.2 Remedy -- Transparency. To remove such secrecy and distrust, the evaluation and award process must, as much as feasible, be brought into the open -- sunlight is the best disinfectant! Several steps are necessary to accomplish this:

(i) *Tendering Package*. If tendering packages don't contain the criteria for evaluation of tenders and award of contracts, then, so far as tenderers and the public are concerned, the basis for awards is a mystery. Failure to specify the criteria in advance of the tendering usually means that the project planners have not considered in advance the criteria they will use to evaluate tenders, which means that they will be more likely to be influenced by subjective factors in making their decision and that the award will, therefore, be unlikely to have been made in a fair and unbiased manner. Also, the lack of an explicit rationale for the award makes it difficult for the Government to defend procurements *which were conducted honestly and fairly*. Each tendering package issued to tenderers before they prepare their tenders should, therefore, include a description of the procedure for the evaluation of tenders and proposals, including the *criteria for evaluation* (efforts should be made to ensure that there are no overlapping criteria) and the weighting assigned to each criterion (which should not be the same for all projects, but should vary according to the technical complexity of the project), and a statement of the *Engineer's estimate* so that there will be no problem of leakage and every tenderer will be on an equal footing. The evaluation criteria should include price and the weighting to be given to it -- cost or price considerations must be an evaluation factor in all selection decisions.

(ii) At the *opening of tenders* (see 5.2.6 above) a preliminary examination should be made of each tender to make sure it complies with the requirements of the tendering package and the results of such examination should be reported *viva voce* and recorded in the minutes.

(iii) *Selection of Evaluators*. Because of the many questions, which persist, about the competence, diligence, and impartiality of evaluators, a new process for selecting evaluators is of vital importance. To secure evaluators of high competence, integrity, and diligence, a Government-wide panel or corps of highly qualified evaluators should be created as part of the CPS (see 5.1.3 above) -- the panel would be composed of Government evaluators, who would be fulltime evaluators and have no other duties, and private evaluators, who would not be fulltime evaluators but would be called upon to serve as evaluators from time to time and would be compensated for each evaluation performed. Both the public and private evaluators should be remunerated at a high enough level to get competent and impartial people. (The non-Government evaluators would be subject to the same conflict-of-interest rules as the Government evaluators.) Evaluators should have

engineering, technical, financial, project management, and/or legal backgrounds. Their selection to serve on a specific tender evaluation should be made by random choice by the tendering secretariat, so long as all necessary disciplines for the specific evaluation are included. The secretariat should safeguard the names of the evaluators chosen for a specific evaluation assignment from everyone including the members of the tender board. The tendering secretariat should provide each evaluator with a copy of the file (see 5.1.2.2) and any other documents needed by the evaluators. As the Government panel develops, evaluators should eventually do evaluations for ministries and departments (and for the regions as the panel grows large enough to permit secondment to regions as needed).

(iv) *Evaluation Procedure.* Each evaluator should conduct his/her own evaluation of the tenders in accordance with the criteria and weightings specified in the tender package and submit his ratings, which should not be revealed to anyone else except for the project manager, to the tendering secretariat.

(v) *Decision.* When the secretariat has received all the evaluations, copies should be sent to the project manager and the secretariat should schedule the evaluations of those tenders for consideration by the tendering authority with the project manager and the evaluators in attendance. At the meeting of the tendering authority, the authority should consider the evaluations and, with the advice of the project manager, decide what to do, based on a sound business consideration of each tender against the evaluation criteria stated in the tendering package. In considering the evaluations of the evaluators, the tendering authority should presume that their evaluations are correct -- if it is to override their evaluations, there should be convincing evidence in the file to justify such a decision. The tendering authority's decision must have a rational basis and must be reduced to writing and, if the decision is to override the evaluators' evaluations, the authority's written decision should set forth the evidence justifying its decision. The decision may be to: (a) recommend an award, (b) amend the tendering package and re-open the procurement to the original tenderers, (c) re-tender completely, or (d) cancel the procurement. (Complete re-tendering should be done only in extraordinary cases as it inevitably results in extensive project delays and substantial increased costs for both tenderers and the Government.) If an award is recommended, the secretariat should then minute the meeting and complete the contract file (see 5.1.2.2 above) for transmittal to the approving authority.

(vi) *Debriefing* All tenderers eliminated by the decision of the tendering authority should be notified within five working days of the decision and should be permitted to obtain, on request, a debriefing from the tendering authority, which should provide the following information: who the selected tenderer was and what the eliminated tenderer's evaluation rating was relative to that of the selected tenderer.

(vii) *Protests.* Tenderers, or their representatives (including

contractors' and consultants' associations), who wish to protest (a) a tender package in advance of the closing date for submission because, for example, the specifications are slanted to favor one or a few consultants or contractors, or (b) the decision of the tendering authority on the award of a contract should first seek informal resolution of the issues they wish to raise. If such informal efforts fail, and the protesting party wishes to pursue a formal protest, he or she should file a written protest which would be subject to a dispute resolution procedure established by the CPS.

5.2.8 RECORDKEEPING AND PUBLIC

INFORMATION. After the contract has been awarded, the contract file should be available for examination at the tendering secretariat, and the contract award should be gazetted with the name of the project, the name of the contractor, and the date and amount of the award.

GUYANA TENDER BOARD SYSTEM

APPENDIX A

PERSONS MET WITH DURING THE CONSULTANCY

Tarachand BALGOBIN, Division Head, Project Cycle Management, Ministry of Finance, Main St., tel. 57262

Alexander BAUM, Economic Advisor, Commission of the European Communities Delegation in Guyana, 72 High St., Kingston, tel. 64004, 65424, 63963

George CLARK, Acting Assistant Regional Executive Officer, Region 10

Bernard DE SANTOS, Attorney General, Carmichael St., tel. 53607

Terrence FLETCHER, Chairman, Association of Consulting Engineering Firms (ACEF), and principal in Terrence Fletcher & Associates, Ltd., 168 New Market St., Cummingsburg, tel. 66772

George FUNG ON, Minister, Office of the President, Waterloo St., tel. 71193, 57899

Anand GOOLSARAN, Auditor General, 63 High St., Kingston, tel. 57592

Charles GREENWOOD, Representative, Inter-American Development Bank, 47 High St., Kingston, tel. 57950

Carole HEBERT, Secretary to the Treasury, Ministry of Finance, Main St., tel. 63371

David L. HOBBS, American Ambassador, American Embassy, 100 Young St., Kingston, tel. 54902

Bharat JAGDEO, Senior Minister of Finance, Ministry of Finance, Main St., tel. 57262

Gordon LEWIS, Procurement Officer, Inter-American Development Bank, 47 High St., Kingston

Patrick MCDUFFIE, Representative, USAID/Guyana, 263 Earl's Ave., Subryanville, tel. 57315

S. NARAYAN, Acting Regional Executive Officer, Region 4

B. OGLE, Principal Assistant Secretary (Finance), Ministry of Finance, Main St.

R.B. PERSAUD, Social Impact Amelioration Programme (SIMAP), 237 Camp St.,
Cummingsburg, tel. 73612

Mahase PERTAB, Chairman, Central Tender Board, and Deputy Secretary to the
Treasury, Ministry of Finance, Main St., tel. 61193

H. RAMLAKHAN, Managing Director, Design and Construction Services Limited, 77
Anira St., Queenstown, tel. 50795-7

B. RAMPERSHAD, Acting Regional Executive Officer, Region 3

Esmee P. ROCKLIFFE, Acting Regional Executive Officer, Region 5

Clyde ROOPCHAND, Chief Planning Officer, Ministry of Finance, Main St.

Ganpat SAHAI, Permanent Secretary, Ministry of Public Works, Communications, and
Regional Development, Oranapal Towers, Wight's Lane, Kingston, tel. 56510,
71511-9

Mervin ST. HILL, Permanent Secretary and Chairman of the Ministerial Tender Board,
Ministry of Agriculture, Regent St. and Vlissengen Rd., tel. 75527

Gazz A. SHEERMOHAMED, Managing Director, S.A. Nabi & Sons Ltd., 63 Brickdam,
Stabroek, tel. 73681, 78682

Dhanraj SINGH, Private Sector Commission, and Guyana Rice Millers & Exporters
Development Association Limited, Kayman Sankar Building, 216/217 Lamaha
St., tel. 55090

Rohan SINGH, Social Impact Amelioration Programme (SIMAP), 237 Camp St.,
Cummingsburg

Prabhu SUKRASH, Policy Coordinator (IDB), Ministry of Agriculture, Regent St. and
Vlissengen Rd., tel. 69755

Daniel WALLACE, Program Manager, USAID/Guyana, 263 Earl's Ave., Subryanville,
tel. 57315

Kathleen WHALEN, Director, Caribbean Engineering & Management Consultants Ltd.
(CEMCO), 63 Main and Middle Sts., North Cummingsburg, tel. 70481, 70542

GUYANA TENDER BOARD SYSTEM

APPENDIX B

TENDERING REFORM AND TRANSPARENCY ACT OF 1996

An Act to reform the procurement system by creating the Central Procurement Secretariat to replace the Central Tender Board, by creating a corps of professional evaluators, and to clarify the rules and procedures for tendering and contracting for Government contracts so that the Government will achieve its contract needs efficiently and at a reasonable price by maximizing competition among and participation in the tender process by qualified tenderers in a system transparent to all.

1. This Act may be cited as the Tendering Reform and Transparency Act of 1996.

2. This Act revokes and supersedes, and any instructions that may be issued and regulations that may be made hereunder shall revoke and supersede, the Financial (Amendment) Regulations, 1958, No. 8; the Tender Board Regulations, 1958, No. 9; the Procedures for the Guidance of Tender Boards, Attachment to Ministry of Finance Circular No. 4/1983; and Increased Limits of Contracts for Supplies, Services and Works to be approved by Tender Boards, Ministry of Finance Circular No. 4/1991; and any other laws, amendments, orders, ordinances, regulations, or circulars to the extent that such laws, regulations, amendments, orders, ordinances, and circulars are inconsistent with this Act or any instructions issued or regulations made hereunder.

3. (1) The Minister of Finance may issue instructions and make regulations which are consistent with this Act respecting--

(a) the level of authority of the Central Procurement Secretariat, tender boards, and contracting officers to adjudicate and award contracts and amendments and modifications thereof;

(b) the extent to which subdivision of contracts may be permitted to encourage local contracting;

(c) recordkeeping and publication of information with respect to tendering and contracting so that the public will be fully informed to the maximum extent possible;

(d) locked tender boxes for receipt of all tenders;

(e) compliance by Government officers, public servants, and private

individuals with the prohibitions of Section 9 and compliance by any person with the prohibitions of Section 10 below; and

(f) the honoraria and emoluments of the members of the Advisory Board to the Director of the Central Procurement Secretariat.

(2) All regulations made under this section shall, as soon after they are made as is practicable, be laid before Parliament and published in the *Gazette*.

4. There shall be a Director of the Central Procurement Secretariat (the "Director") who shall hold office in the public service.

5. There shall be an Advisory Board to the Director, each of whose members shall be appointed by the President of the Republic for a term of three years (except as provided in the next sentence) and may not be removed from the Advisory Board for any cause except malfeasance in office or nonperformance. At the inception of the Advisory Board the initial members will be appointed to terms as follows: one for a one-year term, two for two-year terms, and two for three-year terms.

6. The Central Procurement Secretariat is hereby established and the Central Tender Board is hereby abolished. All of the functions heretofore exercised by the Central Tender Board shall henceforth be performed by the Director or his designee from the Central Procurement Secretariat and all of the archives, records, and other papers of the Central Tender Board shall be transferred to the Central Procurement Secretariat.

7. The Director shall designate in writing the officers who shall be procurement evaluators and he may in writing revoke any such designation.

8. (1) To maximize competition among and participation by qualified tenderers so that the Government will receive the promised contract performance and to ensure that the procedures followed will be transparent so that the public, fully informed, will have reason for confidence in the fairness of the Government tendering and contracting system, the Director may, with the advice of his Advisory Board, issue instructions to all tender boards and contracting authorities and make regulations, which are consistent with this Act, respecting --

(a) the procedures for public tendering and contracting including, but not limited to, preparation of tender packages, including the specification in the instructions to bidders of the criteria and weighting thereof for evaluation and award, use of standard forms and contracts, advertising of tenders, inclusion of the Engineer's estimate in the advertising of tenders and in tender packages, requirements for submission of tenders, and requirements for public tender openings;

(b) the qualification and prequalification of tenderers of all kinds and the

development of registers of prequalified tenderers, sole suppliers, and sole agents, which registers shall be timely published in the *Gazette*;

(c) the preference for competitive tendering and the requirements which must be met before other methods of procurement may be utilized;

(d) the circumstances in which bonds and guaranties must be provided by tenderers and the kinds and amounts of bonds and guaranties which must be provided;

(e) the criteria and the weighting thereof for and the requirements and procedures for evaluation and adjudication of tenders, award of contracts, and protests of such awards;

(f) the qualifications, duties, and remuneration of officers and of private individuals who are members of the panel of tender evaluators;

(g) documents, memos, minutes, records, and other matters which shall constitute part of the contract file;

(h) a Government database on tenders, contracts, contractors, and tenderers; and

(i) any other purpose necessary for the efficient administration of the tendering and contracting procedures of the Government so long as they serve to maximize the probability of the Government obtaining its needs efficiently and at a reasonable price in a system transparent to public observation and inspection.

(2) All regulations made under this section shall, as soon after they are made as is practicable, be laid before Cabinet and published in the *Gazette*.

9. (1) Government officers and public servants are prohibited from sponsoring tenders for Government contracts and from participating in the adjudication of tenders by or award of contracts to and private individuals are prohibited from participating in the adjudication of tenders by or award of contracts to any party, or any principal, officer, or employee of such party, (a) to whom they are closely related by marriage or blood, with whom they have a business relationship from which they may earn profits or suffer losses, or with whom their friendship is so close as to influence their judgment in favor of the friend or (b) in consideration of any bribe, kickback, payoff, or other inducement.

(2) Any Government officer or public servant or any private individual who violates any of the provisions of subsection (1) shall be dismissed from Government service and shall be liable on summary conviction to a fine of _____ dollars.

10. (1) No person may tender for a Government contract when a consultant or any principal, officer, or employee of such consultant:

(a) To whom such person, or any principal, officer, or employee of such person, is or was at the time closely related by marriage or blood,

(b) With whom such person, or any principal, officer, or employee of such person, has or had at the time a business relationship from which such person may earn profits or suffer losses,

(c) With whom such person, or any principal, officer, or employee of such person, has or had at the time such a close friendship that the consultant or any principal, officer, or employee of such consultant would have been influenced to tilt his preparation for the Government's tendering for such contract in favor of such person, or

(d) has received or will receive any bribe, kickback, payoff, or other inducement from such person, or any principal, officer, or employee of such person participated in any manner in the preparation for the Government's tendering for such contract.

(2) Any person who participates in tendering for a Government contract in violation of subsection (1):

(a) shall be barred from being awarded such contract or, if such person has already been awarded such contract, such award shall be null and void and the contract shall be terminated *ab initio*, and such person shall be liable to the Government for any loss resulting from such termination;

(b) shall be barred from any future Government contracts for a period of six months; and

(c) such person shall be liable on summary conviction to a fine of _____ dollars.

11. All advertisements of public procurements and details of all Government contract awards shall be timely published in the *Gazette* and the full contract file shall be available for inspection by the public at the Central Procurement Secretariat after the contract has been awarded.