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ACT NO. 3 OF 2023

Public Procurement Act, 2023

An Act to make provision for the establishment of the Public Procurement Authority; procurement of works, supplies and services in Government; disposal of public assets and for related matters.

ENACTED by the Parliament of Lesotho.

PART I – PRELIMINARY

Short title and commencement

This Act may be cited as the Public Procurement Act, 2023 and shall come into operation on the date of publication in the Gazette.

Interpretation

In this Act, unless the context otherwise requires -

"Authority" means the Lesotho Public Procurement Authority established under this Act;

"annual procurement plan" means a plan consisting of a proposed contract to be procured and prepared by a procuring entity;

"board" means the board of the Lesotho Public Procurement Authority established under this Act;

"board of survey" means a board comprising of the representatives of the departments of a procuring entity to deal with a supply and equipment targeted for disposal;

"candidate" means a person who has submitted an application for prequalification or expression of interest to a procuring entity;

"Chief Accounting Officer" means a person appointed as a head of a procuring entity charged with the responsibility for financial control over the procuring entity;

"close relative" means a parent, spouse, children, sibling, in-law, and first-line uncle, aunt and cousin;

"coercive practice" means harming or threatening to harm, directly or indirectly, a person or his property to influence procurement proceedings or affect an execution of a contract;

"collusive practice" means a scheme or arrangement among two or more bidders with or without the knowledge of a procuring entity, prior to or after bid submission, designed to establish a bid price at artificial non-competitive level and to deprive a procuring entity of the benefits of free, open and genuine competition;

"competent authority" means a government official, body or agency, or an internationally recognised agency that has been legally delegated or vested authority, capacity or power to perform a designated function;

"consultant" means a provider of an intellectual service, including a consultancy service;

"contract" means a written agreement between a procuring entity and a supplier, contractor, or consultant resulting from a procurement proceedings;

"contractor" means a firm, natural or juristic person under contract with a procuring entity to provide works or non-consulting services of any type;

"cooling off period" means a ten-day period after an issuance of a notification of tender results;

"corrupt practice" means offering, giving or promising to give, directly or indirectly, to an officer or employee of a procuring entity or other governmental or private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method followed by a procuring entity in connection with a procurement proceeding;

"day" means a working day;

"disaster" means a progressive, sudden, widespread, localised, natural or man-made event;

"domestic contractor" means a contractor who is a citizen of Lesotho or a contracting company with more than 50 percent share capital owned by citizens of Lesotho;

"domestic consultant" means a consultant who is a citizen of Lesotho or a consulting company with more than 50 percent share capital owned by citizens of Lesotho;

"e-procurement" means the procurement of goods, construction works or services through internet-based information technology;

"electronic communication" means the transfer or recording of information through an electronic or similar medium;

"emergency" means an occasion, instance or event for which, in the determination of the Prime Minister, exceptional assistance from the government is needed to supplement national, district, community or individual actions to save lives, protect property and public health and safety or to prevent or mitigate the threat of a catastrophe or extreme hazard in any part of Lesotho;

"force account" means carrying out construction work by use of government personnel and equipment;

"framework agreement" means an agreement between a procuring entity and a supplier, contractor or service provider for a supply of an unspecified amount of a product over a specified period at an agreed price or price range or stipulating a mechanism for determining a price at a time of awarding a contract under a framework agreement;

"framework contract" means an arrangement between two parties which commits one to buying a specified volume of particular goods or services from the other over a specified period at an agreed price;

"fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement proceeding or an execution of a contract to the detriment of a procuring entity;

"goods" means an object of any kind and description, including a commodity, raw material, product, equipment and object in solid, liquid or gaseous form, and all kinds of livestock;

"high value" means goods, works or services that are above a threshold stipulated in Schedule 4;

"lowest evaluated tender" means a tender which is determined to be the most economic after evaluating all terms and conditions of a tender including price and other associated costs;

"Minister" means the Minister of Finance;

"Ministry" means the Ministry of Finance;

"non-consulting service" means a service that leads to a measurable physical output;

"obstructive practice" means deliberately destroying, falsifying, altering, or concealing of evidence material to an investigation or making false statement to investigator in order to materially impede a lawful investigation into allegation of a corrupt, fraudulent, coercive, or collusive practice, and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of a matter relevant to an investigation or from pursuing an investigation;

"performance security" means a bank guarantee or other form of security submitted by a supplier, contractor, or consultant to secure his obligation under a procurement contract;

"prescribed" means as set out in the regulations made under this Act;

"procurement" means an acquisition by a contractual means of goods, works, services and a concession agreement, and disposal of unserviceable, obsolete, or surplus supply and equipment by a procuring entity;

"procurement committee" means a committee appointed under section 50;

"procurement document" means a document for solicitation of a quotation, proposal or offer and other documents issued by a procuring entity on the basis of which a tenderer prepares a tender;

"procurement manual" means a document produced and issued by an authority for further guidance on compliance with this Act by a procuring entity;

"procurement unit" means a unit established within a procuring entity;

"procuring entity" means a ministry, municipality, district council, state owned legal entity or any other body covered by public law;

"Procurement Tribunal" means the tribunal established under section 39;

"professional" means a person who has a qualification in a specialised field and is engaged in a practice of a skill or trade, having undertaken practical learning in a form of apprenticeship or tutelage under a guidance of a suitably qualified and experienced person or institution;

"public fund" means a monetary resource of a state budget, aid, loan and credit under agreement with a foreign donor or extra-budgetary resource of a procuring entity used for a public function;

"service" means an activity of an intellectual nature or otherwise that does not lead to a physical output;

"supplier" means a physical or juristic person under contract with a procuring entity to supply goods;

"tender or bid" means a quotation, proposal or offer submitted by a tenderer in response to a solicitation by a procuring entity;

"tenderer or bidder" means a natural or juridical person who submit a quotation, proposal or offer in response to a solicitation by a procuring entity;

"tender security" means a bank guarantee or other form of security submitted by a tenderer together with a tender to secure an obligation of a tenderer participating in a tendering proceeding, including an obligation to sign a procurement contract if a tender is accepted;

"turnkey contract" means a contract in which a company is given a responsibility of planning and designing a supply and installation of equipment, and the construction of a building, infrastructure or work facility that would be immediately used by an employer upon completion;

"work" means a work associated with a construction, installation of equipment or materials and services incidental thereto; and

"writing" means and include printing, photography, electronic communication and any other method of representing words, figures and information in visible form that is reproducible in tangible form by a device that generated a visible word and figure of information.

Purpose of the Act

3. The purpose of this Act is to -

(a) regulate and establish institutional structures to manage public procurement, provide procedures, processes and regulations for procurement of goods, works, services, disposal of unserviceable, obsolete, obsolescent, redundant or surplus stores, and equipment, optimise efficiency in public procurement, and obtain value for money;

(b) promote and encourage participation and competition in public procurement;

(c) promote integrity, transparency, proficiency, accountability, fairness and equitable treatment in a public procurement process in order to increase public confidence in a procurement system; and

(d) promote sustainable development policies and objectives, including economic development and diversification, environmental conservation and social welfare, and inclusive governance processes.

Scope of application

4. (1) This Act applies to the following entities:

(a) central government ministries and agencies;

(b) Lesotho Diplomatic Missions;

(c) Local government authorities;

(d) enterprises which are wholly owned by the government; and

(e) any entity in the private sector which is given the responsibility to carry out activities on behalf of government using public funds.

Non-application

5. (1) This Act shall not apply to -

(a) retaining or securing a service of a tenderer who work primarily as an employee of a procuring entity;

(b) acquiring goods, work and service from another procuring entity;

(c) acquiring land and real property, business enterprise, stock, share and such other commercial asset or instrument;

(2) A procurement classified under national defence and national security shall be subject to the following provisions:

(a) a procurement of goods and services shall be exempt from an open competitive tendering but shall use all other procurement methods set out in this Act;

(b) a procedure to be followed to meet a security need may be provided by an Authority in consultation with the relevant defence and security departments of the government for a specific purpose, but a modification shall be governed strictly by a consideration relating to defence or security;

(c) for the purpose of subsection (2) (a), a national defence and national security agency and the Minister of Finance shall in consultation with a relevant ministry or unit, determine a procurement item that relate to national defence and national security; and

(d) a general supply, uniform, stationery, office equipment and ordinary vehicle for a military or security agency shall not be classified as related to national defence or national security.

Non-eligibility

6. (1) The goods, supply, contractor, and consultant from another country shall be ineligible for consideration under this Act if -

(a) the law of Lesotho prohibits commercial relations with that particular country;

(b) a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations prohibits any dealings with that particular country; or

(c) an entity is debarred by a donor or a development partner from participating in procurement proceeding in a project financed by such a donor or a development partner.

(2) A firm which has been engaged by a procuring entity to provide -

(a) consulting service for a preparation or implementation of a project and any of its affiliates shall not be eligible to participate in a procurement of goods, work or non-consulting service related to; and

(b) goods, work or non-consulting service of a project and any of its affiliates, shall not be eligible to provide a consulting service for a preparation or implementation of such a project except in a case of a turnkey.

Environmentally and socially responsible procurement

7. (1) A procurement of goods, work or service shall meet an environmental concern and demand of a country for the type of goods, work and production process with a characteristic that is considered necessary or desirable as

part of its environmental and social policy.

(2) Any goods, work or service that have been declared by a relevant national environmental protection agency or other competent authority as harmful to a human being and to an environment shall not be eligible for procurement under this Act.

(3) Any goods, work or service prohibited by laws of Lesotho shall not be eligible for procurement under this Act.

Procurement of second-hand goods

8. Second-hand goods shall not be -

(a) eligible for procurement under this Act, except with the permission of the Minister who will, on advice of the Authority, issue such permit and condition under which a procuring entity can procure second-hand goods; and

(b) procured through a competitive process that also allows a tender with new goods.

Leasing and renting

9. (1) Where leasing and renting of equipment may be the most economic and efficient means to achieve value for money, a procuring entity may consider leasing and renting of such equipment which will be approved by a procurement committee.

(2) A process to be followed in subsection (1) shall be included in a procurement plan of a procuring entity.

E-procurement

10. (1) The Authority shall develop an e-procurement system for the purpose of providing for a dissemination of tender document and a receipt of tender through electronic means.

(2) The Procuring Entity Central Tender Board shall make use of an e-procurement system for a procurement required by a procuring entity.

(3) A procuring entity shall obtain an approval from the Authority to use any other means of electronic communication for submission of a tender and a proposal.

Joint venture

11. (1) A tenderer is free to voluntarily tender independently or in a joint venture with a domestic or foreign firm.

(2) A party to a joint venture shall be jointly and severally liable for an execution of a contract.

(3) A joint venture shall be subject to a preference margin.

Professionalism in a procurement function

12. A procurement related function shall be carried out by a person trained and knowledgeable in procurement in accordance with the guidelines and qualification requirements as may be established by the Authority.

Language

13. A document used in a procurement proceeding shall be formulated in an official language.

Procurement guideline and manual

14. (1) The Authority may issue a guideline and manual to guide a procuring entity on a practice and procedure to follow in compliance with this Act and regulations made under this Act.

(2) A procuring entity shall pay due regard to a guideline and manual issued by the Authority when discharging its responsibilities in a procurement.

Conflict with international agreement

15. Where a provision of this Act conflict with an obligation of the Kingdom of Lesotho under or arising from a treaty or an agreement to which Lesotho is a party, a requirement of a treaty or agreement shall to the extent of the conflict,

prevail over this Act if an approval has been sought from the Authority.

PART II - INSTITUTIONS ESTABLISHED FOR MANAGING PUBLIC PROCUREMENT

Establishment of the Lesotho Public Procurement Authority

16. (1) There is established a Lesotho Public Procurement Authority as a body corporate with perpetual succession and a common seal.

(2) The Authority shall be autonomous and may sue or be sued in its corporate name.

(3) The Authority shall be able to acquire, hold, manage, or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are directly or reasonably related to its functions.

(4) The Authority may give an approval to a procuring entity to carry out on its own behalf, a procurement above a threshold set out in Schedule 4 for defence and security, and where it considers that a procurement can be carried out more satisfactorily and lead to better value being obtained.

Functions of the Authority

17. The functions of the Authority are to -

(a) disseminate procurement information and publications;

(b) monitor and enforce compliance with this Act;

(c) formulate, promote, support, and implement capacity-building and professionalization programmes in public procurement;

(d) formulate policy and standard for all aspects of public procurement;

(e) establish a Central Tender Board to carry out a procurement of high value goods, works and services;

(f) develop and issue a procurement standard tender document, guideline and procurement manual;

(g) develop a website portal in which a procurement document, process, opportunity and contract award shall be made available;

(h) review and assess an operation of public procurement and make a necessary improvement;

(i) conduct an annual public procurement forum to -

(i) address issues related to public procurement; and

(ii) establish and maintain a mechanism for a feed back and response to stakeholders;

(j) advise the Minister on any issue related to this Act;

(k) debar anyone who has contravened a provision of this Act from participating in a public procurement;

(l) maintain a database of a supplier, contractor, consultant, and a prospective tenderer who has been debarred or not debarred from a public procurement and communicate the information to a procurement entity on a regular basis;

(m) recommend a rule governing a procedure of a Tribunal to a government ministry;

(n) prepare an annual report on an overall function of a public procurement system and a profile of a procurement activity and present it to the Minister to table before Parliament;

(o) conduct an annual procurement audit report on a value for money in public expenditure and present it to the Minister to table before Parliament;

(p) be an overseer of a public procurement process; and

(q) perform other functions as are incidental to the attainment of the objectives of this Act.

Powers of the Authority

18. The Authority shall have the power to -

(a) request an information, document, record and report in respect of any aspect of a public procurement process where a breach, wrongdoing, mismanagement or collusion has been allegedly reported or proven against a procuring and disposing entity or provider;

(b) summon and examine a witness or a party concerned under oath;

(c) call for a production of the books of accounts, a plan or a document;

(d) commission or undertake an investigation and institute a procurement contract and performance audit;

(e) inspect a procurement transaction to ensure compliance with a bid award by a procuring entity; and

(f) suspend a supplier, contractor or consultant from engaging in a public procurement process.

Appointment of the Board

19. (1) There shall be a Board which shall consist of the following:

(a) a Chairperson who shall -

(i) be knowledgeable and experienced in public procurement, public administration, engineering, economics, commerce or law; and

(ii) not be in the public service;

(b) a lawyer with more than ten years experience;

(c) two persons with more than ten years experience in public procurement;

(d) a person who is knowledgeable in governmental and multi-lateral agency procurement procedures;

(e) two representatives of the private sector who have experience in public procurement and business operations; and

(f) Director General.

(2) The recruitment of the members of the Board shall be advertised.

(3) A vice-chairperson shall be nominated by the members from amongst themselves at the first meeting of the Board.

(4) The Minister shall appoint members of the Board by a notice published in the Gazette.

Tenure of Office

20. (1) A term of office for a member of the Board shall be -

(a) five years for a Chairperson; and

(b) four years for a member.

(2) A renewal or reappointment may be for one term and subject to good performance, and shall not necessarily be successive.

Vacancy

21. A position of a member of the Board shall be vacant -

(a) at the expiration of a term of office; or

(b) if a member -

(i) becomes a public servant;

(ii) resigns; or

(iii) dies.

Termination

22. The Minister may terminate the appointment of a member if a member is -

(a) absent from three consecutive meetings of the Board without leave of the Board;

(b) unable to perform the functions of his office due to infirmity of mind or body;

(c) convicted of an offence under the penal code or is sentenced to an imprisonment without an option of a fine;

(d) declared insolvent by a competent authority; or

(e) found guilty of a misconduct or dishonesty.

Filling of a vacancy

23. (1) If the office of a member becomes vacant before the expiration of a term of office, whether by death, resignation or otherwise, the vacancy shall be filled in accordance with the manner in which such a member was appointed.

(2) A member appointed under subsection (1) shall hold office for the remainder of a term of office of a vacating member.

Meetings of the Board

24. (1) The Board shall meet for the dispatch of business at least four times a year and at such times and place as the Chairperson may determine.

(2) The Chairperson shall preside at all meetings of the Board and in his absence, the Vice-Chairperson shall preside and in the absence of both, the members shall elect one of their members to preside.

(3) The quorum for a meeting of the Board shall be five members.

(4) Each member, excluding a Chairperson, shall have one vote but in case of an equality of votes, a Chairperson whether substantive or in an acting capacity shall have a casting vote.

(5) The Board may, on ad hoc basis, co-opt any person to act as an advisor at its meetings, but such a person shall not have the right to vote on any matter being considered by the Board.

(6) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(7) The Board shall determine a procedure for its meetings.

Committees of the Board

25. (1) The Board may constitute a committee from among its members to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee.

(3) The Director General shall appoint in writing, an officer of the Authority to be a secretary of the committee and shall, on the instruction of the chairperson of the committee convene the meetings of the committee

Powers of the Board

26. (1) The Board shall have the power to -

(a) request information, report or documents that it considers necessary for the performance of its functions;

(b) approve organisational structures;

(c) prescribe administrative measures required to safeguard the public procurement compliance;

(d) instructor order the Director General on matters related to management, performance and operational policies of the Authority; and

(e) exercise disciplinary control over the Director General.

(2) The Board shall not intervene in the determination of any procurement method.

Remuneration

27. (1) A member shall be paid from the funds of the Authority, such sitting allowance as the Minister may determine.

(2) A member of a Board or committee may be reimbursed for any reasonable expense incurred in connection with a business of the Board.

Secretariat

28. The Authority shall act as a Secretariat of the Board and shall provide an administrative, secretarial, and other support services to the Board.

Director General

29. (1) The Board shall appoint a Director General who shall be a Chief Accounting Officer of the Authority.

(2) The Director General shall -

(a) hold office for a period of six years and may be reappointed for one term subject to good performance; and

(b) have such qualifications, training and experience as the Board shall prescribe.

(3) The Director General shall cease to hold office if -

(a) he resigns by giving a written notice of three months to the Chairperson of the Board;

(b) he is removed from office by the Board for any of the following reasons:

(i) if he is unable to exercise the functions of his office due to infirmity of mind or body;

(ii) due to poor performance;

(iii) if he is declared insolvent by a competent authority;

(iv) if he is found guilty of misconduct or dishonesty; and

(v) if he is convicted for an offence under the penal code and sentenced to imprisonment without an option of a fine.

Functions of a Director General

30. (1) The functions of the Director General are to -

(a) take overall responsibility over staff and management of the day to day activities of the Authority;

(b) implement the decisions of the Board;

(c) ensure that a procuring entity complies with this Act;

(d) ensure that each procuring entity establishes a procurement committee and tender evaluation committee;

(e) certify the availability of funds to support a procurement activity;

(f) ensure that a procurement plan is prepared in conformity with an allocated budget and medium-term financial

framework; and

(g) monitor signing of a contract by a procuring entity including those awarded by the Central Tender Board.

(2) The Director General may delegate a function of his office to an officer of the Authority but shall not be relieved of the ultimate responsibility for the discharge of the delegated function.

Central Tender Board

31. (1) The Authority shall establish a Central Tender Board whose principal objects are to -

(a) conduct a bidding process on behalf of a public entity to award a contract for a procurement that exceed a thresh old in Schedule 4; and

(b) to enter into a contract for a procurement on its own be half or on behalf of a public entity awarded by the Board as contemplated in paragraph (a).

(2) The Central Tender Board shall comprise of at least five members with different expertise on goods, work and service to be procured.

(3) The Central Tender Board shall endeavour to reach its decision by consensus, but where this is not possible, a decision shall be taken by a majority of members present with the Chairperson having a casting vote.

(4) The Secretary shall maintain a record of proceedings of the Central Tender Board and any dissenting opinion shall be included in a record of a proceeding.

Composition of the Central Tender Board

32. (1) The Central Tender Board shall consist of -

(a) a Chairperson;

(b) one representative of the Ministry of Finance or one of-

ficial from other ministries who are knowledgeable in procurement where the Ministry of Finance is a procuring entity;

(c) a representative of a ministry or body corporate that is a principal user of the goods, work or service being procured; and

(d) a representative of a procurement unit who shall be a secretary but shall not vote.

(2) In addition to the members appointed under subsection (1), the Director General may, on ad hoc basis, appoint two other persons who are knowledgeable in the technical requirements of the goods, work or service to be procured, but they shall not vote.

Functions and powers of the Central Tender Board

33. The Central Tender Board shall have functions and powers to -

(a) request for information and documents from a procuring entity;

(b) examine a record or document and take a copy or extract from it;

(c) commission a study relevant to determine an award of a procurement contract;

(d) request a professional or technical assistance worldwide;

(e) establish an internal procedure for the operation of the Central Tender Board;

(f) approve a bidding document and notice submitted to it by a procuring entity;

(g) invite a bid and initiate a pre-qualification and post qualification for a procurement;

(h) receive and open a bid in public;

(i) appoint a person to act as a member of a bid evaluation committee including a representative nominated by a procuring entity;

(j) oversee an examination and evaluation of a bid;

(k) consider for approval, a recommendation from a bid evaluation committee for an award of a procurement contract;

(l) review a recommendation of a bid evaluation committee;

(m) approve or reject a recommendation of a bid evaluation committee to award a contract;

(n) require a bid evaluation committee to make a new or further evaluation on specified grounds;

(o) report to the Authority any decision of the Central Tender Board not implemented by a procuring entity within a prescribed period; and

(p) do anything that it may consider necessary or expedient to achieve the objects of this Act.

Bid evaluation committee

34. (1) A bid evaluation committee shall consist of -

(a) not less than five persons with the required expertise and shall have equal rights;

(b) two representatives of a procuring entity that are users of the goods, work or service to be procured;

(c) three experts from three public procuring entities;

(2) A member shall have a report that shall be considered by other members to produce a common report.

(3) A member shall not sit on the Central Tender Board when a recommendation of a committee is being considered.

(4) A member shall sign a declaration that he does not have a conflict of interest in a procurement requirement.

Financing of the Authority

35. (1) The Authority shall get its funding from -

(a) money appropriated by Parliament; and

(b) loans or grants from lawful sources.

(2) The Authority shall provide its services free of charge.

(3) The Authority shall open and maintain a local bank account in a bank approved by the Board.

Accounts and Audit

36. (1) The Authority shall prepare an annual budget and keep proper books of accounts and record in a form prescribed by the law governing management of public finances.

(2) The books and accounts of the Authority shall be audited annually by the Auditor-General.

Financial Year

37. A financial year of the Authority shall be the same as a financial year of the Government.

Annual report

38. (1) The Authority shall prepare an annual report on an overall functioning of a public procurement system, including a profile of procurement ac-

tivities.

(2) The Authority shall submit to the Minister, not later than six calendar months after the end of a financial year, a written report that shall include the following:

(a) the activities and operations of the Authority for the previous financial year, including a summary of a main finding of a procurement audit on a selected transaction;

(b) a copy of an audited account;

(c) a report on an activity of a Procurement Tribunal;

(d) a recommendation for improvement of a specific area of goods, work, service, disposal and a planned program for an implementation of a recommendation;

(e) a report on an annual procurement forum held in a previous financial year; and

(f) a general or specific recommendation.

(3) The Minister shall table the Tribunal report before Parliament.

Procurement Tribunal

39. There shall be a Procurement Tribunal to hear and decide on appeal against a decision made by a procuring entity or the Central Tender Board on a complaint filed by a tenderer against an award of a contract.

Composition of the Tribunal

40. (1) The Procurement Tribunal shall consist of -

(a) two lawyers with more than ten years experience in the legal profession;

(b) two retired civil servants who are knowledgeable and experienced in public procurement; and

(c) two persons from business community who are not active public officer and are knowledgeable and experienced in economics, engineering, supply chain management, commerce, financial management or public administration.

(2) The selection criteria shall be through an advertisement and a competitive process.

(3) The quorum of the Tribunal shall be three members with at least one member from each group and the lawyer shall chair the sitting.

(4) The Minister shall appoint the members by a notice published in the Gazette.

Tenure of service

41. (1) A member of the Tribunal shall hold office for a term of five years which may be renewed for one term subject to good performance but may not necessarily be successive.

(2) A member of the Tribunal shall cease to be a member -

(a) upon expiry of the term of office;

(b) if he is -

(i) absent for three consecutive sittings without a reasonable excuse;

(ii) declared insolvent by a competent authority;

(iii) barred from practice, in a case of a lawyer;

(iv) unable to perform the functions of his office due to infirmity of body or mind;

(v) convicted of an offence under the penal code;

(vi) found guilty of misconduct or dishonesty; or

resigns.

(3) A vacancy shall be filled in the same manner as in section 23.

Remuneration of a member of the Tribunal

42. A member of the Tribunal shall be paid a sitting allowance per case to be determined by the Authority in accordance with the rules and procedure to be established by the Authority and approved by the Minister.

Functions and powers of the Tribunal

43. (1) The Tribunal shall have the function and power to -

(a) review, hear and determine a procurement dispute;

(b) perform any other function conferred to it by this Act, Regulations or any other written law; and

(c) develop the rules and procedure to be Gazetted.

(2) The Authority shall provide a secretariat and administrative service to the Procurement Tribunal.

Disclosure of interest

44. A member of the Tribunal who has any pecuniary or other interest on a matter before the Tribunal shall disclose such interest and shall not take part in the proceedings of the Tribunal.

Decision of the Tribunal

45. (1) The Tribunal shall issue a decision within a period of not more than ten days after the hearing.

(2) The secretary shall notify the appellant, in writing, of the decision of the Tribunal before it is published on the website.

(3) A decision of the Tribunal shall be published for general infor

mation on the website and in the bulletin of the Authority.

Procuring entity

46. (1) A procuring entity shall be responsible for the management of all procurement activities within its jurisdiction in accordance with this Act, regulations and guidelines made under it.

(2) A procuring activity within a jurisdiction of a procuring entity shall be an activity below a threshold value set out in Schedule 4.

(3) A procurement entity in procurement above a threshold set out in Schedule 4 shall -

(a) include its requirements in the annual procurement plan;

(b) confirm the availability of the funds for a proposed procurement;

(c) draft a technical specification and other special requirements of a procurement to be made, including an evaluation criteria, a standard tender and contract condition and submit them to the Central Tender Board;

(d) provide at least three suitable persons to assist the Central Tender Board during an evaluation process; and

(e) sign a contract and carry out a contract management function in respect of a contract that relates exclusively to its own requirement.

(4) The steps referred to in subsection (3) shall also apply to a procurement that is carried out without an involvement of the Central Tender Board.

Shared procurement arrangement

47. (1) A procuring entity shall, if directed by the Authority, conduct its procurement by way of a shared procurement arrangement which shall include an arrangement for procuring -

(a) its requirement through a procurement unit established by one of the procuring entities; and

(b) a particular category of goods, construction work or service through one of the procuring entities with expertise in that type of procurement.

(2) A procuring entity that conducts procurement on behalf of another entity under a shared procurement arrangement shall be primarily responsible for ensuring that procurement is conducted in accordance with this Act.

(3) Where the Authority considers, based on its review of the annual procurement plan submitted to it by a procuring entity in terms of section 17, that -

(a) it is proper to direct a group of two or more procuring entities to conduct their procurement by way of a shared procurement arrangement; and

(b) a shared procurement is of a nature that makes the use of a framework agreement expedient, desirable or necessary in order to achieve economies of scale, the Central Tender Board shall negotiate a framework agreement on behalf of the procuring entities concerned.

Multi-use list of suppliers or contractors

48. (1) A procuring entity may maintain a multi-use list of suppliers or contractors and where a procuring entity opts to maintain the multi-use list, the procuring entity shall -

(a) publish a notice, online, inviting interested suppliers to apply for inclusion in the list continuously; and

(b) make available for inscription, a list continuously online and on the web portal of the procurement system.

(2) The multi-use list notice shall include -

(a) a description of the goods, work, service or category

thereof for which the list may be used;

(b) a condition for participation to be satisfied by a supplier for inclusion on the list and a method that a procuring entity will use to verify that a supplier satisfies a condition;

(c) a name and address of a procuring entity and any information necessary to contact a supplier to obtain a relevant document relating to the list;

(d) a period of validity of the list and a means for its renewal or termination, or where the period of validity is not provided, an indication of a method by which notice will be given of a termination of a use of the list; and

(e) an indication in a case where the list may be used for a procurement covered by an international agreement to which Lesotho is party.

(2) A procuring entity shall allow a supplier to apply at any time for inclusion on a multi-use list and shall include on a list, all qualified suppliers within a reasonably time.

(3) A procuring entity shall promptly inform a supplier that submits an application for inclusion on the multi-use list of a decision with respect to a request or application.

(4) Where a procuring entity rejects an application of a supplier for inclusion on the multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from the multi-use list, a procuring entity shall promptly inform a supplier and upon request by a supplier, promptly provide a supplier with a written explanation of a reason for its decision.

(5) Where a supplier that is not included on a multi-use list submit a pre-qualification application or a bid in a procurement based on a multi-use list and all required documents, a procuring entity shall examine a request within an applicable deadline.

(6) A procuring entity shall not exclude a supplier from considera-

tion in respect of a procurement on the grounds that an entity has insufficient time to examine a request, unless in exceptional cases where an entity is not able to complete an examination of a request within a time period allowed for a submission of a tender due to a complexity of a procurement.

Responsibilities of the Chief Accounting Officer

49. (1) The Chief Accounting Officer shall be responsible for ensuring that the procurement entity -

(a) establishes a procurement committee and tender evaluation committee;

(b) certifies the availability of funds to support a procurement activity;

(c) ensures that a procurement plan is prepared in conformity with the allocated budget and medium-term financial framework; and

(d) signs a contract on behalf of the procuring entity except for a contract awarded by the Central Tender Board,

in accordance with the Act.

(2) The Chief Accounting Officer may delegate responsibilities under this Act in writing but he shall not be absolved from accountability or responsibility.

Procurement committee

50. (1) The Chief Accounting Officer shall establish a procurement committee which shall consist of -

(a) the Chief Accounting officer who shall be the Chairperson; and

(b) four senior staff members of the procurement entity.

(2) The members appointed in terms of subsection (1) shall be of a

rank immediately below the rank of the Chief Accounting Officer or the next rank if there are inadequate numbers immediately below the rank of the Chief Accounting Officer.

(3) The head of the procurement unit shall be the secretary to the committee.

(4) The procurement committee may, on ad hoc basis, co-opt a person with expertise to act as an advisor at its meetings, but the person shall not have the right to vote on any matter being considered by the committee.

(5) A member of a procurement committee shall serve for a period of five years and may be renewed only once subject to good performance.

Functions of a procurement committee

51. (1) A procurement committee shall be responsible for the procuring items below the threshold set out in Schedule 4.

(2) The functions of the procurement committee shall be to -

(a) review and recommend a procurement plan to ensure that it supports the objective and operation of a procuring entity and comply with the national budget;

(b) monitor on a quarterly basis, an implementation of a procurement plan of a procuring entity and take appropriate action in a case of poor or inadequate performance;

(c) review and recommend a bidding document including a schedule and specification for procurement;

(d) ensure that a procurement procedure to be followed is in strict conformity with the provisions, regulations and guidelines made under this Act;

(e) approve a choice of a procurement method;

(f) review a proposal evaluation report and approve a contract award subject to a threshold set out in Schedule 2;

(g) approve a termination of procurement proceeding and rejection of a tender;

(h) review and approve annual procurement report prepared by a procurement unit; and

(i) recommend an application for a contract modification in the following cases:

(i) where an original contract award was subject to approval of a procurement committee; and

(ii) where a contract modification would cause a total contract value to be within the authority limits of a procurement committee.

(2) A procurement committee established to determine procurement of a high value shall discharge the functions set out under subsection (1) (a) to (c).

(3) A bidding document shall be referred to the Central Tender Board of the Authority for carrying out a subsequent stage of a procurement proceeding.

Meeting of a procurement committee

52. (1) A procurement committee shall meet as often as required to perform its functions.

(2) The quorum of a meeting of a procurement committee shall be three members,

(3) If the chairperson is absent, the members shall nominate one of them as a chairperson.

Procurement unit

53. (1) The head of a procurement unit shall report directly to the Chief Accounting Officer.

(2) The functions of a procurement unit in a tender below a threshold set out in Schedule 4 shall include -

(a) a preparation of annual procurement plan;

(b) keeping of a procurement record;

(c) a preparation, publication, and distribution of an invitation to tender;

(d) receiving and safeguarding of a tender;

(e) facilitation of evaluation of a tender;

(f) organizing a procurement committee meeting;

(g) providing a tender evaluation report and other material necessary for adjudication by a procurement committee;

(h) managing an implementation of a contract;

(i) profiling of a supplier, contractor and consultant;

(j) a maintenance of a database for use under limited competitive tendering and restricted tendering procedure and other procurement procedure; and

(k) providing a document and information required regarding debarring of a supplier, contractor and consultant.

(3) A head of a procurement unit in a procurement above a threshold set out in Schedule 4 shall, once a specification of a requirement has been approved by the procurement committee and after the Chief Accounting Officer has certified the availability of funds in accordance with section 30 (1) (c), submit a document to the Central Tender Board of the Authority to carry out the remaining stage of a procurement process.

Tender evaluation committee

54. (1) The Chief Accounting Officer shall appoint a tender evaluation

committee of not less than five members on the advice of ahead of procurement.

(2) A member of a procurement committee shall not be nominated to be member of a tender evaluation committee.

(3) A member of a tender evaluation committee shall be a person with a required expertise and may be external to a procuring entity, although an external member shall not be entitled to vote.

(4) A member of a tender evaluation committee shall sign a declaration that he does not have a conflict of interest in a procurement requirement.

(5) A tender evaluation committee shall be a non-standing-member committee.

(6) The functions of a tender evaluation committee shall be to examine and evaluate a tender, prepare a report and make recommendation to a procurement committee on award of a contract.

PART – III GENERAL RULES REGARDING CONDUCT OF PROCUREMENT INSTITUTIONS

Independence of functions and powers

55. Subject to the provisions of this Act, the Chief Accounting Officer, procurement committee, procurement unit, user department and tender evaluation committee shall act independently in relation to their respective functions and powers.

Delegation of powers by the Chief Accounting Officer

56. (1) The Chief Accounting Officer may -

(a) delegate his functions in writing to an officer within the Authority;

(b) delegate the processing of a contract to another procuring entity on the advice of a procurement committee, where a procuring entity lacks capacity to process a procurement contract; and

(c) withdraw a delegated authority at any time.

(2) The Chief Accounting Officer shall be accountable for the decisions of the officer to whom the function is delegated.

(3) The delegation shall be for a stipulated duration.

Time for entering into a contract

57. A procuring entity shall not enter into a procurement contract unless a contract is approved as provided for in the Act and after conclusion of a complaint and appeal, subject to an exceptional procedure applicable to procurement in emergency circumstances.

Signing of a contract

58. (1) A contract shall be signed by the Chief Accounting Officer, except for a high value contract that exceeds a threshold set out under Schedule 4 and shall be signed by the Chairperson of the Central Tender Board.

(2) The Chief Accounting Officer may delegate a signing of a contract that is below a threshold set out in Schedule 2, but such delegation shall not be to the head of a procurement unit.

Conduct of a public official related to public procurement

59. (1) A public official involved in requisition, planning, preparing, disposal, issuing approval and conducting a procurement proceeding and administering an implementation of a contract shall -

(a) discharge his duty impartially to ensure a fair competitive access to a public procurement by a tenderer;

(b) act in the interest of the public and in accordance with the objectives and procedures set out in this Act;

(c) avoid a conflict of interest and an appearance of a conflict of interest in his official and other duty and conduct;

(d) immediately disclose a conflict of interest and recuse

himself from involvement in a matter where there is a conflict of interest;

(e) not commit or abet a corrupt or fraudulent practice, coercion, or collusion, including a solicitation or acceptance of an inducement or obstruction; and

(f) keep confidential an information that comes into his possession relating to a procurement proceeding and to a tender including tenderer's proprietary information subject to disclosure pursuant to a transparency requirement under this Act and other applicable law.

(2) An officer of a procuring entity shall not participate as a tenderer in a procurement proceeding of a procuring entity he works for.

(3) A public officer shall recuse himself from participation in a procurement proceeding where -

(a) a tender has been submitted by a tenderer who is a close relative or whom such an officer will benefit financially or in kind;

(b) a tenderer in which a public officer or the close relative is employed in a management capacity; or

(c) a close relative is an agent or member of a board of directors of or has financial interest in such a firm or consultant.

(4) A recusal shall be effected immediately, in writing, when a public officer becomes aware of a submission of a tender.

(5) A requirement of recusal shall extend to an administration and management of a procurement contract awarded to a tenderer.

Employment restriction

60. (1) A public official of any grade or level who works in the field of a public procurement shall not accept, either directly or indirectly, any form of

work or post from a bidder to a procurement contract of a procuring entity with which an official is directly related or on behalf of which a procurement was conducted.

(2) An official who has served as procurement personnel or who has exercised some other authority referred to under this Act with respect to a procurement shall not participate -

(a) in any manner, as an employee, agent or representative of a supplier or contractor, in a negotiation or technical discussion leading to an award, modification, or extension of a contract for a procurement; or

(b) personally or substantially on behalf of a supplier or contractor in the performance of such a contract.

(3) The restrictions shall remain in effect for a duration of a procurement proceeding and contract, if any, and for a period of two years after retirement from a public post, whichever occurs first.

Conduct of a tenderer, supplier and contractor

61. (1) A procuring entity shall -

(a) reject a tender if a tenderer offers or give an inducement; and

(b) promptly notify a concerned tenderer, the Authority and relevant law enforcement authorities about a rejected tender.

(2) A procuring entity shall not award a contract to a tenderer who is responsible for preparing a specification or tendering document for a contract or supervising an execution of a contract or to an affiliate company of such a tenderer.

(3) Subsection (2) does not apply to the various firms, consultants, contractors or suppliers which together are performing the supplier's obligations under a turnkey or design and build contract.

(4) A tenderer shall not directly or through an agent, be engaged in a corrupt, fraudulent, collusive or coercive practice in competing for a tender.

PART IV – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

Procurement planning

62. (1) A procuring entity shall annually prepare and submit to the Authority, its annual procurement plan for a proceeding year for publication on the web portal of a procurement system.

(2) The Authority shall review and coordinate a plan prepared by a procuring entity.

(3) A procuring entity shall plan its procurement in a rational manner and, shall -

(a) aggregate its requirement where possible and without prejudice to a program to promote SMEs, both within a procuring entity and between procuring entities to obtain value for money and to reduce a procurement cost;

(b) make use of a framework contract wherever appropriate to provide an efficient cost effective and flexible means to procure work, service or supply that is required continuously or repeatedly over a set period of time;

(c) not split a procurement to defeat a use of an appropriate procurement method;

(d) integrate its procurement budget with its expenditure programme; and

(e) integrate a disposal of asset, both listed and unlisted, in its assets register as well as in its income and expenditure budget.

(4) The Authority shall issue a guideline in respect of a format of a procurement plan to be prepared under this section.

(5) A procuring entity shall -

(a) on a quarterly basis and in any other case, wherever nec essary, review and update its procurement plan;

(b) notify the Authority of a change made to its procurement plan and submit an updated and approved plan to the Authority; and

(c) display an updated and approved procurement plan on its website or use other method as may be prescribed.

(6) A procurement shall not be carried out outside a procurement plan except in a declared state of disaster according to the Disaster Management Act.

Qualification of a tenderer

63. (1) A procuring entity shall require a bidder being awarded a procurement contract or all bidders participating in a public procurement preceded by prequalification, to meet a qualification criteria set out in a bidding document.

(2) A qualification criteria shall include that the bidder -

(a) has a legal capacity to enter into a contract;

(b) is not insolvent;

(c) is not being wound up;

(d) has no suspended business activity; and

(e) has fulfilled his obligations to pay taxes and social security contributions.

Disqualification for inaccurate information

64. A procuring entity shall disqualify a tenderer for that tender, if it finds that the information submitted concerning a qualification of a tenderer is false,

or materially inaccurate or incomplete, and a bidder fails to correct or supplement the information.

Prequalification

65. (1) A prequalification proceeding shall be used prior to an invitation to tender to identify a supplier and contractor that has potential to qualify for a procurement in the following situations:

(a) a large or complex work in which a cost of tender preparation is high; and

(b) a high value or complex contract or group of items being bundled together for a large contract.

(2) A threshold for prequalification of a tenderer for work contract shall be as set out in Schedule 2, and prequalification of a tenderer for other contracts shall be approved by a procurement committee.

(3) A procuring entity shall provide a prequalification document to an applicant responding to an invitation to prequalify.

(4) A prequalification document shall provide an applicant with an information required for preparing and submitting an application for prequalification.

(5) An applicant shall be allowed adequate time to purchase, prepare, and submit a prequalification application.

(6) A period allowed shall not be less than a period allowed for a tenderer to submit a tender under both national and international open competitive tender.

(7) A procuring entity shall make available to each applicant, a result of an assessment of a qualification when prequalification proceeding is held.

(8) An applicant who meets minimum criteria for prequalification shall be invited to tender.

(9) Where prequalification proceedings are not conducted, a post-

qualification in which the procuring entity verifies a qualification of a tenderer selected for award against criteria stated in the tender document, shall be used.

Framework agreement

66. A procuring entity may conclude a framework agreement when -

(a) there is expected to be a need for concluding recurrent contract to procure the goods, service, minor works or non-consulting service;

(b) it is expected that the need will arise from time to time in the future to contract for the items, contracting works, or services on urgent basis; and

(c) planning for an emergency event.

Types of framework agreements

67. (1) A procuring entity and the Central Tender Board may conclude a closed framework agreement.

(2) In a closed framework agreement, a person who was not a party to an agreement at a time of its establishment shall not subsequently join the agreement.

(3) A term of a closed framework agreement shall be between two to three years.

(4) In an open framework agreement, a person may apply to join the agreement at any time during its subsistance.

(5) A maximum term of an open framework agreement shall be between three to four years.

Framework agreement for common use item

68. (1) The Central Tender Board shall -

(a) make a framework agreement in respect of a regularly

purchased item that is required by several procuring entities; and

(b) obtain an estimate of the requirements based on research done by the Authority where -

(i) a required quantity and needed timing of goods, works or non-consultancy service cannot be determined at a time of entering into a contract; and

(ii) goods, work or non-consultancy service is needed in a certain quantity at different times over a defined contract period.

(2) A framework agreement may also be established to ensure preparedness to deal with emergency circumstances.

(3) A term for a framework agreement shall be between three to four years.

(4) A procuring entity shall issue an order to a supplier or contractor quoting a required quantity, delivery time and price as indicated in a framework agreement.

(5) A framework agreement shall be subject to a preference and reservation as provided for in this Act.

Turnkey contract

69. (1) A procuring entity may enter into a turnkey contract for work, if a specification of a required building or work facility cannot be determined without participation of a contractor.

(2) A turnkey contract entered into in terms of subsection (1) shall be -

(a) done in consultation with the relevant procuring entity or body;

(b) approved by a procurement committee or Central Tender Board in accordance with a threshold as set out in Schedule 2; and

(c) a single responsibility contract based on lump-sum price under which a payment shall be made in accordance with a contractual milestone.

Description of goods, works and service

70. (1) A procuring entity shall -

(a) formulate a specification based on characteristics, function and performance requirements, to maximize competition and avoid creating an unnecessary obstacle to participation by a bidder in a procurement proceeding;

(b) not make a reference to a brand name, catalogue number, trademark or similar classification; and

(c) not use a symbol and terminology that is irrelevant to a performance of the goods or create an unjustified obstacle to participation by a qualified tenderer unnecessarily and without justification limit competition.

(2) A technical specification shall be based on -

(a) international standards where they exist;

(b) national technical regulations; and

(c) recognised national standards or building codes.

(3) Where there is no other sufficiently precise or intelligible way of characterising a requirement except by a use of a reference in subsection (2), a description shall be used, followed by the words "or equivalent" and shall only serve as a benchmark during an evaluation process.

(4) Notwithstanding subsection (2), where a standardisation policy is adopted by a competent authority, a corresponding trademark, brand name,

patent, design, type, specific origin, manufacturer, producer, catalogue or numbered item may be used in a statement of requirements.

Form of communication

71. (1) A document, notification, decision and other communication submitted by a procuring entity to a tenderer or by a tenderer to a procuring entity shall be in writing.

(2) A procuring entity may use other forms of communication, including electronic communication for publication of an invitation to tender, transmission of a tender document, submission of a tender, conclusion of a contract and payment, if that communication -

(a) can preserve a record of a content of the communication;

(b) can provide an adequate level of security;

(c) does not unduly restrict a tenderers' access to a procurement proceeding; and

(d) meets other requirements in any other applicable legislation.

(3) The Minister may on the recommendation of the authority and by regulations -

(a) establish a unified e-procurement system; and

(b) issue instructions mandating the use of e-procurement in accordance with the suitable functionalities of the system.

Submission of a tender and application

72. (1) A procuring entity shall comply with a set period for submission of a tender, application for prequalification and expression of interest stipulated in this Act, but if the amount of the tender exceeds the threshold set out in Schedule 4, the Central Tender Board shall comply with the set period.

(2) A procuring entity shall consider the need to provide a bidder with sufficient time to respond taking into account the nature and circumstances of a transaction and the characteristics of a bidding community.

Public notice of a contract award

73. A procuring entity or the Central Tender Board shall immediately after signing of a contract publish in a procurement bulletin or designated website of the Authority, notice of each contract award in which a contract amount exceeds a threshold set out in Schedule 2 and shall provide the following information:

(a) In case of a contract for goods, work and non-consulting service, publications shall include -

(i) a name or subject matter of a tender;

(ii) tender or reference number;

(iii) a procurement method that was employed;

(iv) a name of each tenderer that submitted a tender;

(v) an amount of a tender as read out at a tender opening;

(vi) an evaluated price of each tender;

(vii) a name of a tenderer whose tender was either rejected as a non-responsive or not meeting qualification criteria, or not evaluated with the reasons for the rejection or lack of evaluation; and

(viii) a name and address of a winning tenderer, a final contract price and a duration and summary scope of a contract.

(b) In case of a contract for consulting service, publication shall include -

(i) a name or a subject matter of a service;

(ii) a tender number or reference number;

(iii) a name of a consultant in a short list, specifying those that submitted a proposal;

(iv) a technical score of each consultant;

(v) a price offered by each consultant;

(vi) a combined final score and final ranking of a consultant; and

(vii) a name and address of a successful consultant and total price, duration and summary scope of a contract.

Debriefing of a tenderer or consultant

74. (1) A procuring entity shall notify a tenderer and consultant that a tenderer or consultant who wishes to ascertain a ground upon which their tender or proposal was not awarded or selected, may request an explanation or debriefing from the procuring entity during a cooling off period.

(2) A cooling off period shall be a period of ten days.

Advance procurement processing

75. (1) In a case where funding is not provided in a particular financial year but is foreseen to be provided for in the next financial year, a procuring entity may, following an appropriate procurement method stipulated in this Act, proceed with an advance procurement processing to ensure a timely award and completion of a contract.

(2) An advanced procurement processing in subsection (1) shall be subject to the following:

(a) a contract shall not be signed until the Chief Accounting Officer confirms availability of the funds to meet the obligation of a resulting contract;

(b) a tender or proposed documentation shall clearly stipulate that a procurement is contingent and subject to avail ability of the funds; and

(c) if the funds are not available in the next financial year, the process shall be considered to have lapsed.

Record and report of a procurement

76. (1) A procuring entity and the Central Tender Board shall preserve documentation relating to each procurement contract and its proceedings in accordance with an applicable rule governing the archiving of Government documentation.

(2) Notwithstanding subsection (1), a document shall be kept fora minimum period of five years following a date of final completion of a procurement contract or from a date of rejection of a tender or cancellation of a proceeding.

(3) A summary report of procurement proceeding shall include the following information and appended documents:

(a) description of an object of a procurement;

(b) statement of a ground for choice of a procurement method other than open competitive tender or request for proposal for service;

(c) copy of invitation to tender, submission of a proposal and where applicable, an invitation to prequalify or to express interest in being shortlisted;

(d) tender, request for proposal and a prequalification document that contains a tender evaluation criteria and tenderer qualification requirement;

(e) list of participating tenderers, their profile, qualification and a qualification criteria applied;

(f) amount of a tender;

(g) request for clarification of a bidding document, bid and a response to the request;

(h) summary of an evaluation of a tender and prequalification;

(i) full report of an evaluation of a tender and prequalification;

(j) summary of a review proceeding and decision thereon;

(k) statement of a ground for cancellation of a procurement proceeding or rejection of a tender;

(l) contract administration and payment report, certification for receipt, claim, dispute, settlement and resolution thereof; and

(m) any other information that may be required by the Regulations.

(4) A record and document maintained by a procuring entity shall be made available for inspection by the Authority and other competent and authorised agencies upon request.

Debarment of a supplier, contractor or consultant

77. (1) The Authority shall debar a tenderer, supplier, contractor or consultant from participation in a public procurement after -

(a) consultation with an affected procuring entity to consider the facts of the case; and

(b) giving a tenderer, supplier, contractor, or consultant a reasonable notice and opportunity to respond to a proposed action.

(2) A debarment under subsection (1) shall be for a minimum period of one year but shall not exceed five years.

(3) A ground for debarment shall be a -

(a) provision of false information supplied in a process of submitting a tender;

(b) collusion between a tenderer and a public officer concerning a formulation of a part of a tender document;

(c) connivance to interfere with a participation of a competing tenderer;

(d) misconduct relating to a submission of a tender including corruption, collusion, coercion, obstruction, price fixing, tender rigging, pattern of under-pricing of a tender, breach of confidentiality and any other relevant mis conduct;

(e) non-performance of a contractual obligation under a contract considered serious enough to warrant debarment, if the non-performance was not due to circumstances beyond the control of a supplier, contractor or consultant; or

(f) conviction of a -

(i) criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or

(ii) crime related to business or professional activity.

(4) An individual who is an owner or senior executive of a debarred company or business and any company which they form after debarment shall be considered debarred until the debarment is lifted.

(5) A list of debarred contractors shall be published on a website of the Authority.

(6) A detailed procedure for debarment shall be prescribed.

Margin of domestic preference

78. (1) A work, supply and service tender up to a sum specified in Schedule 2 shall be reserved for hundred percent indigenous Basotho, women, youth and people with disabilities owned SMEs, with a maximum turnover not exceeding an amount specified in Schedule 2.

(2) An exemption from the application of subsection (1) may apply with a prior approval of the Authority where the Authority is satisfied that there is no hundred percent indigenous SMEs or disadvantaged groups suitable and qualified for the tender is available.

(3) A procuring entity shall grant a fifteen percent margin of preference to a Basotho business in evaluating a tender proposal which exceeds an amount specified in subsection (1) if they hold a majority shareholding of fifty one percent and above;

(4) A procurement unit shall grant a ten percent margin of preference in evaluating a tender proposal to the following bodies:

(a) a business that can demonstrate a shareholding of between thirty percent and fifty percent by a Lesotho national; or

(b) a tenderer -

(i) tendering to supply goods of Lesotho origin;

(ii) proposing to perform at least fifty percent of a contract in Lesotho by setting up a necessary business and by using and developing the capacity of Basotho staff in the process;

(iii) proposing to sub-contract at least fifty percent of a contract to a Basotho business;

(iv) who has the largest use of locally produced goods, material and service; or

(v) who employ the largest share of local labour.

(5) A procurement unit shall grant a five percent margin of prefer-

ence in evaluating a tender proposal to a business which holds a shareholding of between ten percent and thirty percent by a Lesotho national;

PART – V PROCUREMENT METHODS AND PROCEEDINGS

Choice of a procurement method

79. (1) A procuring entity and the Central Tender Board shall employ an open competitive tendering method of procurement, except where the circumstances arise that justify a use of a prescribed alternative method.

(2) A choice of a procurement method shall be based on expected value of a procurement contract having regard to a threshold value set out in Schedule 2.

(3) Where a procuring entity or the Central Tender Board enters into a framework agreement for procurement -

(a) all stages of a procurement up to the award of a contract shall be effected in accordance with the procedures prescribed for open competitive tendering, unless the use of some other method is applicable in accordance with this Act; and

(b) a contract based on a framework agreement shall be awarded in accordance with a procedure prescribed in a bidding document for establishing the framework agreement, including the possibility of conducting a competition among suppliers contractors or service providers at a time of awarding a contract under a framework agreement.

Standard tender documents

80. (1) The prescribed standard bidding documents shall be used for a purpose of procurement including a manual or guideline that may be issued by the Authority.

(2) The bidding documents shall be made ready for distribution before publication of an invitation to bid.

(3) The bidding documents shall be provided promptly and without discrimination to a -

(a) potential bidder that responds to an invitation to bid;

(b) bidder that has been prequalified in a case of competitive bidding with pre-qualification; or

(c) bidder that has been selected or invited to participate in a procurement in a case of restricted bidding.

(4) A charge for the bidding documents shall be no more than the cost of printing and distributing them and where they are delivered by electronic means, they shall be free of charge.

(5) The bidding documents shall provide a bidder with the information he needs in order to submit a responsive bid and shall give him such particular information as may be prescribed.

(6) A name, postal address, telephone number or email address of a bidder to whom an invitation to bid is issued, together with details of a contact person of a bidder, shall be recorded and a record filed with the procurement documents.

(7) An electronic procurement system shall be approved by the Authority and maybe used for a purpose of this section, and for implementation of any stage of a procurement process.

(8) A tender document shall include -

(a) invitation to tender;

(b) instruction to a tenderer;

(c) a form of tender;

(d) a form of contract;

(e) a condition of a contract, both general and special;

(f) a specification and drawing and an indication whether alternatives to the specification and drawing is solicited or permitted, and if so, how and under what conditions an alternative bid would be evaluated;

(g) a relevant technical data including of geological and environmental nature;

(h) a list of goods or bill of quantities;

(i) delivery time or schedule of completion; and

(j) necessary appendices and format.

(9) A tender document shall inform a tenderer of -

(a) qualification requirement of a tenderer if a prequalification procedure was not followed, including if a tender is directed to a reserved category of tenderers;

(b) a procedure for requesting and obtaining clarification of a bidding document and information to site visit and pre-tender conference;

(c) an instruction for preparation and submission of a tender including a deadline for a submission of a tender, time and place of tender opening and an invitation to a bidder or his representative to attend a bid opening;

(d) a criteria and methodology for evaluation of a tender and a selection of a successful tenderer;

(e) a margin of preference, if any, for goods, contractor and consultant;

(f) a grouping of goods, work or service into a lot and package and the manner of evaluation of the lotor package;

(g) whether a supplier is permitted to submit a tender for

only a portion of the goods, work or service to be procured and a description of a portion for which a tender may be submitted;

(h) a required validity period of a tender;

(i) a notice of a conflict-of-interest restriction and anti-fraud and corruption rules;

(j) a manner in which a tenderer may obtain review of an action, omission and decision of a procuring entity; and other matter required by the regulations or form issued by the Authority.

(10) A tender document -

(a) may require a tenderer to submit a sample of the required goods;

(b) shall prescribe how a sample required under subsection (10) shall be submitted, secured and evaluated; and

(c) shall require that a tenderer whose sample is not responsive to a requirement set in a tender document, shall be rejected and returned to its owner.

Clarity of a tender document

81. (1) A tender document shall -

(a) be worded clearly to permit and encourage a competition.

(b) have a specification setting forth clearly and precisely the -

(i) goods to be supplied;

(ii) performance or output level to be achieved;

(iii) place of delivery or installation;

(iv) schedule for delivery or completion;

(v) work or service to be carried out;

(vi) location of the work or service;

(vii) minimum performance requirements;

(viii) warranty or maintenance requirements;

(ix) conditions of contract; and

(x) manner of entry into force of a contract.

(c) clearly define the -

(i) scope of work to be performed;

(ii) goods to be supplied;

(iii) rights and obligations of a procuring entity and a supplier or contractor;

(iv) functions and authority of a consultant or manager, if one is employed by a procuring entity in a supervision and administration of a contract; and

(v) condition of a contract including special condition particular to the specific goods or work to be procured and shall provide a balanced allocation of risk and liability.

(d) clearly indicate -

(i) when a tenderer can submit an alternative tender;

(ii) how an alternative tender should be submitted;

(iii) how a tender price should be offered; and

(iv) the basis on which an alternative tender shall be evaluated.

(e) if a tender is based on -

(i) alternative design, material, completion schedule; and

(ii) payment terms are permitted, conditions for acceptability and method of evaluation, shall be clearly stated.

(f) where appropriate, define a test, standard and method that will be employed to judge the conformity of equipment when delivered, works or service when performed with specifications and a drawing shall be consistent with a text of the specifications.

(2) A lifecycle costing may form part of the evaluation criteria.

Open competitive tendering

82. Open competitive tendering may include a prequalification stage or apply a post-qualification procedure prior to the award of a contract and may be carried out in a single stage or in two stages.

National competitive tendering

83. A procuring entity and the Central Tender Board shall employ a national competitive tendering procedure when an estimated contract amount exceeds a threshold specified in Schedule 2.

International competitive tendering

84. (1) An international competitive tendering shall be carried out when -

(a) an estimated contract amount exceeds a threshold specified in Schedule 2 and is subject to higher thresholds that may be applicable in cases of emergency procurement;

(b) effective competition cannot be obtained unless a foreign firm is invited to participate; and

(c) required goods or service is only offered by a foreign firm.

(2) In addition to the procedures provided under this Act, the following shall also apply to an international competitive tendering:

(a) an invitation to tender and a tendering document shall only be written in the English language;

(b) the invitation to tender shall be placed in a media with adequate circulation to attract a foreign competition and published on an official website portal of a public electronic procurement system;

(c) a technical specification shall be compatible with national requirement and shall be based on international standard widely used in international trade;

(d) a tenderer is permitted to express his tender and a security document to be presented in a currency widely used in international trade and stated in a tender document; and

(e) a general and special condition of a contract shall be of a kind generally used in international trade including those set out in a standard procurement document issued by the Authority.

Period to be allowed for submission of a tender

85. (1) A bidding period shall be sufficient to allow a bidder to prepare and submit his bid and its advertisement period shall not be reduced with an aim

of limiting competition.

(2) A normally prescribed minimum time period may be shortened in a case of procurement for dealing with an immediate aftermath of emergency, as prescribed in the regulations, if e-procurement is applied or when procuring for goods or service of a commercially standard nature.

(3) A period to be allowed for a submission of a tender shall be provided in the regulations.

Invitation to tender

86. (1) An invitation to tender or prequalify shall be published in a media of a wide national circulation and procurement bulletin including on an official website of a procurement system.

(2) In the case of an international competitive tendering, an invitation to tender shall be published in a media of a wide national circulation, procurement bulletin and in a selected international media in accordance with the guidelines of the Authority.

(3) An invitation to tender or prequalify shall include information on -

(a) identity and address of a procuring entity;

(b) nature and timeframe of a procurement, including a place of delivery of goods or service and a location of a work;

(c) manner of obtaining and a price of a tender document or a prequalification document;

(d) place and deadline for and a manner of submission of a tender or application to prequalify; and

(e) other matter as may be prescribed in the Regulations and standard tender document, form or guidelines issued by the Authority.

Tender price

87. (1) A tender for goods shall be invited on the basis of full cost to a named place of destination including cost of inland transportation and insurance, unless some other shipping term is stipulated in accordance with an applicable standard procurement document issued by the Authority.

(2) A tenderer shall be allowed to arrange for freight and other transportation from an eligible source.

(3) A tender shall be quoted in unit or lump sum price and the price shall include input, required insurance and duty, tax and other levies.

(4) A tender for a turnkey contract shall include a cost to cover the scope of the contract including a required insurance.

(5) Unless otherwise specified in a tender document, a turnkey price shall include a duty, tax and other levies.

(6) A currency of a tender shall be in Lesotho Loti or where other currencies are allowed, shall be stated in a tender document.

Tender security

88. (1) A tender document may require a tender security in an amount sufficient to protect a procuring entity against an action by a supplier or contractor that may affect a procuring entity adversely.

(2) A procuring entity may impose a forfeiture of a tender security

(a) withdraws or modifies its bid during a bid validity period;

(b) refuses to sign a procurement contract in accordance with a procurement document and its bid while a bid is still valid; or

(c) refuses to accept a correction of an arithmetical error of calculation appearing on the face of a bid.

(3) A tender document may require a signing of a tender securing declaration form in lieu of a tender security.

Clarification and modification of a tender document

89. (1) A procuring entity or the Central Tender Board shall respond to a request by a tenderer for clarification of a tender document or prequalification document if the request is submitted to a procuring entity within a time specified in the tender or prequalification document.

(2) A procuring entity shall circulate a response to a request for clarification to a bidder to whom it has provided a bidding or prequalification document without disclosing an identity of a party that requested clarification.

(3) For the purpose of clarifying a bidding document, a procuring entity or the Central Tender Board may, before the close of a bidding period -

(a) hold a meeting with a bidder; or

(b) conduct and invite a bidder to a site visit.

(4) A procuring entity or the Central Tender Board may modify a solicitation document by issuing an addendum at any time prior to a deadline for bid submission on its own initiative or in response to a request for clarification by a bidder and shall extend a closing date, if necessary, to enable the bidder to take the addendum or clarification of a document fully into account while preparing his bid.

Submission and modification of a tender

90. (1) A tender shall be submitted in writing in accordance with an instruction to a tenderer.

(2) A bidder may modify or withdraw his bid at any time before a deadline for bid submission.

Tender opening

91. (1) A procuring entity or the Central Tender Board shall open the bids it has received at the end of a bidding period, at a time and place specified

in a bidding document or as soon as possible thereafter.

(2) An opening of bids shall be conducted in public where bidders or their representatives can witness it.

(3) At the opening of bids, the following particulars of each opened bid shall be read out loud -

(a) the name and address of a bidder;

(b) the total amount of a bid;

(c) a discount or alternative offer by a bidder where allowed;

(d) whether or not a bid security has been given, where it is required and an amount, or if applicable, a signed bid-securing declaration that has been submitted; and

(e) essential supporting document shall be valid.

(4) Where a bid has been received by electronic communication, a procedure to be followed at the opening of a bid is to provide an electronic functional equivalent of in-person attendance at a bid opening as prescribed or specified by the Authority.

(5) A procuring entity shall prepare a record of a bid opening meeting, which shall be signed by all members and the chairperson of a bid opening committee and a copy of a record shall be made available to a bidder that request it.

(6) A decision regarding a disqualification or rejection of a bid shall not be taken or announced at the opening of a bid.

(7) A bidder shall not make an unsolicited communication or try in any way, to influence an examination or evaluation of a bid after opening of a bid until a preliminary decision on awarding a procurement contract has been notified to a successful bidder.

(8) A bidder who contravenes subsection (7) shall have his bid rejected.

Confidentiality

92. (1) An official, employee or a consultant engaged by a procuring entity shall consider, deal and treat a document and information relating to the functions of a procuring entity as confidential.

(2) A person in possession of or in control of a document or information relating to a business or transaction of a procuring entity shall not communicate or attempt to communicate information contained in such a document or pass on a document to a person other than authorised personnel.

(3) Information relating to an examination, clarification and evaluation of a tender and recommendation concerning an award shall not be disclosed, after a public opening of a tender to a tenderer or a person not officially concerned with a process until a publication of the award of contract.

(4) Information relating to evaluation of a proposal and a recommendation for the award of contract shall not be disclosed to a consultant who submitted a proposal or to a person not officially concerned with a process, until a publication of the award of contract.

(5) A procuring entity and the lowest evaluated tenderer shall sign a confidentiality agreement which restricts each other from disclosing information in accordance with internationally accepted standards of confidentiality prior to a start of a negotiation and standard copy of an agreement shall be provided in a contract document.

Examination, evaluation and comparison of a tender

93. (1) A tender evaluation committee shall examine a tender as a preliminary stage in order to determine whether a -

(a) mandatory document has been furnished; and

(b) tender is complete and signed and otherwise substantially responsive to a technical specification and contract condition set forth in a tender document containing no material deviation or only minor deviation, if any, from a requirement in a bidding document.

(2) A bid not substantially responsive to a requirement in a bidding document shall be rejected and excluded from further evaluation and comparison.

(3) A tender evaluation committee shall prepare a preliminary evaluation report detailing a reason for rejection and exclusion for further evaluation of a tender.

(4) A tender received from a person other than a prequalified tenderer shall be rejected and excluded from further evaluation where a prequalification procedure was applied.

(5) A tender not excluded from consideration under subsections (2) and (3) shall be evaluated in accordance with a criteria and methodology stated in a tender document.

(6) A tender evaluation committee may request clarification from a tenderer to facilitate evaluation but shall not ask or permit a tenderer to change a price or an aspect of a tender.

(7) A request for clarification under subsection (6) and a response to the request shall be in writing only.

(8) If there is an arithmetical error, such error shall be rectified and a tenderer notified.

(9) Refusal by a tenderer to accept a rectification under subsection (9) shall cause his tender to be rejected and he shall forfeit his tender security.

(10) If there is a discrepancy between figures and words, the amount in words shall prevail unless the discrepancy is due to misplacement of a decimal point, in which case the discrepancy shall be rectified and a tenderer notified.

(11) In a process that includes a prequalification, a qualification of a lowest evaluated tenderer shall be confirmed again to take account of any change since an original prequalification.

(12) A qualification of a lowest evaluated tender shall be checked against a criteria specified in a tender document where there is no prequalification.

(13) Where a check under subsection (12) fails, the same check shall be applied to the next lowest evaluated tenderer up to a third tenderer.

(14) A tender evaluation committee shall prepare an evaluation report detailing an examination and evaluation of a tender and identify a recommendation for award of a contract.

Cancellation of a procurement proceedings or rejection of a tender

94. (1) A procuring entity shall avoid cancelling a procurement proceeding except where -

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

(b) there is insufficient funding available for procurement;

(c) there is a significant change in a technical detail of a procurement requirement or in a bidding condition, contractual term or other particulars and a procurement proceeding needs to recommence;

(d) subject to subsection (5), the technical detail is so insufficient such that a minimum of five (5) bids had not been received, or no responsive bids are received; or

(e) there is evidence of collusion among bidders; or

(f) it is otherwise in the public interest.

(2) Whenever a procuring entity cancels procurement proceedings, it shall promptly notify a bidder accordingly and cause a written statement detailing a reason for cancellation to be filed with a record of a proceeding.

(3) Where a procuring entity cancels procurement proceedings before the end of a bidding period, it shall -

(a) ensure that a hard copy of a bid received remain un opened and is available for a period of thirty days following an announcement of a cancellation for a bidder

to collect; and

(b) destroy a bid after a period of thirty days period referred to in subsection (a).

(4) A procuring entity reserve a right to reject a bid at any time prior to award of a contract.

(5) A procuring entity shall promptly notify a bidder of a rejection of his bid and shall, upon request by a bidder, inform him of a reason for the rejection.

(6) Where no responsive bid is received or procurement proceeding is otherwise unsuccessful, a procuring entity shall conduct a reasonably adequate investigation into a failure and record -

(a) a reason for the failure; and

(b) a course of action taken by a procuring entity including a review and possible revision of a solicitation and bidding document and shall file a record with a procurement document.

(7) A procuring entity shall incur no liability towards a bidder for action taken by it in terms of this section, but this section shall not relieve a procuring entity or its officer, employee or agent from liability for negligence or for anything done in bad faith.

(8) A tender shall not be cancelled solely to solicit a lower price, although a bid may be rejected if a bid price is above an available budget.

Prohibition of a negotiation with a supplier or contractor

95. (1) A procuring entity shall not negotiate with a supplier or contractor about a tender submitted by a supplier or contractor, except as provided in subsection (2).

(2) Subsection (1) shall not apply where a lowest evaluated tender exceeds a budget for a contract by a substantial margin.

(3) A procuring entity shall investigate a cause for excessive cost and may, subject to approval by a procurement committee, negotiate a contract with a lowest evaluated tenderer to obtain a satisfactory contract through a reduction of costs and the scope of contract shall be reflected in a reduction of a contract price.

(4) A negotiated contract shall be approved by a procurement committee.

Award of a contract

96. (1) An evaluation report and recommendation for an award of a contract shall be submitted to a procurement committee for approval.

(2) A contract shall be awarded to a tenderer that has submitted a lowest evaluated tender that meets an evaluation criteria as specified in a tender document.

(3) A procurement committee shall notify a tenderer about a proposed contract award by giving a contract amount, name and address of a proposed successful tenderer after an approval of a proposed contract award.

(4) A notice under subsection (3) shall indicate that a procuring entity will invite a successful tenderer to sign a contract, unless there is an aggrieved tenderer who submitted a tender complaint against a decision of a procuring entity within ten days from a date of the notice, subject to a non-application of a standstill period if a procuring entity certifies that a procurement must proceed in an immediate aftermath of an emergency.

(5) A contract shall not be signed until an expiry of a notice given under subsection (3) and a conclusion of a complaint, if any.

(6) A procuring entity shall notify a successful tenderer of a confirmation of a contract award after expiry of a notice and conclusion of a complaint, if any, and prior to an expiry of a period of a tender validity.

(7) A procuring entity may request a bidder to extend a validity period of his bid and a bidder shall, in order to be considered to have agreed to do so, also extend a validity period of a corresponding bid security if one was required to be furnished in the first instance.

(8) A notification of a proposed award shall specify a time within which a contract shall be signed.

(9) If a tenderer whose tender has been accepted fails to -

(i) sign a written contract within 10 days after cool-off period, when required to do so; or

(ii) provide a required performance security for a contract within a prescribed time limit,

a procuring entity shall accept a next-ranked tenderer from among the remaining tenders who participated in a tender.

(10) In selecting a next-ranked tenderer, a procuring entity shall comply with a notice requirement provided in subsections (4), (5), (6) and (7).

Entry into force and signature of a contract

97. (1) A procurement contract may be formed on a basis of an exchange of communication between parties without necessarily requiring a signature of a separate contract instrument, particularly in a case of a request for quotation proceeding.

(2) A procurement contract shall enter into force when it is duly signed by a procuring entity and a supplier or contractor where it is a requirement to have it signed.

(3) A contract shall be signed by the Chief Accounting Officer or a person duly delegated by him.

(4) The Chief Accounting Officer may delegate signing of a contract to any senior officer except the head of a procurement unit.

(5) A contract award decided by the Central Tender Board and which pertains to goods, work or service required by several procuring entities, shall be signed by the Chairperson of the Central Tender Board.

Two-stage tendering

98. An open competitive tendering may be held in the following stages:

(a) when it is not feasible to define fully a technical or contractual aspect of a procurement to elicit a competitive tender due to the complexity and nature of a contract; or

(b) where a procuring entity wishes to consider various technical or contractual solutions, and to discuss with a tenderer the relative merit of a variant before deciding on a final technical or contractual specification.

Limited competitive tendering

99. (1) A procuring entity may use limited competitive tendering instead of open competitive tendering when the goods, work, or service is only available from a limited number of known suppliers or service providers in the market.

(2) The use of limited competitive tendering method shall be approved by a procurement committee.

(3) A procedure for open competitive tendering shall apply to a limited competitive tendering, except for advertisement to tender and prequalification procedure.

Request for a quotation

100. (1) A request for a quotation procedure shall be used when an estimated contract amount for standard, commercially available goods, work, or non-consulting service is lower than a value threshold specified in Schedule 2, or when the use of a method is authorised by the Authority for a purpose of dealing with the immediate aftermath of an emergency.

(2) When a request for quotation procedure is employed on a ground referred to in subsection (1), a procuring entity shall solicit a quotation from a minimum number of five qualified tenderers selected in a non-discriminatory manner, unless, in emergency circumstances, a solicitation of three quotations is not feasible.

(3) An invitation for a quotation shall be on the basis of a simplified document that shall indicate a description and quantity of the goods or specification and scope of work or non-consulting service, a desired delivery or completion time, place and time for submission of a quotation and criteria for evaluation and award of contract.

(4) A tenderer shall be -

(a) given adequate time to prepare and submit a quotation; and

(b) required to submit only one price quotation in writing;

(5) A quotation shall be -

(a) delivered by a specified date, time and opened immediately thereafter; and

(b) opened and evaluated by a minimum of three officers nominated by a head of a procurement unit.

(6) A public tender opening shall not be required.

(7) A tenderer shall not be permitted to change or negotiate a quotation.

(8) An evaluation of a quotation shall follow the same principles as those for open competitive tender, including application only of evaluation criteria and methodology that have been disclosed in a bidding document.

(9) A tenderer that provides a lowest evaluated tender determined in accordance with the evaluation criteria disclosed in a bidding document, shall be awarded a contract.

Single sourcing contracting

101. A procuring entity may, with prior approval of a procurement committee, employ a direct or single source contracting procedure where -

(a) a procurement is for an extension of an existing contract

of similar nature for goods, work or service awarded, considering the -

(i) effectiveness of an original procurement in meeting a need of a procuring entity;

(ii) limited size of the proposed procurement in relation to the original procurement; and

(iii) reasonableness of a price;

(b) additional purchase from the original supplier may be justified for a reason of standardization of equipment or spare part to be compatible with the existing equipment;

(c) in terms of subsection (b), a procurement committee shall be satisfied that advantage will not be obtained by further competition and that a price on a contract is within an approved budget margin of a percentage set out in the regulations;

(d) a required goods, work and service is proprietary and obtainable from only one source;

(e) a contractor responsible for a process design require a purchase of a critical item from a particular supplier as a condition of a performance guarantee or warranty;

(f) in an exceptional case of extreme urgency due to an emergency, if the circumstances which give rise to an urgency is neither foreseeable by a procuring entity nor a result of dilatory conduct on its part; and

(g) in a case of a contract that is a subject of a security caveat.

Emergency procurement

102. (1) During a state of disaster or emergency, goods, work or service that needs to be procured as a matter of urgency shall be procured during the

validity period of the declaration of disaster or emergency.

(2) For a procurement done in terms of subsection (1), a procuring entity shall -

(a) determine whether a supply or service needed for ad dressing an emergency situation has been prepositioned for such purposes and is accessible and available or available under a stand-by framework agreement pre-established for dealing with emergency events including for transportation service;

(b) determine whether assistance can be available from other Government entities by accessing a type of frame work agreement that is already in place and through which it may be feasible to obtain a needed procurement;

(c) assess a need for an application of emergency procurement procedures in the immediate aftermath of an emergency; and

(d) identify and prioritise a procurement activity required to cover a period of an emergency and a required time period for implementing an emergency procurement.

(3) An emergency procurement procedure shall apply only where - a state of disaster or emergency is declared by the Prime Minister; or without an urgent procurement, continued functioning of a procuring entity will suffer irreparable loss, the preservation, protection or irreplaceable public property, health, safety or the public will be threatened,
in accordance with the applicable laws.

(4) A justification for use of emergency procurement shall be reported to the Authority as soon as possible after a need arises.

(5) If the Authority does not accept that there is a valid ground for use of emergency procurement, it may instruct a procuring entity on a procedure to be followed.

(6) A procuring entity shall endeavour to achieve as much compe-

tition as is compatible with a need for urgency before resorting to single source or direct procurement.

(7) A procuring entity engaging in single source or direct procurement in terms of subsection (3) shall prepare a written description of its needs and a special requirement to quality, quantity, terms and time of delivery.

(8) A procuring entity shall request submission of a tender in writing and shall be free to negotiate with a single tenderer.

(9) A notice of holding a single source or direct procurement proceeding shall be published in a procurement bulletin or website.

(10) A recommended contract award shall be submitted for approval to a procurement committee.

(11) As alternative to the use of a single source or direct procurement method in terms of subsection (3), a procuring entity may -

(a) consider a possibility of extension of an existing contract with a financial arrangement based on a unit price of existing contract; or

(b) utilize a request for quotation method in accordance with a procedure applicable to that method.

(12) For a purpose of responding to an immediate aftermath of an emergency in terms of subsection (4), a procuring entity may apply a procurement method and procedure including use of a bid securing declaration and possible foregoing of performance security for supply and small work contract.

(13) In conducting emergency procurement, a procuring entity shall -

(a) utilize e-procurement system for efficiency purpose;

(b) utilize standard requisition and contract form applicable to emergency, including time-based and reimbursable cost plus fee contract for work and non-consultancy service;

(c) track the asset procured for dealing with an emergency;

(d) maintain a log and documentation of a procurement activity; and

(e) follow such steps as may be provided in the regulations.

(14) A procuring entity may make emergency procurement until such a time as an immediate aftermath of an emergency has been resolved.

(15) Once an emergency situation has been stabilized, a procuring entity shall revert to application of a normal procedure, subject to a possibility of utilizing an accelerated procedure for procurement of critical infrastructure needed for recovery and reconstruction purposes.

Preparedness for emergency procurement

103. A procuring entity may, in consultation and coordination with the Authority and other competent entity to establish advance preparedness for conducting procurement for dealing with an emergency that may arise, take the following steps:

(a) integrate a procurement function into National Disaster Preparedness and Risk Reduction Plans;

(b) pre-establish a procurement team with an expertise needed to conduct procurement in emergency context;

(c) identify a supply and service likely to be needed in an emergency and costs;

(d) establish a list of prequalified suppliers including a supplier of in-country cargo transport service likely to be needed in an emergency, contractor and consultant pos sessing capability likely to be needed in responding to emergency, subject to transparency safeguard including publication of an existence of a list and solicitation of an application to be included in a list and a periodic renewal of a list;

(e) establish a stand-by framework agreement for a supply, work and service likely to be needed in an event of an emergency of a type that might be expected to arise;

(f) pre-position certain type of supply that would be required for dealing with an immediate aftermath of an emergency;

(g) identification and allocation of a resource for an emergency procurement facility and team including office space, communication and connectivity equipment, storage and distribution facility, website to ensure access to information and budget for an emergency procurement team;

(h) develop a standard form for processing emergency procurement;

(i) build capacity for emergency procurement; and

(j) comply with such other steps as may be specified in the regulations.

Force account

104. A procuring entity may use a force account method of procurement for works, but procurement of goods, sub-contracted works and service required to supplement a force account shall be carried out in accordance with the provisions of this Act.

Community participation in procurement

105. (1) Where there is a need to carry out small value construction works, services and supply of goods, a local community, local contractor and local artisan and tradesmen may be used to carry out such works, services or supply of goods.

(2) A procurement procedure, specification and contract packaging shall be suitably adapted to reflect the consideration.

(3) A procurement procedure may include a use of quotation procedure, single sourcing source contracting and use of community labour and resource.

(4) A proposed procedure and an activity to be carried out by community participation shall be packaged and submitted to an appropriate procurement committee for approval.

PART VI – PROCUREMENT OF CONSULTING SERVICES

Scope of consulting service

106. (1) A consulting service shall apply to a service of an intellectual and advisory nature and shall not include other types of services in which the physical aspect of the activity predominate and lead to a measurable physical output.

(2) A cost estimate of a consulting assignment shall be based on a fee remuneration for staff to carry out an assignment and reimbursable expenditure.

(3) A procuring entity shall choose a type of contract to use for a particular consulting assignment from a contract type as described in the regulations.

Non-eligibility and conflict of interest

107. (1) A consultant shall provide a professional, objective, and impartial advice without consideration for future work.

(2) A consultant and his affiliate shall not be hired for an assignment that may be in conflict with -

(a) another assignment of a consultant; or

(b) his prior or current obligation.

(3) A consultant, his personnel and sub-consultant that have a business, personal or family relationship with a staff member of a procuring entity who is directly or indirectly involved in the preparation of the terms of reference

of a contract or a selection process for or supervision of such contract, shall not be hired for such a contract.

Association between consultants

108. A procuring entity shall not require a consultant to form an association with a specific firm or group of firms.

Training and transfer of knowledge

109. Where an assignment of a consultant includes a component for training and transfer of knowledge to staff of a procuring entity or other consultant, the terms of reference shall indicate an objective, nature, scope, goal and output of a training and knowledge transfer program.

Competitive process

110. (1) A procurement of a consulting service shall follow quality and cost-based selection method that uses a competitive process among shortlisted firms and considers the quality of a technical proposal and cost of a service in a selection of a successful firm.

(2) Other selection methods shall be used as exception to subsection (1) as provided for in sections 90 to 95.

(3) A procuring entity shall use a standard request for a proposal which shall include a letter of invitation, information to a consultant, the terms of reference, form for technical and financial proposal and a proposed contract.

Shortlisting of a consultant

111. (1) A procuring entity shall shortlist consultants to be invited to submit proposals either by seeking an expression of interest in an assignment or a qualified known firm by the procuring entity.

(2) If an estimated value of a consulting assignment exceeds a threshold set out in Schedule 2, a procuring entity shall seek an expression of interest by advertising openly for a firm to apply for consideration to be on a shortlist.

(3) An invitation for expression of interest shall be published in accordance with the provisions of this Act, including on an official web portal of a procurement system and may also be published in a relevant trade publication, technical or professional journal.

(4) A procuring entity shall allow enough time for a consultant to prepare his application, but which shall not be less than 10 days from a date of posting an advertisement to a date set for submission of expression of interest.

(5) The shortlist shall -

(a) be established from among the applicants who have responded to an invitation for expression of interest and have the capacity to perform the required service as demonstrated in their submission;

(b) comprise consultants of the same category with similar business objective, corporate capacity, experience and field of expertise, and that have undertaken an assignment of a similar nature and complexity;

(c) not include an individual consultant;

(d) not mix commercial firms, non-profit making organizations, and public entities unless, a selection is made using either quality-based selection or selection based on the qualification of a consultant; and

(e) not be less than six firms unless it is approved by a procurement committee.

(6) An invitation for expression of interest shall include -

(a) a name and address of a procuring entity;

(b) a brief description of a service;

(c) date and place for submission of expression of interest;

(d) an applicable qualification criteria; and

(e) information required to establish qualification of an applicant.

(7) An information requested shall be a minimum required to make a judgment on suitability of a firm and shall not be complex or worded to discourage a consultant from expressing interest.

(8) For an assignment of a value lower than a threshold set out in Schedule 2, a shortlist may be established from the knowledge of a market and qualified firms by a procuring entity or other source of information, if in a case of an assignment, an estimated value is lower than a threshold but is particularly complex, an advertisement for expression of interest may be used.

Request for a proposal

112. (1) A shortlisted firm shall be invited to submit a proposal on the basis of a standard request for a proposal which shall provide a shortlisted firm with an information necessary to enable it to participate in a procurement proceeding and submit a proposal.

(2) A consultant shall be required to submit a technical and financial proposal in separate and sealed envelopes, and which shall be put in one sealed envelope.

(3) A request for proposal shall -

(a) be worded clearly to permit and encourage competition; and

(b) set out clearly and precisely -

(i) the deliverables to be provided;

(ii) place of delivery;

(iii) schedule for delivery or completion of an assignment;

(iv) location of work or service;

(v) reporting arrangement;

(vi) minimum performance requirement;

(vii) condition of contract; and

(viii) a manner of entry into force of a contract.

(4) A request for proposal shall be in a standard format issued by the Authority and shall contain a letter of invitation, information to consultant, standard form, terms of reference and a proposed contract.

(5) A request for proposal shall include, among others -

(a) name and address of a procuring entity;

(b) nature, timeframe and location of a service to be provided;

(c) criteria to be used in evaluating and comparing a proposal, and its relative weight as compared to price;

(d) contract term and a manner of entry into force of a contract;

(e) instruction to a consultant for preparation and submission of proposal and a place and deadline for submission of a proposal;

(f) final selection procedure to be applied;

(g) notice of conflict-of-interest restriction, anti-fraud and corruption rules including a ground for a potential de barment from future participation in procurement of goods, service or work that may result from an assignment under consideration;

(h) such other procedures as may be prescribed.

Instructions to a consultant

113. (1) The instructions to a consultant shall -

(a) contain all necessary information to help a consultant prepare responsive proposal and shall ensure a transparent process by indicating a procedure for preparation and submission of a proposal, criteria for evaluation and award of contract;

(b) indicate an estimate of a level of key staff input required of a consultant but a consultant shall be free to prepare his own estimate of staff time to carry out the assignment and to offer the corresponding cost in his proposal;

(c) specify the proposal validity period, which should be ad equate for the evaluation of proposals, decision on award, finalization of contract negotiations and signing of the contract; and

(d) indicate a procedure for requesting and obtaining clarification of a request for proposal.

(2) A procuring entity shall respond promptly to a request for clarification and shall circulate the response to all consultants to whom a procuring entity provided the request for proposal without disclosing the identity of a requestor.

Evaluation criteria

114. A request for proposal shall contain an evaluation criteria to be used by a procuring entity.

Price in a proposal

115. Without prejudice to a possibility of a request for proposal providing a time-based contract in appropriate circumstances, a proposal shall be invited on the basis of full cost, unless otherwise specified in a request for proposal and a price shall include all duties, taxes and other levies.

Currency of a proposal

116. (1) A request for proposal shall state a -

(a) currency in which a tenderer is to state his price;

(b) procedure for conversion of a price expressed in a different currency into a Lesotho Loti for a purpose of comparing financial proposals; and

(c) currency in which a contract price will be paid.

(2) A source of exchange rate for conversion and date of selling exchange rate shall be stated in a tender document and request for proposal.

(3) A date of exchange rate shall not be later than an original date for the opening of a technical proposal.

Securities and declaration

117. A request for proposal shall not require a consultant to provide a tender security, declaration or performance security, except under special circumstances approved by the Authority.

Time for preparation of a proposal

118. (1) A procuring entity shall allow a consultant enough time to prepare and submit a proposal.

(2) A time allowed shall depend on an assignment but shall not be less than 20 days or more than 60 days, subject to a possibility of a shorter minimum period of time in a case of procurement needed to address an immediate aftermath of an emergency.

Submission and opening of a proposal

119. (1) A technical and financial proposal shall be submitted at the same time and in separate sealed envelopes.

(2) Amendment to a technical or financial proposal shall not be ac-

cepted after a deadline, although amended proposal may be submitted before a deadline.

(3) A proposal received -

(a) after a deadline shall be declared late, be rejected and kept un opened; and

(b) from a consultant other than a shortlisted consultant and from a firm that has gone into a joint venture or association shall be rejected and promptly returned unopened.

(4) A proposal opening procedure shall be the same as a procedure specified in section 90.

(5) A request for clarification may be submitted on the same basis as that specified in section 85.

(6) A pre-proposal conference or site visit may be organized to give a prospective consultant an opportunity to seek clarification and to obtain additional information on a requirement of an assignment or clarity on an issue set out in a request for proposal.

(7) A date, time and venue of a pre-proposal conference shall be contained in a request for proposal under instructions to a prospective consultant and shall serve as an invitation to all prospective consultant, to attend a pre-proposal conference.

Evaluation of quality

120. (1) An evaluation shall be conducted solely based on a submitted technical proposal.

(2) An evaluation of a quality cost-based selection proposal shall be carried out in the following two stages:
the quality; and
the cost.

(3) An evaluator of a technical proposal shall not have access to a financial proposal until a technical evaluation is concluded.

(4) A financial proposal shall be opened only after a technical evaluation has been concluded.

(5) An evaluation shall be carried out -

(a) in full conformity with a provision of a request for proposal; and

(b) by an evaluation committee of at least three or more specialists.

(6) A procuring entity shall divide criteria in a request for proposal into sub-criteria and evaluate each proposal on a basis of its responsiveness to the terms of reference.

(7) A proposal shall be considered unsuitable and rejected at a stage of evaluation if it does not respond to an important aspect of the terms of reference or fails to achieve a minimum technical score specified in a request for proposal.

(8) A procuring entity shall prepare a technical evaluation report of a quality of a proposal at the end of a process.

(9) A report under subsection (8) shall substantiate a result of an evaluation and describe a relative strength and weakness of a proposal.

(10) A record relating to an evaluation shall be retained until the completion of a project and its audit.

Evaluation of cost

121. (1) A procuring entity shall inform a consultant, who has submitted a proposal, of a technical point assigned to each consultant after an evaluation of quality is completed, and shall notify a consultant whose proposal did not meet a minimum qualifying mark or was considered non-responsive to a request for proposal and terms of reference that his financial proposal will be kept unopened after a signature of a contract.

(2) A procuring entity shall simultaneously notify a consultant that has secured a minimum qualifying mark of a date, time and place set for opening

a financial proposal.

(3) The opening date shall be set between 5 and 10 days to allow a consultant to attend an opening of a financial proposal.

(4) A financial proposal shall be opened publicly in the presence of a consultant or his representative.

(5) The name of a consultant, technical point and proposed price shall be read aloud and recorded.

(6) A procuring entity shall also prepare minutes of a public opening and a copy of this record shall be posted in a procurement file and on request made available to a consultant who submitted a proposal.

(7) A cost shall include remuneration of a consultant and other expenses such as travel, taxes payable, translation, report printing or secretarial expenses.

(8) A cost shall include all taxes payable in Lesotho for the purpose of evaluation.

(9) If there is an arithmetical error in a financial proposal, that error shall be rectified and a consultant notified in writing.

(10) A proposal of a consultant who refuses to accept a correction done in terms of subsection (9) shall be rejected.

(11) If there is a discrepancy between figures and words, an amount in words shall prevail, unless a discrepancy is due to misplacement of a decimal point, in which case a mistake shall be rectified and the consultant notified.

(12) For the purpose of comparing proposals, a cost shall be converted to a single currency as stated in the request for proposal.

(13) A proposal with a lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

(14) Alternatively, a directly proportional or other methodology may

be used in allocating a mark for the cost, and the methodology to be used shall be described in a request for proposal.

Combined quality and cost evaluation

122. (1) A total score shall be obtained by weighting the quality and cost scores and adding them.

(2) A weight for a cost shall be chosen taking into account the complexity of an assignment and relative importance of quality.

(3) A weight for quality and cost shall be provided in a request for proposal.

(4) A formula for combining a technical and financial score shall be indicated in a request for proposal and in accordance with a sample formula to be specified in the regulations.

(5) A firm obtaining a highest total score shall be invited for negotiation.

Rejection of a proposal

123. A procuring entity may reject a proposal -

(a) at any time prior to acceptance of a proposal; and

(b) if it fails to achieve a minimum technical score specified in a request for proposal.

Cancellation and re-invitation of a proposal

124. (1) A procuring entity may cancel procurement proceedings where -

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

(b) there is no sufficient funding available for the procurement;

(c) there is a significant change in a required technical detail, procurement procedure, condition of contract or other details such that a recommencement of a proceeding is necessary;

(d) there is no responsive offer received;

(e) there is evidence of corruption, fraud, coercion or collusion among the shortlisted firms; and

(f) cancellation is in the interest of national security.

(2) Before rejecting all proposals or cancelling the procurement proceedings, a procurement unit shall prepare a written request to a procurement committee for approval of the rejection or cancellation.

(3) The request shall be submitted to a procurement committee and shall clearly state -

(a) a detailed reason for recommending the rejection or can cellation;

(b) a status of the procurement proceedings including whether a proposal had already been opened; and

(c) whether new procurement proceedings are recommended and if so, a modification recommended.

(4) The reason for rejecting a proposal or cancelling the procurement proceeding shall be noted in a record of the procurement proceedings and promptly communicated to a consultant.

(5) A procuring entity shall not be liable to a consultant by reason of rejection of a proposal or cancellation of procurement proceeding under subsection (1).

(6) If a decision to cancel the procurement proceedings is taken before a deadline for submission of a tender, a proposal received shall be kept unopened.

(7) In an event of cancellation or rejection of a proposal in terms of subsection (1), a consultant shall not be re-invited to the same terms of reference and contract condition, unless the cancellation of an initial proceeding is for budgetary or other reasons unrelated to the terms of reference and contract condition.

(8) If a procurement is to be repeated, the reason for a cancellation of initial proceedings shall be examined and a technical term of reference or contract condition or both, may be suitably modified prior to re-invitation.

(9) In a case of cancellation under subsection (1) (b), as an alternative to re-invitation, a feasibility of increasing a budget or scaling down a scope of service with a firm shall be investigated.

(10) Any substantial reduction in the scope of service shall not be acceptable.

Negotiation and award of a contract

125. (1) A procurement committee shall establish a negotiation team responsible for negotiating a contract.

(2) A negotiation may not be simultaneously conducted with several consultants and shall cover terms of reference and scope of a proposed service, deliverable, progress report, facility to be provided by a procuring entity and financial proposal.

(3) A negotiation shall not substantially alter the term of reference or contract and whenever price has been a factor in a ranking of a proposal, the price including fee for services shall not be subject to negotiation.

(4) Upon a successful completion of a negotiation, a procuring entity shall notify a participating consultant of a proposed award decision.

(5) If a negotiation with a highest ranked consultant fails, after appropriate notice to a consultant, a procuring entity shall terminate the negotiation after obtaining an approval of a procurement committee and a next ranked consultant shall be invited for negotiation.

(6) A selected firm shall not be allowed to substitute a key expert,

unless both parties agree that undue delay in a selection process make a substitution unavoidable or that a change is critical to meet an objective of an assignment.

(7) A key expert proposed for substitution shall have a qualification equal to or better than the key expert initially proposed.

(8) If it is established that a key expert would not be available and was included in a proposal without confirming his availability, a firm may be disqualified, and a process continued with a next ranked firm.

(9) A rate of an expert shall not be negotiated unless under exceptional circumstances.

Quality based selection method

126. (1) A procuring entity may, subject to an approval of a procurement committee, use a quality-based selection if an assignment -

(a) is highly complex or specialized and it is difficult to define a precise term of reference and a required input of a consultant for which the consultant is expected to demonstrate innovation in his proposal;

(b) has a high downstream impact and an objective is to have the best expert; or

(c) can be carried out in substantially different ways and a proposal will not be comparable.

(2) In a quality-based selection, a procuring entity shall invite a shortlisted firm to submit a technical proposal only, and the firm scoring the highest-ranked technical proposal shall be asked to submit a detailed financial proposal for negotiation and award of contract.

(3) Other aspects of a selection process shall be identical to those of a quality and cost-based selection except that, only the price of a winning firm shall be published.

Least cost selection

127. (1) The least cost selection method shall be used for selecting a consultant for an assignment of a standard or routine nature, including audit and engineering design of non-complex work where a well-established practice and standard exist.

(2) A selection procedure to be used for least cost method shall be the same as the one used for a quality and cost-based selection except that, a firm offering the least cost will be selected for a negotiation and award of contract.

Fixed budget selection

128. (1) A procuring entity may, subject to an approval of a procurement committee, use selection under a fixed budget procedure when an assignment is simple and can be precisely defined and a budget is fixed.

(2) A selection procedure under fixed budget selection method shall be the same as a procedure for a quality and cost-based selection method, except that a shortlisted firm shall be required to prepare its financial proposal within a fixed budget.

(3) A fixed budget shall be disclosed in a request for proposal.

(4) A proposal that exceeds an indicated budget shall be rejected.

Consultant qualification selection

129. (1) A consultant qualification selection method may be used for an assignment that does not exceed a threshold set out in Schedule 2, and in a selection of a consultant for which a need for preparing and evaluating a competitive proposal is not justified.

(2) A procuring entity shall prepare terms of reference for an assignment and establish a shortlist of three to six firms with adequate experience and competence relevant to an assignment.

(3) A contract shall be awarded to a firm on the shortlist with most appropriate qualifications and references.

(4) A selected firm shall be invited to submit a combined technical and financial proposal and then be invited to negotiate a contract.

Individual consultant selection

130. (1) An individual consultant is employed on an assignment for which a team of personnel is not required and additional outside professional support is not required.

(2) An individual consultant shall be selected based on his qualifications for an assignment.

(3) An individual considered for comparison of qualifications shall meet a minimum relevant qualification and the individual selected for employment by a procuring entity shall be the best qualified and fully capable of carrying out an assignment.

(4) The capability to carry out an assignment is judged based on -

(a) academic or professional background;

(b) experience; and

(c) knowledge of a local condition such as a local language, culture, administrative system and government organization.

(5) A procuring entity shall shortlist at least three individuals and compare their qualifications and capability relevant to an assignment and an individual with best qualifications shall be selected for an assignment.

(6) The selected individual shall be asked to submit a technical and financial proposal and then be invited to negotiate a contract.

Single source selection method

131. (1) A procuring entity may, subject to an approval of a procurement committee, use a single source selection method of a consultant only in an exceptional case and if the method demonstrates a clear advantage over a competitive method on the following issues:

(a) for a task that represent a natural continuation of ongoing or previous work carried out by a firm;

(b) in an emergency case such as a response to a disaster and for consulting service required during a period immediately following the emergency;

(c) for a very small assignment as defined in Schedule 1;

(d) when only one firm is qualified or has unique experience for an assignment; or

(e) as a result of downstream assignment.

(2) In each case described in subsection (1), a procuring entity shall ask a selected consultant based on terms of reference furnished by a procuring entity, to prepare a technical and financial proposal which shall then be negotiated.

Selection of a procurement agent

132. (1) A procuring entity may use a service of a procurement agent to undertake a procurement function which would otherwise be carried out by a procuring entity, but a procurement function or service shall be carried out in accordance with the Act.

(2) Subject to the approval of a procurement committee, a procurement agent shall, be used where a procuring entity or its procurement unit lacks capacity to carry out procurement.

(3) A procurement agent shall act strictly on behalf of a procuring entity and shall follow a procurement procedure outlined in this Act and regulations, including use of a standard tender documents and other documentation issued by the Authority.

Selection of inspection agent

133. Where a procurement agent has been appointed by a procuring entity, and there isa need to undertake pre-shipment inspection and certification of an import, a procuring entity may use an agent without going through another se-

lection process for an agent, otherwise inspection agent shall be selected following appropriate selection procedure.

PART VII – CONTRACT MANAGEMENT

Procurement contract

134. (1) A procurement contract shall, where possible, be based on an appropriate model contract set out in a standard bidding document developed by the Authority.

(2) A procuring entity shall ensure that a procurement contract it enters into -

(a) sets out the complete names and addresses of a party to a contract;

(b) lists the contract documents by order of priority;

(c) states -

(i) the specification, quantity and price of a procurement requirement;

(ii) how a price shall be determined; and

(iii) when a price shall be paid and a method of payment;

(d) provides for -

(i) a right of a procuring entity to inspect a procurement requirement in order to ensure proper performance of the contract by a contractor;

(ii) delivery of a procurement requirement, including, where appropriate, transfer of title, risk of loss, insurance and the completion of import and export formalities, which provisions shall be defined in accordance with international commer-

cial terms published by a body such as the Inter national Chamber of Commerce;

(iii) a remedy of either of the parties in the event of breach by the other;

(iv) the responsibility of the parties in the event of delay in performance, supervening impossibility of performance or other event affecting performance;

(v) the termination of a contract; and

(vi) the nature and amount of security to be provided by the parties, where applicable;

(e) specifies a place and time of delivery or completion of a procurement requirement and a condition relating to its delivery or completion;

(f) contains a provision for dispute settlement; and

(g) covers other necessary issues concerning an obligation of the parties and clarifying a transaction, including price revision, warranty, contract modification, sub-contracting, insurance obligation and remedy for delay and non-performance.

Performance security

135. (1) A tender document for work shall require a performance security in an amount stated in the regulations to protect a procuring entity in a case of breach of contract by a contractor, with a possible exception of small work contract for dealing with an emergency.

2) A security shall be provided in a prescribed form in a standard bidding document and amount specified in a tender document.

(3) A portion of a security may extend beyond a date of completion of the work to cover a defect liability or maintenance period up to a final ac-

ceptance by a procuring entity.

(4) Alternatively or as a supplement to a performance security, a contract may provide for a percentage of each periodic payment to be held as retention money until final acceptance.

(5) A contractor may be allowed to replace retention money with an equivalent security after a provisional acceptance.

(6) A format of a performance security shall be in accordance with the one provided in a tender document and shall be issued by a reputable bank or a financial institution selected by a tenderer.

(7) If an institution issuing a security is located outside Lesotho, it shall have a correspondent financial institution located in Lesotho.

(8) In a contract other than for work, a need for a performance security shall depend on a market condition and commercial practice for a particular kind of contract.

(9) A supplier or manufacturer may be required to provide a guarantee to protect a procuring entity against non-performance of a contract, and such a security in appropriate amount, may also cover a warranty obligation.

Responsibility for contract management

136. (1) A procuring entity or other designated entity shall -

(a) be responsible for administering a procurement contract; and

(b) establish a procedure for administering a contract and provide the necessary resources, human and material, for effective contract administration.

(2) Under a framework contract, a procuring entity shall be responsible for ensuring a drawdown that it makes from a contract delivered in a correct quantity and specification.

Pricing in procurement contracts

137. (1) A price of a procurement requirement in a procurement contract shall be set -

(a) based on a unit price applied to a quantity actually delivered;

(b) based on a lump-sum, applied to a whole or part of a contract, irrespective of an actual quantity needed to be delivered to fulfil a contract; or

(c) in a way that may be prescribed or authorised in a standard bidding document, general condition of a contract or instrument issued by the Authority.

(2) An adjustment of a price of a procurement contract for -
works shall not exceed fifteen percent of the price of the original contract; and
goods and services shall not exceed twenty percent of the price of the original contract.

(3) Where the time for performance under a procurement contract extends beyond a prescribed period, a contract may provide for an adjustment in a price to consider a change in economic circumstances.

(4) Where a procurement contract provides for an adjustment in a price, a contract shall stipulate clearly a -

(a) condition under which a price adjustment shall be permitted, which condition may include an increase or decrease in a cost of material, labour and energy;

(b) formulae and indices to be referred to in order to determine whether a price adjustment is permissible and to identify an amount of adjustment;

(c) frequency with which a price adjustment may be implemented; and

(d) procedure to be followed in order to effect a price ad

justment.

(5) A procurement contract may provide that, where an application of a price adjustment modifies an initial price or balance owing under a contract by more than fifteen percent, a procuring entity may terminate a contract.

Variation of a procurement contract

138. (1) A variation of a procurement contract that exceeds a maximum variation allowed in a contract document or necessitated by law enacted after an award shall be effected by a modification of a contract signed by both parties.

(2) A procurement contract may permit a representative of a procuring entity or other official designated in a procurement contract to issue, in writing, a variation order requiring a supplier or contractor to implement a technical change or change in a quantity or delivery time of the goods, work or service to be supplied.

(3) A party to a procurement contract shall not agree to vary a contract, if variation would result in a contract being materially different from the original contract or would significantly alter the nature or scope of a contract.

(4) Where a procuring entity wishes to vary a procurement contract in a manner referred to in subsection (2) or to increase a contract price to a greater extent than is prescribed or permitted, a procuring entity shall either initiate fresh procurement proceedings, or where appropriate, embark on a direct procurement.

Payment

139. (1) A payment under a procurement contract shall be made within 30 days or a time-limit set out in a contract, and a contract may provide for payment of a compensation for failure to make a payment within a time-limit.

(2) A procurement contract may provide for a procuring entity to make a progress payment based on progress in fulfilment of a contract.

(3) A payment under subsection (2) may be -

(a) calculated as a percentage of a total performance due

under a contract;

(b) paid according to an achievement of a performance milestone identified in a contract;

(c) based on an actual quantity delivered or completed; or

(d) paid or calculated on a basis that may be prescribed.

(4) A progress payment shall not be made except upon presentation and acceptance of documentation as is required under a procurement contract as evidence of a progress in performance.

(5) Where a procurement contract provides for a making of progress payment, a contract may, in terms ofsection135(4), provide that a procuring entity may withhold a percentage of an amount due as retention money until performance of a procurement contract is completed.

(6) Where necessary to enable effective implementation of a contract, a procurement contract may provide for a procuring entity to make advance payment of a price, provided that -

(a) a letter of credit facility is issued or its equivalent; or

(b) advance payment shall not be made unless a contractor furnishes an advance payment guarantee covering an amount of advance payment and satisfies a term set out in a bidding document.

(7) Where a procuring entity has made an advance payment under a procurement contract -

(a) a contractor and its sub-contractor shall utilise material, equipment and personnel that is a subject of advance payment only for a work or service for which advance payment was made; and

(b) in a case of a contract for a construction of work, a contractor and its subcontractor shall commit material, equipment and personnel that is a subject of advance

payment exclusively to site related to a work covered by a contract and for which an advance payment was made.

Sub-contracting

140. (1) Unless a procurement contract provides otherwise, a contractor may sub-contract part of its performance under a procurement contract, subject to a written approval of a procuring entity for each sub-contract, except in a case of management contract, a contractor shall not sub-contract a performance of all its obligations under a contract.

(2) A contractor shall not enter into a contract without a prior written consent of a procuring entity.

(3) A sub-contracting shall not diminish or affect a responsibility of a contractor to fulfil its obligation under a procurement contract.

Inspection of goods and construction work

141. (1) Where a procurement requirement consists of goods or construction work, a procurement contract shall give a procuring entity a right -

(a) to inspect a procurement requirement before accepting it; and

(b) at a reasonable time, to observe and inspect a manufacture of goods or progress of a construction work.

(2) A contract shall provide that a defect or omission detected at an inspection or observation shall be remedied at the expense of a contractor.

(3) A contractor shall, at its own expense, place at a disposal of a procuring entity a premise, facility and personnel needed for inspection referred to in subsection (1).

(4) A contractor and a procuring entity shall each bear an expense for attendance of their respective representatives at the inspection referred to in subsection (1).

(5) A procurement contract may establish a schedule of a required

inspection and test, and an allocation of liability for an additional cost and time incurred in order to accommodate an unscheduled inspection and test.

(6) If a contractor has been permitted to employ a service of a sub-contractor, it shall in its contract with the sub-contractor, reserve to a procuring entity, a right of inspection and observation referred to in this section.

(7) A procuring entity may appoint -

(a) an inspection committee and additionally or alternatively, an inspection agent to carry out inspection referred to in subsection (1); and

(b) a technical committee to inspect a procurement requirement and accept a performance under a contract.

After sales service

142. A bidding document and procurement contract may oblige a contractor to provide workshop and spare parts for goods that require after-sale service, duration of such obligation corresponding to an average operating life span of the goods.

Insurance

143. (1) Where in a procurement, a successful bidder is required to obtain insurance, a requirement shall be stated in a bidding document or request for proposal and in a procurement contract, indicating an amount and essential term of an insurance cover that a successful bidder is required to obtain.

(2) A procurement contract may require a contractor to cause its sub-contractor to take out and maintain insurance cover in accordance with a requirement of a procurement contract.

(3) Where a procurement contract contains a requirement referred to in subsection (1) or (2), it shall reserve to a procuring entity, a right to reject insurance coverage that does not comply with a requirement stated in the contract.

Remedy

144. (1) A procurement contract shall provide a procuring entity with one or more lawful remedies in an event of breach of contract by a contractor, which remedy may include -

(a) rejection of defective performance;

(b) prompt removal and replacement of defective goods, repair or replacement of defective performance;

(c) a liquidated damage for delay;

(d) reduction in a price for defective performance; and

(e) termination of a contract and procurement of replacement performance, at an expense of a defaulting party.

(2) A procurement contract shall also stipulate a remedy available to a contractor in an event of breach of contract by a procuring entity.

Liquidated damage

145. Where a procurement contract provides that a contractor is liable to pay an agreed percentage of a contract value for delay in a performance due under a contract, a provision shall specify -

(a) an amount to be paid for each day, week or month of a delay;

(b) a maximum period of delay allowed before a contract can be terminated;

(c) that a contractor is not relieved of its liability for performance under a contract by virtue of payment under a provision;

(d) a liquidated damage for delay, up to a maximum referred to in subparagraph (b), in addition to liability for an extra cost of entering into a further procurement contract with

another contractor;

(e) that a contractor will not be charged a liquidated damage when a delay in delivery or performance is beyond the control of the contractor and is not caused by fault or negligence on the part of the contractor.

Settlement of dispute

146. (1) A procurement contract shall specify a substantive law applicable to a contract and a way a dispute that might arise in an implementation of a procurement contract is to be settled.

(2) A contract may include a mechanism for amicable settlement of a dispute that might arise among the parties during a contracting period.

(3) In prioritizing an amicable settlement of a dispute through a negotiation, a procurement contract may provide for a technique including a cooling-off period for negotiation prior to a resort to a litigation or arbitration.

(4) A procurement contract may provide for an appointment of a third party to aid in a settlement of a dispute, in a form of -

(a) a conciliation or mediation;

(b) related technique involving an appointment of a dispute-expert, adjudicator or dispute review board; and

(c) a related appointment procedure for a third-party facilitator,

to assist a party in amicable settlement of a dispute.

(5) A party to a procurement contract may agree in a procurement contract or separate written agreement, to submit a dispute arising in a contract to arbitration.

(6) In a case referred to under subsection (5), an agreement to arbitrate a dispute shall stipulate an institutional setting for arbitration, the procedural rules to govern a conduct of arbitration and a location of arbitration.

(7) In the absence of an arbitration clause, a procurement contract shall specify a court competent to settle a contract dispute.

(8) When an arbitration clause or agreement is invoked, a party shall continue performance of a contractual obligation stated in the clause or agreement.

Contract termination

147. A procurement contract shall refer to a case in which a contract is subject to termination, including the following:

(a) if a supplier or contractor -

(i) has obtained a contract through bribery;

(ii) has committed fraud, corruption, tender rigging or manipulation to win or implement a contract;

(iii) became insolvent, bankrupt, his insolvency was established or a court order issued to place him under receivership or in the event of a company, it was dissolved or liquidated;

(iv) delayed, slackened a commencement of work or breached a contract condition and did not take a remedial action within fifteen days from a date of receiving a notice to do so; or

(v) assign or subcontract a contract without a prior written permission of a procuring entity;

(b) if a procuring entity establishes, after awarding a contract and submission of a performance security, that a security or document submitted by a contractor is incorrect and has a material omission;

(c) in a case of a prolonged of an unforceable circumstances that prevents the supplier or contractor from fulfilling the contract;

(d) in a case identified by a contract in which a supplier or contractor is entitled to exercise a right to terminate;

(e) by an agreement of the parties;

(f) termination for a convenience of a procuring entity, if that is determined to be in the interest of the public.

Contract completion

148. (1) The Chief Accounting Officer of a procuring entity shall close out a procurement contract immediately after completion.

(2) A head of a procurement unit shall, where a contract is not complex and specialized, issue a certificate to a contractor confirming delivery and acceptance of goods, work and service.

(3) A technical department shall, where a contract is complex and specialized, issue a certificate to the Chief Accounting Officer of a procuring entity confirming the quality and quantity of such goods, work and service.

PART VIII – DISPOSAL OF UNSERVICEABLE, OBSOLUTE, OBSOLUSCENT, REDUNDANT STORES OR EQUIPMENT

Authority to dispose

149. (1) The Chief Accounting Officer of a procuring entity shall at least once a year, convene the board of survey comprising not less than five staff members of a procuring entity and persons with relevant expertise to board unserviceable, obsolete, surplus supply and equipment, report its findings and recommend the most suitable mode of disposal.

(2) Upon approval of a recommendation of a board of survey by the Chief Accounting Officer, the item shall be disposed of by a procurement unit.

(3) A notice of auction shall specify that the goods shall be sold on an “as is” “where is” basis and a procuring entity shall disclaim further liability after sale.

(4) A warranty shall not be offered on the goods to be disposed.

(5) Where an item becomes unserviceable for a reason other than fair wear and tear, such as through accident or expiry, a set procedure to be established by the Authority for handling loss shall be followed before an item is boarded and disposed of.

(6) Where an item has no residual value, including scrap value, it may be destroyed in an environmentally responsible manner.

(7) A procuring entity shall report a disposed item to the Accountant General, Auditor General and Internal Audit to allow their removal from a register of government assets.

Disposal procedure

150. A disposal of unserviceable, obsolete, surplus supply and equipment procedure shall be outlined in the regulations.

PART IX – ADMINISTRATIVE REVIEW

Right to review

151. (1) A potential or actual tenderer that claims to have suffered or is likely to suffer loss or injury due to a breach of a duty imposed on a procuring entity may make an application for review in a form of a complaint following a procurement proceedings for grievances.

(2) An application for review shall not be entertained unless it identifies a specific omission, agency or procuring entity alleged to have violated the Act, its regulations or a tender document.

(3) Where an application for review concerns an alleged impropriety in a solicitation of application to prequalify or solicitation of a tender, which is apparent prior to a tender opening, an application shall be entertained only if submitted prior to tender opening.

Review by Chief Accounting Officer of a procuring entity

152. (1) A tenderer shall make a written application for review in a first instance to the Chief Accounting Officer prior to an entry into force of a contract.

(2) A complaint shall state a nature of an alleged violation and shall be submitted in writing.

(3) A complaint concerning a term of advertisement, solicitation, pre-qualification, short-listing, decision or action taken by a procuring entity shall be submitted prior to a deadline for submission of a bid.

(4) A complaint concerning a decision, action or omission shall be submitted within a standstill period.

(5) Upon receipt of a complaint in connection with a tender proceeding, the Chief Accounting Officer shall notify the Authority and a tenderer who has a right to intervene in a complaint.

(6) Unless a complaint is resolved by mutual agreement, the Chief Accounting Officer shall suspend procurement proceedings and shall, within five days after submission of a complaint, issue a written decision to a complainant stating -

(a) a reason for a decision;

(b) whether a complaint is upheld in whole or part; and

(c) indicate a corrective measure to be taken where applicable.

(7) If the Chief Accounting Officer does not issue a decision within a time stated in subsection (4) or a complainant is not satisfied with a decision of the Chief Accounting Officer, the complainant is entitled to submit an appeal to a procurement tribunal.

Notification of review and suspension of proceedings

153. (1) A submission of appeal shall be done within five days after receipt of a decision of a procuring entity.

(2) A secretary to a procurement tribunal shall notify the Chief Accounting Officer of a procuring entity, of a pending review from a procurement tribunal and suspension of procurement proceedings in such a manner as may be prescribed.

(3) A tribunal may choose not to suspend procurement proceedings, if a procuring entity certified to the satisfaction of a tribunal that procurement should proceed in the public interest in order to respond to an immediate aftermath of an emergency.

Rejection of an application for review

154. A procurement tribunal secretariat shall reject a request for a review where an appeal fee set out in Schedule 3 is not paid upon submission of a complaint.

Party to a review

155. A party to a review shall be -

(a) a person who requested a review and shall be a tenderer;

(b) a procurement committee of a procuring entity;

(c) a secretary to a procurement committee;

(d) such other person as a procurement tribunal may determine.

Review by a procurement tribunal

156. (1) An appeal for review may be brought before a procurement tribunal where -

(a) it is submitted within five days after a date of a decision by the Chief Accounting Officer;

(b) the Chief Accounting Officer has failed to make a decision within five days of the submission of a complaint or after hearing;

(c) a contract has already been signed by a party, an appeal submitted in a first instance to a procurement tribunal shall not be entertained except where in the opinion of a procurement tribunal, a contract was signed without fol-

lowing a correct procedure provided in this Act.

(2) A procurement tribunal shall hear and pronounce its decision in an open forum.

(3) A participant in a proceeding shall have a right to -

(a) be heard prior to a decision of a review body being made on an application;

(b) be present, represented and accompanied;

(c) have access to a proceeding;

(d) request that evidence and witness be presented; and,

(e) seek access to a record of a challenge proceedings.

(4) A procurement tribunal shall make a decision within ten days after receiving a complaint.

(5) An application for review automatically suspends a procurement proceeding until a decision on an appeal is issued by a procurement tribunal.

(6) A suspension of a procurement proceeding shall not apply if a procuring entity certifies to the Authority, and the Authority approves that an urgent public interest consideration exists such as natural disaster, pandemic, civil strife, outbreak of war or such other reason of similar nature. .

(7) A certification shall state a ground for a finding that an urgent consideration exists and shall be made a part of a record of procurement proceedings, and shall be conclusive with respect to a level of review, except review by a court of law.

(8) An appeal against a decision of a procurement tribunal shall be made in a court of law within seven days failing which the decision shall be final and binding on a party.

(9) Information shall not be disclosed in a challenged proceedings and a public hearing shall not take place if it would -

(a) impair a protection of essential security interest of the State;

(b) be contrary to law;

(c) impede law enforcement;

(d) prejudice a legitimate commercial interest of a supplier or contractor; or

(e) impede fair competition.

Appeal against a decision of the Central Tender Board

157. (1) A tenderer may challenge an act, omission or decision of the Central Tender Board on the same basis as a challenge against a decision of a procuring entity.

(2) A procedure stipulated in section 149 shall apply as if the Central Tender Board was a procuring entity in a circumstance under subsection (1).

Dismissal of a frivolous appeal

158. A procurement tribunal may dismiss with costs, an appeal if it is of the opinion that an appeal is frivolous or vexatious or was made solely for a purpose of delaying a procurement proceeding or performance of a contract and an applicant shall forfeit a deposit paid.

Decision of a tribunal

159. (1) Upon completing a review, a procurement tribunal may do the following:

(a) annul anything a procuring entity has done in a procurement proceeding including procurement or disposal proceeding in its entirety;

(b) give a direction to the Chief Accounting Officer of a procuring entity of anything to be done or redone in a procurement or disposal proceeding;

(c) substitute a decision of a chief accounting officer of a procuring entity in a procurement or disposal proceeding;

(d) order a payment of costs between parties to a review in accordance with a prescribed scale;

(e) order a termination of a procurement process and commencement of a new procurement process; and

(f) make any other order that may be appropriate in the circumstances.

(2) A decision of a procurement tribunal shall be posted on the website of the Authority together with a brief summary of a reason given for a decision.

PART X – MISCELLANEOUS

Request for information by the Authority

160. A procuring entity, tenderer, supplier, contractor or consultant concerned with procurement proceedings shall provide the Authority with information that the Authority may require in writing, regarding procurement carried out or proposed to be carried out by a procuring entity.

Review of procurement proceedings by the Authority

161. (1) The Authority shall carry out procurement audit or review into procurement activity of a procuring entity during at any time to assess whether the activity was carried out in compliance with the law and whether value for money was obtained.

(2) The Authority shall investigate a procurement activity of a procuring entity if it considers that an investigation is necessary or desirable for a purpose of preventing, investigating or detecting a contravention of this Act or any other law.

(3) In pursuit of a review or investigation under subsections (1) and (2), the Authority may appoint its own officer or consultant as a reviewer to con-

duct a review or investigation.

(4) A reviewer may -

(a) enter the premises of a procuring entity, tenderer, supplier, contractor or consultant concerned with a procurement proceeding under review and request for information or document at any time during normal office hours, with or without previous notice;

(b) require an officer, employee or agent of a procuring entity or tenderer, supplier, contractor, or consultant to produce a book, record, account or document;

(c) examine and make an extract from or copy of a book, record, account, or document of a procuring entity, tenderer, supplier, contractor or consultant;

(d) remove a book, record, account or document of a procurement entity, tenderer, supplier, contractor or consultant for as long as may be necessary to examine it or make an extract from or its copy, but a reviewer shall give a detailed receipt for a book, record, account or document removed; and

(e) require an officer, employee or agent of a procuring entity, tenderer, supplier, contractor or consultant to -

(i) explain an entry in a book, record, account or document; and

(ii) provide a reviewer with information concerning a management or activity of a procuring entity, tenderer, supplier, contractor or consultant as may be reasonably required.

(5) A person who, without just cause, hinders or obstructs a reviewer in the exercise of a function under this section commits an offence.

Procedure on completion of a review

162. (1) A reviewer shall -

(a) forward a copy of a review report to the Authority; and

(b) send a summary of a finding and recommendation to a procuring entity and to a tenderer, supplier, contractor or consultant whose conduct was a subject of review.

(2) The Chief Accounting Officer shall, if satisfied that there has been a contravention of this Act or any other law in relation to procurement proceedings or procurement contract, take action to rectify a contravention, which action shall include -

(a) annulment of a procurement proceeding;

(b) cancellation of a procurement contract;

(c) ratification of anything done in relation to a procurement proceeding; or

(d) a declaration consistent with a relevant provision of this Act.

(3) The Chief Accounting Officer shall afford a person adequate opportunity to make a representation in a matter, before taking any action which may adversely affect a right or property of that person or company.

Regulations and Schedules under this Act

163. (1) The Minister may by notice published in the Gazette, and on the recommendation of the Authority -

(a) make or amend the Regulations under this Act; and

(b) amend any part of the Schedules of this Act.

Offences

164. A person who contravenes a provision of this Act commits an offence and is liable on conviction to a fine or imprisonment or both as stipulated in Schedule 1.

Protection from a personal liability and indemnity.

165. A person shall not be liable in a civil or criminal proceeding in respect of an act or omission done in good faith in the performance of his duties under this Act.

Transitional provisions

166. (1) A procuring entity involved in an ongoing or unfinished procurement immediately before the coming into force of this Act, shall continue with and complete the procurement as if it was done under this Act.

(2) Where in a view of a procuring entity, a continued validity of a contract violates any law, a procuring entity may take an appropriate step to rectify an inconsistency to an extent permissible and consistent with this Act.

(3) A procurement review for a complaint, assessment or audit relating to procurement proceedings and contract commenced before an effective date of this Act, shall continue till completion.

(4) A procurement tribunal established under the Public Financial Management and Accountability Act, 2011 shall continue to exist and discharge its functions until a new tribunal is constituted under this Act.

(5) Where a case relating to a contract was pending before a procurement tribunal or a court of law prior to the coming into effect of this Act, a case shall continue to be heard by a procurement tribunal or the court until completion and the ruling shall have the same effect as if made after the coming into effect of this Act.

(6) A confidentiality in relation to past proceedings as provided in this Act shall apply with respect to procurement proceedings started before the commencement date of this Act.

(7) This Act shall apply to a record of procurement with respect to procurement proceedings that took place before the commencement date of this Act.

Repeal and amendment

167. This Act repeals all procurement-related provisions in the Public Financial Management and accountability Act.

SCHEDULE 1
OFFENCES:

(section 164)

1. A person who is a natural person or sole trader, to a fine not exceeding M100, 000.00 or to imprisonment for a term not exceeding five years or both.

2. A person who is a body corporate under works, to a fine not exceeding:

(a) Category A: M20, 000, 000.00;

(b) Category B: M5, 000, 000.00;

(c) Category C: M200, 000.00; and

(d) Category D: M100, 000.00.

3. A person who is a body corporate under goods, to a fine not exceeding -

Supply of goods: M 5,000,000.00.

4. A person who is a body corporate under services, to a fine not exceeding -

(a) Consultancy Firm: M5, 000, 000.00 ;

(b) Non Consultancy Services: M 500,000.00.

SCHEDULE 2
THRESHOLDS:

(sections 51,58,69,73,78,79,83,84 & 111)

1. An advertisement notice for open competitive tendering, prequalification, expression of interest and contract award shall be published when an estimated value of a contract exceeds an amount indicated below:

(a) Contract for procurement of goods - M 150,000.00;

(b) Contract for procurement of works - M 350,000.00;

(c) Non-consulting services - M 150,000.00; and

(d) Consulting services - M 200,000.00.

2. A threshold for applicable procurement methods are as follows:

Procurement Category	Estimated Contract Value (M)	Procurement Method
Goods/Plant/ICT	Over 3,000,000.00	Open International Competitive Tender
	150,000.00 to 3,000,000.00	Open National Competitive Tender
	Below 150,000.00	Request for Quotations
Works	Over 50,000,000.00	Open International Competitive Tender
	350,000.00 to 50,000,000.00	Open National Competitive Tender
	Below 350,000.00	Request for Quotations
Non-Consulting Services	Over 150,000.00	Open National Competitive Tender
	Below 150,000.00	Request for Quotations

Consulting Services	Over 200,000.00	Quality and cost-based selection Quality-based selection Least-cost selection Use of an invitation for expression of interest.
	Below 200,000.00	Selection of a firm based on it'squalifications

3. Pursuant to section 52 (2) of the Act, a delegation of signing a contract is set as M 500,000.00 for all types of contracts.

4. Pursuant to section 59 (2) of the Act, prequalification of a tenderer for works contract is set as M 7,000,000.00

5. Pursuant to section 74, a threshold for 100% indigenous Basotho owned company shall be an amount of M2, 000,000.00 with maximum turnover of not more than M2, 000, 000.00 per annum.

SCHEDULE 3
APPEAL FEES:

(section 156)

The appeal fees at a tribunal level shall be as follows:

Procurement Category	**Estimated Contract Value (M)**	**Appeal fees**
Goods	Over 3,000,000.00	2 % of estimated contract value
	150,000.00 to 3,000,000.00	1 % of estimated contract value
	Below 150,000.00	M1, 000.00
Works	Over 50,000,000.00	2 % of estimated contract value
	350,000.00 to 50,000,000.00	1 % of estimated contract value

	Below 350,000.00	M3, 000.00
Non-Consulting Services	Over 150,000.00	1 % of estimated contract value
	Below 150,000.00	M1, 000.00
Consulting Services	Over 200,000.00	1 % of estimated contract value
	Below 200,000.00	M1, 500.00

SCHEDULE 4

THRESHOLDS FOR HIGH VALUE PROCUREMENT TO BE CARRIED OUT BY THE CENTRAL TENDER BOARD

(sections 46,16,31,53,58&58)

Table A

Procurement category	**Threshold value**
Framework Agreement	
Goods (*Common user items*)	Not applicable
Air tickets	
Lodging and Boarding services (*Per district*)	Not applicable
Non Consulting services (*Per district if applicable*)	

Table B

Procurement category	**Threshold value**
Works	M50,000,000.00
Consultancy services	M20,000,000.00

GOVERNMENT NOTICE NO. 3 OF 2023

The Parliament of Lesotho

Statement of Objects and Reasons of the Public Procurement Act, 2023

(Circulated by the Authority of the Minister of Finance Honourable Dr. Retšelisitsoe Matlanyane)

The main purpose of the Public Procurement Act, 2023 is to establish the Lesotho Public Procurement Authority to regulate institutional structures and manage public procurement by providing procedures, processes and regulation of procurement of goods, works and services, and disposal of unserviceable, obsolete, obsolescent, redundant, surplus stores and equipment to optimize efficiency in public procurement and obtain value for money.

The Act provides the Authority with power to request for information, document, record and report in respect of any aspect of a public procurement process where the breach, wrongdoing, mismanagement or collusion has been allegedly reported or proven against a procuring and disposing entity or provider, commission or undertake an investigation and institute a procurement contract and performance audit and suspend a supplier, contractor or consultant for engaging in public procurement misconduct.

The Act establishes a Central Tender Board which shall be responsible for conducting a bidding process on behalf of a public entity for large tender in excess of twenty million (M20,000,000,00) for consultancy works and fifty Million (M50,000, 000,00) for works as indicated in the schedules.

The Act further codifies all issues pertaining to procurement and disposal of absolute stores by providing for the establishment and functions of the Public Procurement Tribunal. Previously, the Tribunal was established under the Public Financial Management and Accountability Act (PFAMAA).

The Act also provides for debarment of tenderers, suppliers, contractors or consultants for provision of false information in a process of submitting a tender, collusion between suppliers and a public officer concerning formulation of a tender document, connivance to interfere with a participation of a competing tenderer and misconduct relating to a submission of a tender including corrup-

tion, collusion, coercion, obstruction, price fixing, tender rigging, pattern of underpricing of a tender, breach of Confidentiality and any other relevant misconduct.

The Act provides for emergency procurement during a state of disaster or emergency and further lays down the procedures to be followed during emergency.

Moreover, the Act provides and introduces an electronic method of procurement to enable a procurement entity to disseminate tender documents and receipt through electronic means.

The Act further provides for community participation in procurement where there is need to carry out small value construction works and supply of goods.

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