M O N T S E R R A T

# PUBLIC PROCUREMENT ACT 2025

No. 5 of 2025

## ARRANGEMENT OF SECTIONS


**PART 1—PRELIMINARY ..... 3**

1. Short Title ..... 3
2. Interpretation ..... 3

**PART 2—PURPOSE AND APPLICATION ..... 10**

3. Purpose ..... 10
4. Application ..... 10
5. Exemptions ..... 11

**PART 3—ADMINISTRATIVE STRUCTURE FOR PUBLIC PROCUREMENT ..... 12**

6. Duties of the Financial Secretary ..... 12
7. Establishment and meetings of the Public Procurement Board ..... 12
8. Functions of the Public Procurement Board ..... 13
9. Establishment of committees ..... 14
10. Government Procurement Services ..... 15
11. Departmental Procurement Committee ..... 16
12. Accounting officers of the procuring entities ..... 17
13. Evaluation Panels ..... 18

**PART 4—GENERAL PROVISIONS ..... 18**

14. Annual procurement plan ..... 18
15. Early market engagement ..... 19
16. Description of procurement requirements ..... 19
17. Valuing procurement and artificial aggregation or division ..... 20
18. Eligibility of suppliers ..... 21
19. Form of communication ..... 23
20. Confidentiality ..... 24

21. Language of documents ..... 25

**PART 5—AWARD OF PUBLIC CONTRACTS .....25**

22. Procedure selection ..... 25
23. Open tendering ..... 26
24. Request for proposals ..... 28
25. Restricted tendering ..... 28
26. Request for quotation ..... 29
27. Direct contracting ..... 29
28. Electronic reverse auction ..... 30
29. Procurements from registered suppliers ..... 31

**PART 6—AWARD OF PUBLIC CONTRACTS .....31**

30. Key procedural steps ..... 31
31. Evaluation and award ..... 32
32. Rejection of tenders ..... 33
33. Cancellation of procurement proceedings ..... 34

**PART 7—SUSTAINABLE PROCUREMENT.....35**

34. Social value ..... 35
35. Environmental objectives ..... 35

**PART 8—TRANSPARENCY AND INTEGRITY .....35**

36. Publication of notices ..... 35
37. Procurement records and reports ..... 36
38. Conflict of interest ..... 36
39. Disclosure of interest in procurement proceedings ..... 37
40. Integrity ..... 38

**PART 9—CHALLENGE PROCEDURES .....39**

41. Right to Challenge ..... 39
42. Suspension of procurement ..... 40
43. Review of complaint by the procuring entity ..... 40
44. Appeal to the Independent Adjudicator ..... 41

**PART 10—MISCELLANEOUS .....42**

45. Regulations ..... 42
46. Transitional arrangements ..... 42
47. Repeal of Regulations ..... 43

Montserrat

Public Procurement Act, 2025

No. 5 of 2025

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**I ASSENT**

(Sgd.) Harriet Cross

**Governor**

**DATE: 07.08.2025**

M O N T S E R R A T

No. 5 of 2025--

AN ACT TO PROVIDE FOR PUBLIC PROCUREMENT.

BE IT ENACTED BY THE KING'S MOST EXCELLENT MAJESTY, BY AND WITH THE ADVICE AND CONSENT OF THE LEGISLATIVE ASSEMBLY OF MONTSERRAT, AND BY THE AUTHORITY OF THE SAME AS FOLLOWS:—

## PART 1—PRELIMINARY

### 1. Short Title

This Act may be cited as the Public Procurement Act 2025.

### 2. Interpretation

In this Act—

**"accounting officer"** means a person designated as such under section 9 of the Public Finance

(Management and Accountability) Act (Cap. 17.07);

**"Chair"** means the Chairperson of the Public Procurement Board under section 7;

**"collusive practice"** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

**"compliant tender"** means a tender which conforms to the requirements and conditions of the tender documents without material omission, deviation or reservation;

**"consulting services"** means services of an advisory or intellectual nature provided by individuals or firms using their professional or technical skills;

**"day"** means calendar day;

**"Departmental Procurement Committee"** means the body established pursuant to section 11;

**"domestic supplier"** means a supplier who has their principal place of business in Montserrat;

**"EC$"** means Eastern Caribbean dollar;

**"electronic means"** means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means, by electrical, by digital, or by other electromagnetic means;

"**electronic reverse auction**" means a repetitive electronic process which is applied following the full evaluation of tenders in which new prices, which are revised downwards, are presented by suppliers, enabling them to be ranked using automatic evaluation methods;

**"eligible supplier"** means a supplier that meets the requirements of section 18 for participation in a procurement process.

**"evaluation panel"** means a panel established pursuant to section 13;

**"framework agreement"** means an agreement or other arrangement between one or more procuring entities and one or more suppliers which establishes the terms and conditions under which the supplier enters into a contract with the procuring entity for a stipulated period in accordance with section 23(8);

**"goods"** means—

*(a)* raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form and electricity;

*(b)* software, whether on tangible medium or as a download from the internet or otherwise; and

*(c)* services incidental to the supply of such goods;

**"Government"** means His Majesty's Government of Montserrat;

**"Government Owned Entity"** means an Agency, authority, commission, board, body or other entity—

*(a)* in which the Government holds an ownership or controlling interest of at least 50%; or

*(b)* which is established by an Act for a public purpose and which receives more than 25% of its annual income from public funds; or

*(c)* which may be audited by the Auditor-General;

**"Government Procurement Services"** means the body established pursuant to section 10;

**"Head of Government Procurement Services"** means the person referred to in section 10(1);

**"Independent Adjudicator"** means a person appointed pursuant to this Act to decide on challenges brought by suppliers under section 44;

**"material omission, deviation or qualification"** means an omission, deviation or qualification which would—

*(a)* detrimentally affect the scope, quality or performance of the goods, service or works identified in the tender document; or

*(b)* change the supplier's risk and responsibilities under the procurement contract;

**"national defence and national security"** refer to procurement for—

*(a)* the supply of military equipment, including any parts, components or its subassemblies;

*(b)* works, supplies and services directly related to the equipment referred to in paragraph *(a)* for any and all elements of its life cycle;

*(c)* works and services for specifically military purposes;

*(d)* guns, ammunition, riot gear and any other good related to national defence and security; and

*(e)* any service related to national defence and security.

**"open tendering"** means publishing a request or invitation for tenders and considering all submissions received in response to the invitation;

**"prequalification"** means the proceeding under section 23(5) to identify qualified suppliers before an invitation to participate in a procurement process;

**"prequalification document"** means a document issued by the procuring entity in prequalification proceedings under section 23(5).

**"prescribed"** means prescribed in Regulations;

**"procurement"** means the acquisition of goods by any means, including purchase, rental, lease or hire-purchase, and the acquisition of works, consulting and other services;

**"procurement notice"** means the notice of a procurement which is required to be published under the Act;

**"procurement process"** means the collective procedures for a method of procurement referred to in Part 5, including pre-qualification;

**"procuring entity"** means—

*(a)* a ministry, department, unit or any subdivision of the Government that engages in procurement or;

*(b)* a Government owned entity;

**"prohibited practice"** means—

*(a)* an offence identified under Part 6 of the Penal Code (Cap. 4.02);

*(b)* a fraudulent practice consisting of any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

*(c)* a collusive practice consisting in an arrangement between two or more parties, designed to achieve an

improper purpose, including influencing improperly the actions of another party;

*(d)* a coercive practice consisting in impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party, to influence improperly the actions of a party; and

*(e)* an obstructive practice consisting in deliberately destroying, falsifying, altering or concealing of evidence related to an investigation or making false statements or false allegations to investigation or supervisory authorities in order to impede their investigation into allegations of a violation of a prohibited practice; and

*(f)* an obstructive practice consisting of threatening, harassing, or intimidating any party to delay or prevent it from sharing evidence or disclosing its knowledge of matters relevant to an investigation or from pursuing the investigation; or acts, which impede the exercise of the relevant authorities' access, inspection and audit rights.

**"public contract"** means a contract for the supply, in return for consideration, of goods, works or services, including consulting services, between a procuring entity and a supplier;

**"public funds"** means all revenues or other moneys raised or received by and for the purposes of the Government;

**"Public Procurement Board"** means the Public Procurement Board established under section 7;

**"public private partnership"** means a collaboration between the government and a private sector partner, with or without the award of a concession, that the private partner may fully or partially finance, plan, or execute;

**"public service law"** means any law relating to the matters referred to in section 24(2) of the Montserrat Constitution Order (Cap. 1.01);

**"publish"** means publication in accordance with section 36 and includes publication by electronic means;

**"Regulations"** means regulations made under section 45;

**"service"** means a service of a general nature other than works;

**"supplier"** means according to context a natural or legal person or a consortium or joint venture of several legal persons who participate in procurement proceedings conducted by a procuring entity under this Act; it includes the terms contractor, supplier, service provider and consultant;

**"sustainable procurement"** means procurement which incorporates a procuring entity's economic development, environmental and social inclusion objectives to the extent that they are compliant with Government policy;

**"tender"** means an offer made by way of tender, a proposal or quotation, including any amendment, issued by a supplier to a procuring entity for the purpose of responding to an invitation or request to participate in a procurement process or participating in a procurement process;

**"tender document"** means a document, including any amendment, issued by the procuring entity for the purpose of an invitation or request to

participate in a procurement process which sets out the terms and conditions of a particular procurement and includes an invitation to tender, a request for quotations and a request for proposals;

**"works"** means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works and includes site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing; and

**"written"** or **"in writing"** means any expression consisting of words or figures which can be read, reproduced and subsequently communicated and information which is transmitted and stored by electronic means.

## PART 2—PURPOSE AND APPLICATION

### 3. Purpose

The purpose of this Act is to—

*(a)* promote positive economic, environmental and social value outcomes for Montserrat;

*(b)* maximise value for money, quality and efficiency;

*(c)* promote competition;

*(d)* ensure fairness, transparency and integrity; and

*(e)* ensure that funds are managed in accordance with the Public Finance (Management and Accountability) Act.

### 4. Application

**(1)** Subject to subjection (2), this Act applies to every procuring entity.

**(2)** This Act applies to every Government Owned Entity other than as prescribed.

**(3)** Where there is a conflict between this Act and the Regulations or any other law of Montserrat in matters relating to public procurement, this Act shall prevail.

**(4)** In a procurement fully or partly funded by a third party, whether by loan, donation, grant or otherwise, the procurement shall conform with this Act to the extent that its provisions are compatible with the procurement procedures of the third party and any incompatibilities shall be resolved in agreement between the Government of Montserrat and the third party.

**(5)** Public private partnerships are awarded as prescribed.

**(6)** Every procuring entity shall ensure that its procurement activities and decisions comply with this Act.

## 5. Exemptions

This Act does not apply to —

*(a)* a procurement made under a regional or international co-operative procurement agreement, including among members of the Organisation of Eastern Caribbean States;

*(b)* a contract awarded to a supplier from a framework agreement to which Montserrat is a party;

*(c)* a procurement for the purposes of national defence and national security;

*(d)* the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

*(e)* the procurement of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related thereto;

*(f)* the procurement of services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

*(g)* arbitration and conciliation services;

*(h)* contracts of employment;

*(i)* research and development services the purpose of which is to create a prototype product not intended for commercial exploitation;

*(j)* legal services in respect of representation and preparation for judicial proceedings;

*(k)* procurement between two procuring entities with a view to achieving public service objectives that they have in common; and

*(l)* the procurement of water, electricity, fuel and other utilities.

## PART 3—ADMINISTRATIVE STRUCTURE FOR PUBLIC PROCUREMENT

### 6. Duties of the Financial Secretary

The Financial Secretary is responsible for the administration of this Act, including the implementation of the Government's public procurement policies, and of securing Cabinet's approval of recommendations for any amendments or improvements to those procurement policies.

### 7. Establishment and meetings of the Public Procurement Board

**(1)** There is established the Public Procurement Board.

**(2)** The Public Procurement Board consists of—

*(a)* the Deputy Financial Secretary, who shall be an *ex officio* member and Chairperson of the Public Procurement Board;

*(b)* a person nominated by the Attorney-General with at least five years' experience in law and appointed by the Financial Secretary;

*(c)* three persons appointed by the Financial Secretary who—

(i) have at least five years' experience in finance, senior management, policy or project development, project management, public procurement, banking, business or administration; or

(ii) possess technical expertise in engineering, architecture or other similar or relevant technical field.

**(3)** In the absence of the Chairperson from a meeting of the Public Procurement Board, the members present may elect another member to chair that meeting.

**(4)** The Chairperson may invite any person to present information relevant to matters being considered but that person is not entitled to vote.

**(5)** Other than the *ex officio* member, a member of the Public Procurement Board is appointed for an initial term of up to three years and may be reappointed for a maximum of two consecutive terms of up to three years in each term.

**(6)** The Chairperson plus two other members constitute a quorum of the Public Procurement Board.

**8. Functions of the Public Procurement Board**

The Public Procurement Board shall be responsible for—

*(a)* reviewing and approving the membership of the Departmental Procurement Committee as

recommended by the accounting officer of a procuring entity;

*(b)* reviewing and approving the annual procurement plan of a procuring entity, including updates;

*(c)* in respect of a procurement procedure for a contract with an estimated value above the prescribed thresholds—

(i) appointing evaluation panels;

(ii) satisfying itself that there is sufficient budget to cover the proposed award recommendation;

(iii) assessing the conformity of the procurement procedure with this Act;

(iv) granting or refusing its consent to the accounting officer in respect of the award of a contract; and

(v) conducting the public opening of tenders.

*(d)* approving the debarment or reinstatement of a supplier as prescribed.

**9. Establishment of committees**

**(1)** The Public Procurement Board may appoint committees, either generally or with respect to a specific matter, to advise the Public Procurement Board.

**(2)** A committee may consist of—

*(a)* members of the Public Procurement Board;

*(b)* persons other than members of the Board;

*(c)* designated persons meeting the conditions of section 7(2)*(c);*

*(d)* any combination of persons under paragraph *(a), (b)* or *(c).*

**10. Government Procurement Services**

**(1)** There is established a Government Procurement Services within the Ministry of Finance comprising the Head of Government Procurement Services and other public officers sufficiently qualified, trained or experienced in procurement matters.

**(2)** The Head of Government Procurement Services shall be accountable to and report directly to the Financial Secretary.

**(3)** The Head of Government Procurement Services shall—

*(a)* be responsible for the management and implementation of the public procurement system;

*(b)* monitor the operation of public procurement in accordance with this Act;

*(c)* provide procuring entities and private sector organisations with the necessary tools, guidance, training and direction to implement procurement;

*(d)* establish and implement a framework for contract management;

*(e)* keep and maintain all records as required by this Act;

*(f)* implement a continuous improvement programme and develop processes that enable consistency of application and straightforward compliance with this Act;

*(g)* provide Secretariat services to the Public Procurement Board; and

*(h)* deliver any other services as required by the Financial Secretary.

**(4)** The Head of Government Procurement Services shall establish a Procurement Team for the purpose of facilitating procurement by procuring entities in respect of any procurement procedure for a contract with an

estimated value above the prescribed thresholds or in response to a request made under section 12*(c).*

**(5)** The Financial Secretary may in the circumstances prescribed direct that a procurement be carried out by a designated alternative procuring entity or by the Procurement Team.

**11. Departmental Procurement Committee**

**(1)** The accounting officer of every procuring entity shall, subject to sub-section (2), establish a Departmental Procurement Committee comprising—

*(a)* the accounting officer or a senior public officer within the procuring entity delegated by the accounting officer, who shall be the Chairperson;

*(b)* at least two other senior public officers meeting the conditions of section 7(2)*(c)*; and

*(c)* a member from the Government Procurement Services designated by the Head of Government Procurement Services, who shall not vote.

**(2)** The Financial Secretary may in the circumstances prescribed direct that the functions of a Departmental Procurement Committee be transferred to a different entity.

**(3)** The composition of the Departmental Procurement Committee shall be approved by the Public Procurement Board in accordance with section 8*(a).*

**(4)** In respect of a procurement procedure for a contract with an estimated value below the prescribed threshold, the Departmental Procurement Committee shall be responsible for—

*(a)* conducting the public opening of tenders;

*(b)* appointing an Evaluation Panel;

*(c)* satisfying itself that there is sufficient budget to cover the proposed award recommendation;

*(d)* assessing the conformity of the procurement procedure with this Act;

*(e)* granting or refusing its consent to the accounting officer in respect of the award of a contract recommended by the evaluation panel;

*(f)* reporting to the Public Procurement Board on a quarterly basis or on any other basis required by the Public Procurement Board, on the consistency with this Act of the procurement procedures carried out by the procuring entity; and

*(g)* maintaining efficient record keeping and quality assurance systems.

**12. Accounting officers of the procuring entities**

The accounting officer shall—

*(a)* develop an annual procurement plan for approval by the Public Procurement Board and subsequent submission to the Head of Government Procurement Services in accordance with section 14.

*(b)* designate appropriately experienced staff who will carry out the procurement in accordance with this Act and Regulations;

*(c)* may, whenever appropriate, request facilitation by the Government Procurement Service; and

*(d)* award and administer contracts approved by the Public Procurement Board and the Departmental Procurement Committee with the support and guidance of the Government Procurement Service.

**13. Evaluation Panels**

**(1)** An Evaluation Panel shall be appointed by the Public Procurement Board or Departmental Procurement Committee in accordance with sections 8*(c)* and 11(4)*(b)*.

**(2)** An Evaluation Panel shall comprise a minimum of three members, at least two of which shall have experience in procurement law, finance, business, public administration or a field that is relevant to the goods, works or service to be procured.

**(3)** The functions of the evaluation panel are to—

*(a)* receive from the Public Procurement Board or Departmental Procurement Committee the tender opening record and the tenders;

*(b)* evaluate the tenders fairly, impartially and in accordance with the evaluation criteria in the tender notice;

*(c)* prepare a tender evaluation report including recommendations for award and submit the same to the accounting officer for decision and subsequent approval to the Public Procurement Board or Departmental Procurement Committee; and

*(d)* respond to any queries raised by the accounting officer, Public Procurement Board or Departmental Procurement Committee or Government Procurement Service.

## PART 4—GENERAL PROVISIONS

**14. Annual procurement plan**

**(1)** All accounting officers shall, before the end of each financial year, prepare and submit to the Public Procurement Board an annual procurement plan in a form provided by the Head of Government Procurement Services.

**(2)** On the enactment of an Appropriation Act of a particular year, the accounting officer shall amend the annual procurement plan in line with the provisions of the Appropriation Act for that year and provide a copy to the Head of Government Procurement Services.

**(3)** The Head of Government Procurement Services shall publish a summary of each annual procurement plan and any amendment on the Government website in the form of a planned procurement notice.

**15. Early market engagement**

**(1)** In preparing its procurement, a procuring entity may, in coordination with the Head of Government Procurement Services, engage with suppliers and other parties in a non-discriminatory way for the purpose of developing the procuring entity's requirements and approach to the procurement.

**(2)** The procuring entity shall ensure that no suppliers participating in an engagement under subsection (1) are put at an unfair competitive advantage and shall put in place measures to mitigate an unfair advantage.

**16. Description of procurement requirements**

**(1)** A procuring entity shall not include or use in the prequalification documents or tender documents—

*(a)* a specification, plan, drawing or design setting out the technical or quality characteristic of goods, services or works;

*(b)* a requirement concerning testing and test methods, packaging, marking or labelling or conformity certificate; or

*(c)* a symbol, terminology or description of goods,

if it creates an obstacle to the participation of suppliers in the procurement process.

**(2)** Subject to subsection (3), a procuring entity shall base a specification, plan, drawing, design or requirement on the relevant objective technical and quality characteristics of the goods, services or works to be procured.

**(3)** A procuring entity shall not refer to a particular trademark, name, patent, design, type, specific origin or producer in a specification, plan, drawing, design or requirement, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, services or works to be procured and shall, in such case, include words such as "or equivalent" in the prequalification documents or tender documents.

**17. Valuing procurement and artificial aggregation or division**

**(1)** The calculation of the estimated value of a procurement contract, or of all contracts under a framework agreement, shall be based on the total amount payable as estimated by the procuring entity, including any form of option or renewals of the contract.

**(2)** Calculation of the estimated value of works contracts shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works.

**(3)** A procuring entity shall neither aggregate nor artificially divide an object of procurement with the intention of avoiding the prescribed financial thresholds for determining the appropriate procurement method or otherwise limiting competition.

**(4)** Despite the prohibition in subsection (3), a procuring entity may divide a procurement requirement, which could be procured as a single contract, into a package, consisting of one or more lots which are to be tendered together, where it is anticipated that the award of several separate contracts may result in—

*(a)* the best overall value for the procuring entity; or

*(b)* the achievement of the Government's sustainable procurement goals.

**(5)** For contracts with an estimated value below the prescribed threshold, suppliers for lots may be identified through the register of suppliers.

**(6)** The estimated value of a contract divided into lots shall be the total value of all the lots to be procured.

**18. Eligibility of suppliers**

**(1)** A supplier is eligible to participate in a procurement process if the supplier—

*(a)* possesses or has access to the technical competence, financial resources, equipment and other physical facilities, personnel, managerial capability, experience and reputation necessary to complete the procurement contract;

*(b)* has the legal capacity to enter into a procurement contract;

*(c)* is not insolvent, in receivership, bankrupt or being wound up and its activities or affairs are not suspended or being administered under any Act, by a court or by a judicial officer;

*(d)* is not the subject of legal proceedings for any of the matters mentioned in paragraph *(c);*

*(e)* has fulfilled or has made substantial arrangements satisfactory to the relevant authorities, to fulfil its obligations to pay taxes and social security and other contributions of its employees; and

*(f)* has not, or in the case of a company, its owners and beneficial owners, directors or officers have not, been convicted of a criminal offence related to—

(i) its professional conduct; or

(ii) a prohibited practice,

within the period specified in the tender documents but not exceeding three years preceding the commencement of the procurement process; and has not, or in the case of a company, its owners and beneficial owners, directors or officers have not, been debarred from a procurement process in Montserrat.

**(2)** The procuring entity may require a supplier participating in the procurement process to provide the prescribed documentary evidence or other information to satisfy itself that the supplier is qualified in accordance with the criteria in subsection (1).

**(3)** A procuring entity shall set out in a prequalification document or tender document all the criteria for qualification to be applied in accordance with subsection (1).

**(4)** Except as permitted under this Act, the procuring entity shall not establish a criterion for eligibility of a supplier that—

*(a)* discriminates against or among a supplier or against categories of suppliers; or

*(b)* is not required for the performance of the procurement contract, or

*(c)* is not related to the avoidance or management of legal, reputational or economic risk to the procuring entity

unless it is in the national interest to do so, and the criterion is set out in the tender documents.

**(5)** A procuring entity shall assess the eligibility of a supplier for participation in the procurement process against the criteria for qualification under subsection (1).

**(6)** A procuring entity may disqualify a supplier from the procurement process if that supplier—

*(a)* does not satisfy a criterion for eligibility, including experience and performance related criteria; or

*(b)* knowingly submits information concerning its eligibility that is materially inaccurate, materially incomplete or false; or

*(c)* is in breach of its obligations under section 40 of this Act.

**(7)** If a supplier knowingly submits information concerning its eligibility which is materially inaccurate, materially incomplete or false, a procuring entity may initiate debarment procedures before the Public Procurement Board in accordance with the Regulations to—

*(a)* debar the supplier, for a prescribed period, from being considered for any procurement contract by a procuring entity; or

*(b)* debar the supplier from participation in any or a certain type of procurement process, subject to any condition the Public Procurement Board considers necessary.

**19. Form of communication**

**(1)** A document, notification, decision or other communication that this Act requires—

*(a)* a procuring entity to submit to a supplier; or

*(b)* a supplier to submit to a procuring entity,

shall be in writing or in a form that provides a record of the content of the communication.

**(2)** The procuring entity shall not discriminate against or among suppliers based on the form in which they transmit or receive documents, notifications, decisions or other communications.

**20. Confidentiality**

**(1)** Any communication between the procuring entity and a supplier in respect of a procurement process shall be confidential.

**(2)** Unless required by law or ordered by a competent court or authority, no party to any communication referred to under subsection (1) shall disclose to any other person any technical, price or other information relating to the communication without the consent of the other party.

**(3)** Other than when providing or publishing information pursuant to section 31(4) and (5), the procuring entity shall treat applications to pre-qualify and submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or to any other person not authorised to have access to this type of information.

**(4)** Nothing in this Act shall be construed as—

*(a)* preventing the disclosure of information necessary for the protection of the security interests of Montserrat; or

*(b)* requiring the disclosure of information where its disclosure would—

(i) be contrary to law;

(ii) impede law enforcement;

(iii) prejudice the legitimate commercial interests of the suppliers;

(iv) impede fair competition; or

(v) not otherwise be in the public interest

unless disclosure of that information is ordered by a competent court or authority and, in such case, subject to the conditions of such an order.

**(5)** Subject to subsection (3), in procurement involving classified information, the procuring entity may impose

on suppliers, requirements aimed at protecting classified information.

**21. Language of documents**

A tender document, submission or other documents required under this Act shall be in English and in any other language that the procuring entity specifies in the tender documents.

## PART 5—AWARD OF PUBLIC CONTRACTS

**22. Procedure selection**

**(1)** A procuring entity shall select the most appropriate method of procurement for each requirement as part of the procurement planning process from among the following—

*(a)* open tendering;

*(b)* restricted tendering;

*(c)* request for proposals;

*(d)* request for quotations;

*(e)* direct contracting; or

*(f)* electronic reverse auction.

**(2)** A procuring entity may select a method other than open tendering only when the conditions for the use of the other method are fulfilled.

**(3)** Consulting services shall be procured by the request for proposals method.

**(4)** The procedure for each method under subsection (1) shall be as prescribed.

**(5)** A procuring entity shall not engage in negotiations of price with the supplier with respect to the supplier's tender as submitted except when the procuring entity

conducts a procurement using direct contracting or a request for proposals with evaluation based on quality alone.

**23. Open tendering**

**(1)** Open tendering is open equally to any eligible supplier for all contracts exceeding the prescribed threshold.

**(2)** Open tenders shall be advertised by way of a tender notice as prescribed.

**(3)** Following publication in accordance with subsection (2), a procuring entity may notify the content of the advertisement directly to persons who may have an interest in the procurement, including persons appearing in any framework agreements under which Montserrat is a beneficiary, provided that such notification contains no information other than that contained in the published notice.

**(4)** The procuring entity shall determine an appropriate tender submission period taking into account—

*(a)* the time required for the preparation of tenders based on the level of detail required and the complexity of procurement; and

*(b)* the minimum prescribed periods.

**(5)** Open tendering may be conducted with pre-qualification as prescribed in the Regulations in the case of large-scale, technically complex and high value projects for goods, works or non-consultancy services where the suitability of suppliers is evaluated prior to carrying out the tendering.

**(6)** In a case of open tendering in accordance with subsection (5)—

*(a)* invitations to prequalify shall be advertised by a notice in accordance with section 36;

*(b)* the prequalification documents shall establish the minimum requirements and criteria in accordance with section 18; and

*(c)* all suppliers that meet the qualification requirements shall be invited to participate in the tender submission phase.

**(7)** Open tendering may be conducted in two stages if a proposal from a supplier is necessary for the procuring entity to—

*(a)* determine the most satisfactory technical solution for its procurement needs; or

*(b)* define or detail the technical, quality or performance specifications and characteristics of the good, works or other service to be procured.

**(8)** With the approval of the Government Procurement Services, a procuring entity may engage in open tendering to award a framework agreement for up to a maximum of four years where it determines that there is a recurrent need for the same or similar requirements, but the nature and timing of specific requirements are not known until the time an order is placed.

**(9)** A procurement contract under a framework agreement may be awarded only to a supplier that is a party to the framework agreement and shall be awarded either—

*(a)* by way of limited competition among suppliers who are parties to the framework agreement; or

*(b)* without competition between framework suppliers—

(i) where only one supplier is party to the framework; or

(ii) the framework sets out an objective mechanism for supplier selection.

**24. Request for proposals**

**(1)** A procuring entity shall use the request for proposals method for the procurement of consulting services from consulting firms or individual consultants.

**(2)** Without limiting the generality of subsection (1), a procuring entity may evaluate consulting services on the basis of—

*(a)* only quality;

*(b)* quality and cost;

*(c)* quality within a fixed budget; or

*(d)* least cost with an acceptable level of quality.

**25. Restricted tendering**

**(1)** The number of suppliers invited to submit a tender response may be restricted when—

*(a)* the goods, works or services are only available from a limited number of suppliers;

*(b)* for contracts below the prescribed estimated value, the goods, works or services can be provided by a supplier on the approved supplier register as established in section 29; or

*(c)* the subject matter of the procurement relates to national security.

**(2)** In selecting suppliers to be invited to tender in accordance with subsection (1)*(a)*, all eligible suppliers shall be invited.

**(3)** In selecting suppliers to be invited to tender in accordance with subsection (1)*(b)*, the procuring entity shall use the approved supplier register maintained by the Government Procurement Services, provided it selects sufficient suppliers to ensure effective competition and, in any case,

at least three qualified suppliers or all qualified suppliers, whichever is the greater.

**26. Request for quotation**

A procuring entity may engage in procurement by means of a request for quotations for the procurement of goods, works or services where—

*(a)* the goods, works or services to be procured are readily available and not specially produced; or provided to the description or technical specification of the procuring entity; and

*(b)* there is an established market for the goods, works or services to be procured; and

*(c)* the estimated value of the goods, works or services to be procured does not exceed the prescribed thresholds.

**27. Direct contracting**

**(1)** A procuring entity may award a public contract by direct contracting where any of the following apply—

*(a)* no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procurement (with or without pre-qualification), a restricted procurement or a request for quotations, provided that the initial conditions of the proposed contract are not substantially altered;

*(b)* where, for technical or for reasons connected with the protection of intellectual property rights, the works, supplies or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

*(c)* owing to a circumstance of extreme urgency, as prescribed in Regulations;

*(d)* in the event of declared public emergencies under the Montserrat Constitution Order;

*(e)* the supply of additional goods or services from the original supplier is required for reasons of standardisation or compatibility a change of supplier would result in disproportionate costs or technical difficulty;

*(f)* supplies are quoted and purchased on a commodity market;

*(g)* for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under an enactment; and

*(h)* for small purchases below the value prescribed.

**(2)** In respect of situations of extreme urgency under subsection (1)*(c)*, where time permits, quotations shall be sought from as many sources as practicable, including those registered within the approved supplier register.

**28. Electronic reverse auction**

Where the Government Procurement Services utilises an appropriate electronic platform for the conduct of reverse auctions, a procuring entity may, in the procurement of goods, works or services, conduct reverse auctions electronically in the prescribed manner if—

*(a)* it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;

*(b)* there is a competitive market of suppliers anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured; and

*(c)* the criteria to be used by the procuring entity in determining the successful tender are quantifiable and can be expressed in monetary terms.

**29. Procurements from registered suppliers**

**(1)** The Government Procurement Services may establish a register of suppliers for goods, works or services required across procuring entities or required on a recurring basis.

**(2)** The Government Procurement Services may invite suppliers to apply for inclusion on the approved supplier register by advertising in the prescribed manner.

**(3)** Suppliers may apply for inclusion on the approved supplier register at any time.

**(4)** Suppliers will be admitted to the approved supplier register if their application demonstrates that they are eligible to participate in a procurement process and they meet the published qualification criteria for the category of goods, works or services they wish to supply.

## PART 6—AWARD OF PUBLIC CONTRACTS

**30. Key procedural steps**

**(1)** For each procurement, the procuring entity shall, by the date of the invitation or request, prepare tender documents or pre-qualification documents based on the standard tender documents established by the Head of Government Procurement Services.

**(2)** A supplier may, in writing, seek clarification of the tender documents from the procuring entity prior to the deadline for submission of tenders and the procuring entity shall within the prescribed time limits respond to the request in

writing simultaneously to all suppliers without identifying the source of the request for clarification.

**(3)** A procuring entity may issue a modification to the tender documents in writing at any time prior to the deadline for submission of tenders and, if necessary, may postpone the deadline for submission of tenders in order to provide suppliers with adequate time to take into account any modification in the preparation of their tenders.

**(4)** Tenders in open and restricted procedures and proposals shall be—

*(a)* submitted in written form in the manner and at the place and time indicated in the tender documents; and

*(b)* opened in public at the time and place specified in the tender documents in the manner prescribed.

**(5)** Tenders or proposals received after the deadline for submission shall be returned unopened.

**31. Evaluation and award**

**(1)** The evaluation criteria shall be appropriate to the nature and method of procurement.

**(2)** In the case of goods, works and services, a procuring entity shall award a public contract to the supplier that submits the most advantageous tender, namely the compliant tender that achieves the best combination of price together with any number of prescribed award criteria linked to the subject-matter of the contract in question.

**(3)** The evaluation criteria for requests for quotation, direct contracting and for the procurement of consultancy services shall be prescribed.

**(4)** The procuring entity shall communicate the outcome of the award to unsuccessful suppliers as prescribed.

**(5)** Contract awards must be published as prescribed.

**(6)** Where a standstill period is imposed, no contract may be entered into before the end of a ten-day standstill period from the date of the communication in subsection (4).

**(7)** A copy of all executed contracts shall be sent to the Government Procurement Services for inclusion in the register of contracts.

**32. Rejection of tenders**

**(1)** A procuring entity may reject any or all tenders, proposals or quotations at any time prior to their acceptance when—

*(a)* the tenders, proposals or quotations submitted are not substantially responsive; or

*(b)* there is evidence of lack of competition; or

*(c)* the supplier has a conflict of interest, in accordance with the Regulations, that materially affects fair competition or impedes the supplier's diligent performance of the procurement contract or framework agreement or is prejudicial to the interests of the procuring entity.

**(2)** Notice of the rejection shall be given promptly to all participating suppliers.

**(3)** A procuring entity shall upon request by the supplier communicate the grounds for rejecting a tender through debriefing.

**(4)** Any debriefing shall be provided in writing, within a reasonable period of the receipt of the request and in any case, before the end of any prescribed standstill period which shall normally be within ten days of the date of notification of the award.

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

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

*(b)* state that a submission was substantially responsive, but failed to offer the best value for money, as required.

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

**33. Cancellation of procurement proceedings**

**(1)** The cancellation of procurement proceedings shall be avoided whenever possible, but is permitted where—

*(a)* the procurement need has ceased to exist or changed significantly;

*(b)* insufficient funding is available for the procurement;

*(c)* there is a significant change in the required technical details, tendering conditions, conditions of contract or other details, such that the recommencement of procurement proceedings is necessary;

*(d)* insufficient or no responsive tenders are received;

*(e)* there is evidence of prohibited practices by suppliers; or

*(f)* it is otherwise in the public interest.

**(2)** A procuring entity shall incur no liability towards suppliers solely by virtue of its invoking this section.

**(3)** If a procuring entity cancels the procurement proceedings before the tender submission deadline, all tenders received shall be returned unopened to the suppliers who submitted them.

## PART 7—SUSTAINABLE PROCUREMENT

### 34. Social value

If indicated in the tender documents, and only where a policy has been issued by the Head of Government Procurement Services, a procuring entity may through its procurement seek to promote national industry and socio-economic development by—

*(a)* applying a margin of preference of no more than 15% to tenders offering goods of domestic origin or using domestic labour or service; or

*(b)* setting aside a percentage, but no more than 20%, of their total estimated value of procurement for defined target groups of suppliers.

### 35. Environmental objectives

**(1)** A procuring entity may seek to procure goods, services, and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured.

**(2)** In undertaking a procurement under subsection (1), a procuring entity shall comply with any Government policy setting out the requirements related to the purchase of environmentally products and with any targets set out in the policy.

## PART 8—TRANSPARENCY AND INTEGRITY

### 36. Publication of notices

Notices required under this Act shall be published as prescribed.

**37. Procurement records and reports**

**(1)** A procuring entity shall maintain an easily accessible and retrievable individual record for each procurement proceeding, which shall be marked with a unique procurement reference number.

**(2)** Records under this section shall be as prescribed.

**38. Conflict of interest**

**(1)** A person who can influence a decision relating to a procurement is to be treated as acting in relation to the procurement.

**(2)** Any person acting in relation to a procurement and has a conflict of interest in that procurement must declare it to his accounting officer.

**(3)** The disclosure referred to in subsection (2) must include the notification of all relevant personal, financial, business or other interests of that person, in particular—

*(a)* any directorship, partnership, agency or any shareholding in any supplier or potential supplier;

*(b)* any conflict of interest in relation to any activity or business in which or with which the supplier of potential supplier engaged; or

*(c)* any conflict of interest in relation to the procurement of goods, services or works recommended or supplied by the supplier or potential supplier under this Act.

**(4)** The accounting officer of the procuring entity shall investigate, review and resolve every suspected or reported conflict of interest in relation to any person employed in or assigned to the procuring entity.

**(5)** Where, after a review or an investigation, it is determined that there is a conflict of interest, the person concerned shall—

*(a)* immediately cease to exercise public procurement functions in relation to the procurement;

*(b)* without delay, give notice of disqualification from public procurement functions in relation to the procurement to any person specified by the Regulations; and

*(c)* refrain from exercising any public procurement function in relation to the procurement.

**39. Disclosure of interest in procurement proceedings**

**(1)** A member of the Public Procurement Board, Departmental Procurement Committee or Evaluation Panel shall immediately on appointment or reappointment sign a declaration as prescribed confirming a conflict of interest in any matter that comes before the Public Procurement Board or Departmental Tender Committee or in any tender to be evaluated, as appropriate.

**(2)** A member of the Public Procurement Board, Departmental Procurement Committee or Evaluation Panel shall recuse himself from voting on a matter in respect of which he declares a conflict of interest.

**(3)** The Chairperson shall restrict a member of the Public Procurement Board, Departmental Procurement Committee or an Evaluation Panel from voting on a matter in respect of which the Chairperson determines a conflict of interest arises in respect of the member

**(4)** A member of the Public Procurement Board, Departmental Procurement Committee or an Evaluation Panel who is a public officer and who contravenes this section is subject to disciplinary proceedings under the public service law.

**(5)** The Financial Secretary may suspend or terminate the appointment of a member of the Public Procurement

Board who is not a public officer and who contravenes this section.

**(6)** The Public Procurement Board or the Departmental Procurement Committee, as the case may be, may suspend or terminate the appointment of a member of an Evaluation Panel who is not a public officer and who contravenes this section.

**40. Integrity**

**(1)** A public officer or a person who can influence a decision relating to a procurement shall not engage in or abet prohibited practices in a procurement process or the execution of a contract.

**(2)** A supplier shall not engage in or abet prohibited practices including the misrepresentation of facts, to influence a procurement process or the execution of a contract, including by inducing or coercing the commission of inappropriate acts.

**(3)** Suppliers shall not engage in collusive practices designed to allocate procuring entities among suppliers, establish tender prices at artificial non-competitive levels or otherwise to deprive the procuring entity of the benefits of free and open competition.

**(4)** The procuring entity shall reject a tender if the supplier engages in prohibited practices and promptly notify the rejection of the supplier concerned to the relevant law enforcement authorities.

**(5)** Public officers and persons who can influence a decision relating to a procurement who engage in prohibited practices in connection with public procurement are subject to prosecution under the applicable criminal laws, and public service law.

**(6)** Suppliers who engage in prohibited practices in connection with public procurement are subject to

prosecution under the applicable criminal laws and suppliers may be debarred.

## PART 9—CHALLENGE PROCEDURES

### 41. Right to Challenge

**(1)** A supplier who claims to have suffered, or that he is likely to suffer loss or injury due to a decision, action, breach of a duty or non-compliance with this Act by a procuring entity may seek review under this Part.

**(2)** Notwithstanding subsection (1), a decision of the procuring entity to cancel the procurement or reject all tenders for a particular procurement is not subject to review.

**(3)** A supplier may submit, in writing, a complaint to the accounting officer of a procuring entity requesting the review of a decision, action, breach of a duty or non-compliance no later than—

*(a)* five days after the supplier submitting it became aware of the circumstances giving rise to the complaint or when the supplier should have become aware of those circumstances, whichever is earlier; and

*(b)* in any event within the prescribed standstill period of ten days from the date of notification of the proposed award of the contract where such standstill period applies.

**(4)** Complaints shall not be considered—

*(a)* after the time periods in subsection (3) have elapsed; or

*(b)* where the specific act or omission alleged to contravene this Act is not identified.

**42. Suspension of procurement**

**(1)** The procuring entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned—

*(a)* where it receives a complaint within the time limits specified in section 41; or

*(b)* where it receives notice of appeal to the Independent Adjudicator in accordance with section 43.

**(2)** The prohibition referred to in subsection (1) shall lapse immediately on the notification of the decision of the procuring entity or the Independent Adjudicator to the parties and any participants joining the proceedings under section 44(4).

**(3)** The procuring entity may at any time request the Independent Adjudicator to authorise it to enter into the procurement contract or framework agreement on the grounds that it is in the overriding public interest to do so.

**43. Review of complaint by the procuring entity**

**(1)** The accounting officer of the procuring entity shall, within 14 days from the date on which a request for review is received—

*(a)* resolve the matter by mutual agreement with the supplier; or

*(b)* issue a written decision together with the reasons for the decision to the supplier.

**(2)** If the accounting officer of the procuring entity does not issue a decision within the time stated in subsection (1) or if the complainant is not satisfied with the decision, the complainant may, within ten days of receipt of a written decision or within ten days submit an appeal to the Independent Adjudicator and shall notify the accounting officer of the procuring entity of such appeal.

**44. Appeal to the Independent Adjudicator**

**(1)** An appeal against the decision of the procuring entity may be made to the Independent Adjudicator, appointed by the Financial Secretary in consultation with the Attorney General.

**(2)** An appeal to the Independent Adjudicator is made through the Head of Government Procurement Services as prescribed.

**(3)** An appeal to the Independent Adjudicator may be disallowed—

*(a)* for failure of the supplier to comply with the requirements of sections 43(2); or

*(b)* for failure to identify the specific act or omission alleged to contravene this Act in accordance with section 41(4).

**(4)** The appeal procedure is commenced on the working day following notification of the appeal to the parties by the Head of Government Procurement Services.

**(5)** Any supplier participating in the procurement proceedings to which the appeal relates, as well as any governmental authority whose interests are or may be affected by the appeal, has the right to participate in the appeal proceedings.

**(6)** A supplier duly notified of the proceedings that fails to participate in the proceedings is barred from subsequently challenging the decisions or actions that are the subject matter of the appeal.

**(7)** The Independent Adjudicator shall make a written decision, containing the reasons for the decision, within 15 days of hearing all evidence from the parties to the appeal.

**(8)** The decision of the Independent Adjudicator is binding on all the parties to the appeal.

**(9)** Unless an appeal is dismissed, the remedies that may be ordered by the Independent Adjudicator include—

*(a)* prohibiting the procuring entity from acting or deciding in an unlawful manner or from following incorrect procedure;

*(b)* annulling in whole or in part any unlawful act or decision of a procuring entity other than the decision to award a contract;

*(c)* requiring the procuring entity to revise any annulled act or decision in a manner consistent with this Act;

*(d)* terminating the procurement procedure in its entirety and ordering a new procedure to be commenced; or

*(e)* where a contract has been concluded unlawfully, the award of compensation to be paid by the procuring entity to the aggrieved supplier amounting at least to the cost of tender preparation.

**(10)** Subsection (8) is without prejudice to the rights of the parties to bring a subsequent claim before the High Court.

## PART 10—MISCELLANEOUS

### 45. Regulations

The Governor acting on the advice of Cabinet may, after consultation with the Public Procurement Board, make regulations generally for giving effect to the provisions of this Act.

### 46. Transitional arrangements

A procuring entity may continue any procurement proceedings in respect of the procurement of goods, services or works—

*(a)* commenced before the coming into operation of this Act; and

*(b)* which have not been determined, terminated or completed

as if this Act were not enacted, but the provisions of this Act shall apply to any procurement contract that is awarded or executed as a consequence of such proceedings.

**47. Repeal of Regulations**

The Public Finance (Management and Accountability) (Procurement) Regulations 2019 (SRO 27 of 2019) are repealed.

(Sgd.) Marjorie Smith

**SPEAKER**

Passed by the Legislative Assembly this 28th day of July, 2025.

(Sgd.) Judith Baker

**CLERK OF THE LEGISLATIVE ASSEMBLY**