

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 30 OF 2022

The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

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IN EXERCISE of the powers contained in section 112 of the Public Procurement Act, 2020, the following Regulations are made:

PART I

PRELIMINARY PROVISIONS

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| 1. These Regulations may be cited as the Public Procurement Regulations, 2022. | Interpretation |
| 2. (1) In these Regulations, unless the context otherwise requires— | Short title |
| “appeal committee” means a committee appointed under regulation 244 to hear and determine an appeal by a bidder or supplier who is aggrieved with a decision of a procuring entity; | |
| “applicant” means a person or group of persons submitting an application to pre-qualify, or for an expression of interest; | |
| “associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012; | Act No. 3 of 2012 |
| “Authority” has the meaning assigned to the word in the Act; | |
| “Bank of Zambia” means the Bank of Zambia established under the Constitution; | Cap. 1 |
| “beneficial owner” has the meaning assigned to the words in the Companies Act, 2017; | Act No. 10 of 2017 |
| “committee” means a committee appointed by the Director-General under regulation 232 to hear and determine a recommendation to bar or suspend a bidder or supplier. | |
| “Director-General” has the meaning assigned to the words in the Act; | |
| “evaluation committee” means a group of persons selected to evaluate tenders, proposals or quotations, in accordance with the evaluation criteria stated in the solicitation document, and the preparation of evaluation reports for submission to an approvals authority; | |
| “fundamental principles” means the principles specified under regulation 6. | |
| “relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012; and | Act No. 3 of 2012 |
| “standard goods, work or services” means goods, works or services that are acquired by a procuring entity continuously or repeatedly whose prices are published in a quarterly market price index issued by the Authority. | |

- Exercise of information management and dissemination functions
3. The Authority shall, with respect to developing and implementing systems for the publication and management of public procurement information—
- (a) take into account the most efficient and economic use of media, including electronic media;
 - (b) ensure that systems are accessible to intended users; and
 - (c) consider the ease of maintaining and updating systems.
- Circulars on reports
4. (1) The Authority shall issue public procurement circulars relating to reports required by the Authority, which specify the—
- (a) types of data and information required;
 - (b) format for reports; and
 - (c) frequency and submission deadlines for reports.
- (2) The Authority shall ensure that reporting requirements imposed on procuring entities are not burdensome.
- Reports by procuring entities
5. A procuring entity shall submit procurement reports that the Authority may require to facilitate the establishment and maintenance of data and information relating to public procurement, and to assist in the monitoring of public procurement and development of public procurement policies.

PART II

PRINCIPLES OF PUBLIC PROCUREMENT

- Fundamental principles
6. (1) Public procurement shall be governed by the following fundamental principles:
- (a) transparency;
 - (b) competition;
 - (c) economy;
 - (d) efficiency;
 - (e) effectiveness;
 - (f) fairness;
 - (g) integrity;
 - (h) value for money; and
 - (i) accountability.
- (2) A public officer or approvals authority shall be guided by the following basic considerations when undertaking or approving a procurement:
- (a) the need for economy and efficiency in the use of public funds in the implementation of projects, including the provision of related goods and services;

- (b) the best interests of a procuring entity in giving all eligible bidders equal opportunities to compete in providing goods or executing works or providing services;
- (c) the need to get value for money for goods, works or services;
- (d) the importance of integrity, accountability, fairness and transparency in the procurement process;
- (e) honesty and fairness; and
- (f) the need to ensure that national, social, economic and environmental interests are protected.

7. (1) A procuring entity shall in carrying out the procurement process be transparent to bidders and members of the public. Transparency

(2) A procuring entity shall, for the purposes of ensuring transparency in the procurement process, maintain records of each procurement as provided under section 21 of the Act.

(3) Subject to section 20 of the Act, records of procurement proceedings shall be open for inspection to the members of the public as specified in these Regulations.

8. (1) A public officer and an approvals authority shall, when undertaking or approving a procurement, choose appropriate procedures and cause the procurement process to be carried out diligently and efficiently so that the prices paid or received by the procuring entity represents the best value or net outcome that can reasonably be obtained for the funds applied. Economy, efficiency and value for money

(2) A public officer and approvals authority shall, in addition to what is specified under subregulation (1), ensure that the goods, works or services procured are of the required quality and are appropriate to the procuring entity's requirements.

(3) A procuring entity shall, where goods, works or services have been procured, ensure that the goods are delivered, the services are provided or the works are completed in a timely manner as specified in the solicitation documents and procurement contracts.

(4) A procuring entity shall, when undertaking a procurement, obtain value for money by ensuring that—

- (a) transparency and integrity are achieved throughout the procurement cycle;
- (b) the needs of end users and other stakeholders are appropriately identified and factored in the procurement proceedings;

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- (c) a clear statement of the procurement needs and objectives is developed, including permitted socio-economic or environmental goals;
 - (d) a procurement modality proportional to the risk, value, context and strategic importance of the procurement is chosen;
 - (e) the technical requirements of a procurement are adequately specified, including the cost and non-cost elements that may be evaluated to achieve those requirements, such as the life cycle cost of goods or works where appropriate;
 - (f) the appropriate standard contract for the procurement is used;
 - (g) a clear evaluation criteria aligned with the needs and objectives is developed;
 - (h) the bidder whose bid best meets the needs and objectives is selected; and
 - (i) an effective contract management plan is developed to ensure that the contract is successfully implemented and the deliverables are met as aligned in the contract.
- Accountability 9. A procuring entity shall ensure that—
- (a) procurement processes are conducted and managed in accordance with the provisions of the Act and these Regulations;
 - (b) persons involved in procurement processes are answerable for their actions and decisions in the performance of their respective roles and responsibilities under the Act and these Regulations;
 - (c) information, documents, records and reports in respect of a public procurement process are availed to the Authority in accordance with the Act and these Regulations;
 - (d) investigations, inspections and other compliance monitoring activities undertaken by the Authority are not hindered by a procuring entity; and
 - (e) remedial measures required by the Authority are undertaken in the exercise of its oversight function.
- Fairness 10. A procuring entity shall take the following measures to ensure the widest possible participation by bidders on equal terms in inviting tenders for goods, works or services:
- (a) publication of invitations to bid, requests for expressions of interest or proposals;

- (b) elimination of discriminatory practices, technical specifications or description of services which may limit participation on equal terms except as permitted under the Act;
- (c) selection criteria is specified in the solicitation or pre-qualification documents and request for proposals; and
- (d) the bid or proposal selected conforms to the requirements of the solicitation documents or request for proposals and meets the specified selection criteria.

11. (1) The Authority shall, in preparing a quarterly market price index required under section 12(3) of the Act, determine the standard goods, works and services with known market prices as a reference guide.

Market price index

(2) The Authority shall publish the market price index on the e-procurement portal and the Authority's website.

(3) A procuring entity shall procure standard goods, works and services in accordance with the price index issued by the Authority.

(4) A procuring entity shall use a market price index during the following stages:

- (a) budgeting;
- (b) procurement planning;
- (c) evaluation; or
- (d) contract execution in relation to variations or amendments which affect the price.

(5) The Authority may issue a circular for the range of prices for goods, works or services for the purposes of the market price index.

12. (1) A procuring entity shall conduct a price reasonableness analysis on the best evaluated bidder and where an item to be procured is not covered in the quarterly market price index during the following stages:

Price reasonableness analysis

- (a) evaluation; or
- (b) contract execution in relation to variations or amendments which affect the price.

(2) A procuring entity shall take the following into consideration when undertaking a price reasonableness analysis:

- (a) comparison of prices offered by other bidders in a competitive procurement process;
- (b) historical prices which involve comparison of prices offered in the past for similar contracts;

- (c) similar procurements by other procuring entities;
- (d) published prices by relevant Government institutions;
- (e) budget and procurement plan estimates;
- (f) insurance and demurrages; and
- (g) inflation, profit, labour and transport costs of the item to be procured.

(3) A procuring entity shall submit a price reasonableness analysis to the approvals authority and once approval is granted, obtain approval from the Authority.

(4) A procuring entity shall maintain a record of a price reasonableness analysis.

Competition

13. A procuring entity shall promote competition among bidders by ensuring that—

- (a) standards, technical specifications or descriptions of services do not limit the participation of potential bidders;
- (b) bidders are not discriminated on the basis of nationality, race, ethnicity, religion, gender or any other criterion not related to the bidder's eligibility or qualifications, except to the extent provided for in the Act and these Regulations; and
- (c) procurement methods that encourage wider participation are used to the extent provided for in the Act and these Regulations.

Probity and ethics in procurement

14. (1) A procuring entity shall conduct procurement proceedings with complete probity and in a manner that upholds respect and trust of the procuring entity as a client or customer while maintaining a good reputation with bidders.

(2) A procuring entity shall reject a bid of a bidder who gives or agrees to give directly or indirectly to any public officer or other public authority a gratuity in any form, an offer of employment or any other thing of service or value as an inducement with respect to an act, omission or decision of, or procedure followed by, the procuring entity in connection with that bid or proposal or any other bid or proposal.

(3) A procuring entity shall not include in a solicitation document any condition or specification to favour a bidder.

(4) A person who is involved in procurement proceedings at which any matter, is the subject of consideration and in which that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the procurement proceedings, disclose that

interest and shall not take part in any consideration or discussion of, or vote on, any question relating to that matter.

(5) A disclosure of interest made under subregulation (4) shall be in Form I set out in the First Schedule and recorded in the minutes of the meeting at which it is made.

(6) Where the disclosure of interest under subregulation (4) relates to the restriction on an office holder under section 15 of the Act, the bidder may be disqualified from further participation in the procurement proceedings.

PART III

GENERAL RULES OF PROCUREMENT

15. (1) A communication between a bidder and a procuring entity shall be in the English language and as specified in section 17 of the Act.

Form of
communication

(2) The medium of communication between a bidder and a procuring entity shall be specified in the solicitation documents.

(3) A procuring entity shall record in the minutes of the meeting the discussions at a meeting between a procuring entity and a bidder or supplier, and confirm all agreements in writing.

(4) A communication to a procuring entity shall be addressed to the controlling officer or chief executive officer of that procuring entity through the postal, physical or electronic means.

16. (1) A procuring entity shall, in addition to records referred to in section 21 of the Act, keep and maintain the following records relating to the procurement proceedings which shall be open to inspection by the Authority:

Record of
procurement
proceedings

(a) records arising from the procurement process;

(b) records relating to contracts management;

(c) records of the Procurement Committee;

(d) any record of the controlling officer or the chief executive officer which relates to the procurement process, contracts management and the administrative review process; and

(e) any other record of a procurement nature arising under matters related to the Act or these Regulations.

(2) A procurement record kept and maintained by a procuring entity shall contain the following documents:

(a) the request to initiate procurement proceedings;

(b) a copy of any published notices;

- (c) any shortlist or list of pre qualified bidders;
- (d) a copy of the pre qualification and solicitation documents and any amendments or clarifications of the documents;
- (e) the records of bids received;
- (f) the records of bid openings;
- (g) copies of the bids evaluated and any clarifications requested and responses received;
- (h) the evaluation report;
- (i) minutes of any meetings related to the procurement, including pre bid and negotiation and debrief meetings;
- (j) the notice of best evaluated bidder;
- (k) the letter of bid acceptance;
- (l) the contract document;
- (m) any contract amendments;
- (n) a submission to, and a decision of, the approvals authority relating to the procurement, including—
 - (i) the choice of procurement method;
 - (ii) authorisation of solicitation documents;
 - (iii) authorisation of evaluation reports; and
 - (iv) authorisation of contract documents, contract award and contract amendments; and
- (o) any decision to suspend or cancel the procurement proceedings.

(3) A record of the procurement process referred to under subregulation (1)(a) shall, in addition to the information under section 21(2) of the Act, contain the following information:

- (a) the names and addresses of bidders who were pre-qualified, short listed or selected and invited to submit tenders including the procedure used to select the bidders;
- (b) the names and addresses of bidders that submitted tenders and the name and address of the bidders with whom the procurement contract is entered into and the contract price;
- (c) information relating to the qualifications, or lack thereof, of bidders that submitted bids;
- (d) price, price reasonableness analysis, and a summary of the other principal terms and conditions of each tender and of the procurement contract, where these are known to the procuring entity;

- (e) a summary of the evaluation and comparison of tenders, including the application of any margin of preference specified in these Regulations;
 - (f) where a bid is rejected, a statement to that effect and the grounds for the rejection;
 - (g) where procurement proceedings did not result in a procurement contract, a statement to that effect and the grounds thereof;
 - (h) a statement of the grounds and circumstances on which the procuring entity relied on to justify the selection of the method of procurement used in procurement proceedings;
 - (i) a summary of any requests for clarification of the pre-qualification, request for expression of interest or solicitation documents or request for proposals, the responses thereto as well as a summary of any modification of those documents; and
 - (j) a summary of all complaints lodged by bidders before the award of the contract and decisions thereof.
- (4) A record relating to contract management referred to under subregulation (1)(b) shall contain the following documents:
- (a) the signed contract document, including any signed contract amendments;
 - (b) any variations issued under the contract;
 - (c) all post contract documentation relating to the fulfillment of contract obligations, in particular copies of bank guarantees or advance payment guarantees;
 - (d) minutes of any meetings relating to contracts management, including contract progress or review meetings;
 - (e) the documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;
 - (f) copies of the invoices for goods, works and services, including work papers verifying the accuracy of payments claimed and details of the actual payment authorised by a contracts manager;
 - (g) copies of cumulative payment worksheets evidencing management of the payments made;
 - (h) copies of any claims made by a contract manager on behalf of the procuring entity in respect of any warranty, non warranty, short supply, damage and other claims on the supplier or on the procuring entity;

(i) all correspondence between the procuring entity and supplier; and

(j) a submission to, and a decision of, the approvals authority relating to contracts management, including the authorisation of any contract amendment.

(5) A procuring entity shall not disclose the information under subregulation (1)(d) and (e), except when ordered by the Authority or a competent court and subject to the conditions of that order, and where—

(a) the disclosure of information shall—

(i) be contrary to law;

(ii) impede law enforcement;

(iii) not be in the public interest;

(iv) prejudice legitimate commercial interests of the parties; or

(v) inhibit fair competition; or

(b) the information relates to the examination, evaluation and comparison of bids and bid prices, other than the summary referred to under subregulation (1)(d).

(6) A procuring entity shall submit the records referred to under this regulation to the Authority as the Authority may determine.

(7) Subject to section 20 of the Act, a record maintained in accordance with the Act and these Regulations may be open for inspection by any member of the public authorised by the Authority, on payment of a fee set out in the circulars issued by the Authority.

(8) A record referred to under this regulation shall be kept for a period of not less than ten years from the date of completion of the contract and may be made available within a reasonable time during that period to the Auditor-General, the Authority or any other officer authorised by the controlling officer or chief executive officer.

(9) A procuring entity shall not be liable to a bidder for damages owing solely to a failure to maintain a record of the procurement or selection proceedings in accordance with these Regulations.

17. (1) A procuring entity shall publish any notice inviting potential bidders to participate in a procurement proceeding and any contract award as follows:

(a) the *Gazette*;

(b) a daily newspaper of general circulation in the Republic;

- (c) any media of wide regional or international circulation or on widely read internet sites, where the method of procurement is open international bidding or open international selection;
- (d) on the e-procurement portal;
- (e) to the extent feasible, on the internet, including any regional website or website established by the Authority or procuring entity; or
- (f) a prominent place on the notice board at the procuring entity's office.

(2) A procuring entity may use information communication technology in the procurement process in matters relating to the—

- (a) publication of the annual procurement plan;
- (b) publication of general procurement notices;
- (c) advertisement of procurement opportunities;
- (d) publication of contract award;
- (e) publication of a summary of evaluation results;
- (f) request for information on the bidding process; or
- (g) dissemination of laws related to public procurement.

(3) Where a procuring entity believes that it is necessary to ensure wide competition, it may, after the date of publication of the notice referred to under subregulation (1), send invitation notices directly to—

- (a) potential bidders, who may include registered bidders, past suppliers or any other identified potential sources;
- (b) professional or industry associations; or
- (c) a Zambian high commission or embassy in countries which are likely to participate, or foreign embassies of those countries in the Republic where open international bidding or open international selection is used.

(4) A procuring entity shall keep a record of any bidder or organisation to whom an invitation notice is sent directly, which shall form part of the procurement record.

18. (1) The kwacha or any foreign currency specified in a solicitation document shall be used in any bidding under the Act and these Regulations.

Currency for
procurement

(2) Where a bidder provides an offer in foreign currency, the Bank of Zambia shall be the source of the exchange rate to be used.

- (3) A solicitation document shall specify the effective date for the conversion of the foreign currency to the kwacha, where appropriate.
- Consortium 19. (1) Bidders may form a consortium to increase their capacity and competitiveness for solicitation purposes.
- (2) Where bidders form a consortium for purposes of bidding under subregulation (1), one of the bidders shall be considered as the lead bidder and serve as the representative in all activities related to the bid.
- (3) A bid submitted by a consortium shall be a single document and bear the name of the consortium or the lead bidder.
- (4) A bidder shall not participate in two different consortiums in the same bidding process.
- (5) A person shall not submit a bid in that person's own name and as part of a consortium for the same bidding process.
- (6) Persons participating in a consortium shall be individually and collectively liable towards the procuring entity.
- Subcontracting 20. (1) A procuring entity shall require foreign bidders or suppliers to subcontract to citizen bidders and suppliers, a minimum threshold of twenty percent of the total value of the procurement for procurements exceeding the simplified bidding and simplified selection thresholds set out in the Second Schedule.
- (2) A foreign bidder or supplier shall apply the methods of subcontracting specified under section 93(3) of the Act.
- (3) A solicitation document shall state the method of subcontracting that a foreign bidder or supplier shall apply.
- Procedure for domestic subcontracting 21. (1) A foreign bidder or supplier shall, for purposes of domestic subcontracting under section 93(3)(a) of the Act, select a citizen bidder or supplier who-
- (a) is eligible to participate in a procurement under section 89 of the Act; and
- (b) meets the qualification criteria under section 90 of the Act.
- (2) A foreign bidder or supplier shall include the following in the bid:
- (a) details relating to the selected subcontractor;
- (b) documents showing proof of the eligibility and qualifications of the subcontractor;
- (c) scope of the goods, works or services and priced schedules; and
- (d) a proposed subcontracting agreement.

22. (1) A procuring entity shall, for purposes of nominated subcontracting under section 93(3)(b) of the Act, use a competitive process to identify subcontractors who shall be nominated for award of subcontracts. Procedure for nominated subcontracting
- (2) A procuring entity shall prepare separate scope of works and bills of quantities for the main contractor and subcontractor and shall run parallel tenders for the procurement of the main contractor and the subcontractor.
- (3) A best evaluated bidder under a tender for subcontracting shall be nominated as a subcontractor and shall sign a subcontract agreement with the main contractor.
- (4) A procuring entity shall, where the subcontract bid sum does not meet the subcontracting threshold specified in the solicitation document, reallocate part of the scope of the goods, works or services for the main contract to the subcontractor in order to meet the threshold.
- (5) A procuring entity shall use the unit rates in the subcontract bid for pricing the reallocated scope of the goods, works or services under subregulation (4) where the specifications and requirements are comparable in terms of description and units of measure.
- (6) A procuring entity shall, where the reallocated scope of the goods, works or services are not comparable to the subcontractor's scope, use the unit rates in the main contract for pricing the reallocated scope.
23. (1) The main contractor or supplier shall be responsible for— Management of subcontracts
- (a) managing, supervising and coordinating a subcontractor's works;
- (b) certifying the goods, works or services supplied or performed by a subcontractor; and
- (c) supervising costs of the subcontractor.
- (2) The main contractor shall include in a bid an amount for managing a subcontractor.
- (3) The payments for certified works undertaken by the subcontractor shall be made directly by a procuring entity into the subcontractor's bank account.
24. (1) A procuring entity may package tenders into different lots based on certain economic interests such as the promotion of small business enterprises or the attraction of a large number of bidders. Packaging tenders

(2) A procuring entity that intends to package a tender shall ensure that the solicitation documents specifies the nature of each lot and modalities for awarding the tender.

(3) Despite subregulation (1), a procuring entity shall not divide tenders in a manner aimed at avoiding the procurement procedures provided under the Act and these Regulations.

(4) The main contractor shall be required to include in their rates an amount for managing subcontract.

Cancellation
of
procurement
proceedings

25. (1) A procuring entity shall avoid the cancellation of procurement proceedings whenever possible, but a cancellation may be approved by the approvals authority under the circumstances specified under section 69(1) of the Act.

(2) A Procurement Unit shall, before cancelling any procurement proceedings, consult with the user department which issued the requisition and obtain the prior authorisation of the approvals authority.

(3) A Procurement Unit shall prepare a request, in writing, to the approvals authority for authorisation to cancel a procurement proceeding, which shall clearly state—

- (a) detailed reasons for recommending the cancellation;
- (b) the status of the procurement proceedings, including in particular, whether bids have already been opened under open or limited bidding or selection; and
- (c) whether new procurement proceedings are recommended and, if so, the modifications recommended.

(4) A procuring entity shall, where the approvals authority has authorised the cancellation of a tender—

- (a) refund any fee paid on the solicitation document; and
- (b) release any tender security obtained.

(5) A Procurement Unit shall, where procurement proceedings are cancelled prior to bid opening, return the bids to all the bidders, unopened.

Publication
of
procurement
awards and
contract
execution

26. (1) A procuring entity shall, within fourteen days from the date of award of a contract, publish a notice of contract award in respect of any procurement in Form II set out in the First Schedule.

(2) A controlling officer or chief executive officer shall, after completion of a contract that exceeds the threshold for simplified

bidding or simplified selection set out in the Second Schedule, provide the Authority with complete information on contract implementation including the original contract period, the final contract period, original approved contract sum and the final contract amount paid to the bidder, and any deductions made by the procuring entity within the quarter in which the contract is completed.

27. (1) A Procurement Unit shall, where no responsive bids are received or any procurement proceeding is otherwise unsuccessful, investigate the failed procurement proceedings and prepare and submit a report to the approvals authority, who shall report the matter to the Authority within fourteen days of completing the investigations.

Unsuccessful
procurement
proceedings

(2) An investigation undertaken under subregulation (1) shall consider all relevant issues, including whether—

- (a) the bidding period was sufficient, considering the factors required to be taken into account in determining the minimum bidding periods as provided in these Regulations;
- (b) the requirements of the solicitation document and the terms and conditions of the proposed contract were reasonable and not so as to deter competition;
- (c) any invitation notice was published in an appropriate publication and on the required date;
- (d) any shortlist included sufficient bidders and whether the short listed bidders included provide the goods, works or services required;
- (e) there was any delay in supplying the solicitation documents;
- (f) any amendments or clarifications to the solicitation documents allowed sufficient time for bidders to take them into account in preparing their bids;
- (g) there are other extraneous events or circumstances which may have affected the ability of the bidders to respond;
- (h) the evaluation process was conducted in accordance with the Act, these Regulations and the solicitation document, and whether the staff responsible for the evaluation had adequate skills and resources;
- (i) there is any suspicion of collusion between potential bidders; or

(j) the original choice of procurement method was appropriate.

(3) A report prepared under subregulation (1) shall include the reasons why the procurement process was unsuccessful and recommendations on how any new procurement proceedings shall be managed to avoid failed procurement proceedings.

(4) The recommendations under subregulation (3) may include

(a) the use of an alternative method of procurement;

(b) amendments to the solicitation document, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;

(c) alternative publication of any invitation notice or revised shortlist; or

(d) the introduction of regional or international competition.

PART IV

PROCURING ENTITIES

Levels of
authority

28. (1) The level of authority for a Procurement Committee shall be determined by the Authority and as set out in the Third Schedule.

(2) The level of authority of a controlling officer or chief executive officer of a procuring entity shall be as set out in the Third Schedule.

(3) The level of authority of a subcommittee or subdivision of a Procurement Committee shall be specified by the Procurement Committee.

(4) The level of authority for any designated senior officer or office of a procuring entity shall be as specified by the controlling officer or chief executive officer, in writing.

Thresholds

29. (1) The thresholds for the use of each procurement method are as set out in the Second Schedule.

(2) The Authority shall, in reviewing and revising the thresholds referred to under subregulation (1), take into account all relevant factors, including the need to safeguard public funds, the need for efficiency in the procurement process and the capacity of procuring entities and approvals authorities.

Use of
standard
solicitation
documents

30. (1) A procuring entity shall use the standard solicitation documents issued by the Authority for a particular kind of procurement or where no such document has been issued to seek

approval from the Authority to use a solicitation document developed by that procuring entity until the Authority issues the standard solicitation document.

(2) The Authority shall ensure that a standard solicitation document is easily available to all procuring entities by posting the solicitation document on the Authority website or the e procurement portal.

(3) The Authority shall notify all procuring entities of any amendments to, or change of, any standard solicitation document thereof.

(4) An amendment to, or change of, a solicitation document that has not been notified to procuring entities shall not take effect until the notification has been given.

31. (1) An approvals authority shall review and authorise a procurement requirement of a procuring entity which has been submitted to the approvals authority.

Decision-making process for approvals authority

(2) An approvals authority shall consider each submission made to that approvals authority based on the information and supporting documents contained in the submission.

(3) An approvals authority shall make a decision regarding a procurement requirement submitted to that approvals authority, in writing, stating the following:

- (a) whether the submission is approved or rejected;
- (b) the reasons for the rejection, if that is the case; and
- (c) the conditions applicable to the approved submission.

(4) Where an approvals authority rejects a submission made to it under subregulation (3), the approvals authority shall not substitute the submission with its own decision.

(5) A Procurement Unit may re submit any submission rejected by an approvals authority after taking into account the reasons given for the rejection.

(6) An approvals authority may give a conditional approval to a submission where there is a minor issue to be resolved relating to the procurement.

(7) A decision made by an approvals authority shall be valid for a period of—

- (a) six months from the date of the approval, in the case of a local contract, which may be extended for a further period of three months, without changing the terms and conditions of the original contract; or

(b) six months from the date of the approval, in the case of an international contract, which may be extended for a further period of six months without changing the terms and conditions of the original contract.

Appointment
of
procurement
agent or
procurement
service
provider

Act No. 15
of 2003

32. (1) A procuring entity may, with the authorisation of the Authority, appoint an existing procuring entity as a procurement agent or procurement service provider under the following circumstances:

- (a) where a procurement is of a specialised nature;
- (b) the procuring entity does not have qualified personnel as required under the Zambia Institute of Purchasing and Supply Act, 2003;
- (c) the procuring entity is a newly established body; or
- (d) under other circumstances as determined by a procuring entity that the Authority considers appropriate.

(2) The Authority shall authorise the appointment of a proposed procurement agent or procurement service provider under subregulation (1) on a written request by a procuring entity which specifies—

- (a) the reasons for the appointment;
- (b) the name of the proposed procurement agent or procurement service provider;
- (c) the terms of reference for the appointment of a procurement agent or procurement service provider;
- (d) whether the appointment shall be for a single or multiple procurements;
- (e) the duration of the appointment;
- (f) consent from the proposed procurement agent or procurement service provider; and
- (g) any other relevant information that the Authority may determine.

(3) A procuring entity shall—

- (a) meet the cost of the services offered by the procuring agent or procurement service provider;
- (b) prepare the terms of reference for the procurement agent or procurement service provider;
- (c) be responsible for the actions and performance of the procurement agent or procurement service provider; and
- (d) only use a procuring entity authorised by the Authority.

(4) A procuring entity shall not contract out both the procurement and contract management functions to the same procurement agent or procurement service provider.

(5) The functions of the controlling officer or chief executive officer specified under section 26 of the Act shall not be contracted to a procurement agent or procurement service provider appointed under this regulation.

(6) A procuring entity shall submit a report to the Authority on the performance of the procurement agent or procurement service provider within fourteen days of the expiry of the appointment.

PART V

METHODS OF PROCUREMENT

33. (1) A procuring entity shall use one of the procurement method specified under section 37 of the Act in undertaking procurement activities.

Procurement
methods

(2) A procuring entity shall undertake public procurement under a selected method of procurement in accordance with the public procurement planning process, procurement process, contract award process and contract management process as specified under the Act and these Regulations.

(3) A procuring entity shall not use any alternative procurement method unless that method has been approved by the Authority prior to its use.

34. (1) A procuring entity shall select open national bidding or open international bidding in circumstances provided under section 39 of the Act.

Open
national
bidding or
open
international
bidding

(2) A foreign bidder who participates in the open international bidding under section 39(5) of the Act shall include the following information in the bid:

(a) the name of the citizen bidder that the foreign bidder shall partner with if awarded the contract;

(b) the documentation on the partnership arrangements between the foreign bidder and citizen supplier or bidder; and

(c) any other documentation stated in the solicitation document.

35. (1) A procuring entity shall select open national selection or open international selection in the circumstances specified under sections 40 and 41 of the Act.

Open
national
selection or
open
international
selection

(2) A foreign bidder who participates in open international selection under section 41(4) of the Act shall include the following information in the bid:

- (a) the name of the citizen bidder that the foreign bidder shall partner with if awarded the contract;
- (b) the documentation on the partnership arrangements between the foreign bidder and citizen bidder; and
- (c) any other documentation stated in the solicitation document.

Limited
bidding

36. (1) A procuring entity may, in addition to the circumstances provided under section 42(2) of the Act, use limited bidding for goods, works or non consulting services, where—

- (a) the requirement is of a specialised nature or relates to public safety or public security which makes open bidding inappropriate;
- (b) there is a need to achieve specific social objectives by calling for participation of local communities or target groups; or
- (c) open bidding has failed to secure an award of contract.

(2) The justification for limited bidding under subregulation (1) shall be disclosed in the record of the procurement proceedings.

(3) Except where bidders have already been pre-qualified, a procuring entity issuing a limited tender shall seek bids from a broad list of potential bidders with a view to assuring competitive prices.

Limited
selection

37. (1) A procuring entity may, in addition to the circumstances provided under section 43(2) of the Act, use limited selection for consulting services where—

- (a) the requirement is of a specialised nature or relates to public safety or public security which makes open selection inappropriate;
- (b) open selection has failed to secure an award of contract; or
- (c) there is need to achieve specific social objectives by calling for participation of local communities or target groups.

(2) The justification for the use of limited selection under subregulation (1) shall be specified in the record of the procurement proceedings.

Simplified
bidding

38. (1) A procuring entity may use simplified bidding where the estimated value of the goods, works or non consulting services does not exceed the threshold set out in the Second Schedule.

(2) A procuring entity may use simplified bidding for —

- (a) readily available off the shelf goods of low value;
- (b) low value goods whose specifications are standard; or
- (c) low value works or services.

39. A procuring entity may use simplified selection where the estimated value of the consulting services does not exceed the threshold set out in the Second Schedule. Simplified selection

40. A procuring entity may use direct bidding in the circumstances provided under section 46(2) of the Act and where the estimated value of the goods, works or non consulting services does not exceed the threshold set out in the Second Schedule. Direct bidding

41. A procuring entity may use direct selection in the circumstances provided under section 47(2) of the Act. Direct selection

42. (1) A procuring entity may use electronic reverse auction in the procurement of standard goods in the circumstances specified under section 48(2) of the Act. Electronic reverse auction

(2) The electronic reverse auction may be applied in the procurement of goods where the—

- (a) auction scope and the evaluation criteria for selection and award of a contract is clearly established and advertised;
- (b) value of items to be procured is substantially high to make the procurement commercially viable;
- (c) procuring entity verifies that all operational conditions are met for starting the auction, including connecting all participants to the e GP system and ensuring that conditions required for safe guarding anonymity are in place; or
- (d) auction is carefully monitored to avoid market manipulation.

(3) The electronic reverse auction method shall not be applied where a considerable evaluation process is required.

43. A procuring entity may ensure that the requirements in electronic reverse auction include the- Bidding requirements in reverse bidding auction

- (a) date and time of the auction;
- (b) conditions and rules for participation or valid bid reductions for electronic reverse auction;
- (c) information which shall be made available to bidders in the course of the electronic reverse auction and, where appropriate, when that information shall be made available to bidders; or

(d) any other relevant information relating to the electronic reverse auction process.

Advertising
in electronic
reverse
auction

44. (1) A procuring entity shall issue an invitation through the e-GP system to pre-qualified bidders informing the bidders of the date and time of the electronic reverse auction.

(2) A procuring entity shall advertise a notification of an electronic reverse auction on the appropriate section of the e-procurement portal.

(3) An advertisement made under subregulation (2) shall include all the specifications, terms and conditions for the proposed contract and a sample contract which shall be made available online with the advertisement.

(4) The advertisement period shall be from the date of publication of the electronic reverse auction on the e procurement portal.

Operation of
electronic
reverse
auction

45. (1) A procuring entity shall operate the electronic reverse auction according to the information specified in the invitation to the e-auction.

(2) A procuring entity shall ensure the identity of bidders is kept confidential during the phase of the electronic reverse auction.

(3) The e-GP system shall collect electronically and without human intervention, anonymous bids which shall be automatically ranked by the system.

(4) The e-GP system shall automatically inform bidders through email of the new ranking as the ranking shall occur, including the price in a way that bidders shall be able to ascertain the ranking at any given time.

(5) All invalid bids submitted shall be rejected with a message explaining the reasons for the rejection.

(6) A procuring entity shall not provide any additional information or clarification related to the electronic reverse auction that may distort competition, and where it is necessary to provide the additional information or clarification, the information shall be through the appropriate section of the e-GP system accessible to all bidders.

(7) A procuring entity shall close the electronic reverse auction at the time and date as published in the advertisement made under regulation 44.

(8) A procuring entity may extend the time for closure of the electronic reverse auction in accordance with these Regulations.

(9) Where the closure of the electronic reverse auction is extended under subregulation (8), the e GP system shall inform the bidders of the extension.

46. (1) A procuring entity shall post simultaneously all pre electronic reverse auction clarifications and amendments of the bidding documents, and pre electronic reverse auction meetings onto the appropriate section of the e procurement portal, and where possible email to potential bidders who previously expressed interest.

Correspondence, amendments and clarifications

(2) A procuring entity may hold online pre-electronic reverse auction meetings and online conferencing before an electronic reverse auction commences.

(3) A procuring entity shall track and record, for audit purposes, modifications to any of the procedures, operations, specifications or conditions on the electronic reverse auction.

(4) A procuring entity shall not make available electronic reverse auction meetings and clarifications, including online conferencing and chat facilities, when an electronic reverse auction is in progress.

(5) A procuring entity shall issue an addendum electronically and the information contained in the addendum shall be provided to all bidders at the same time.

(6) All clarifications and addenda to the solicitation document shall be binding on all bidders.

47. (1) An eligible bidder who is registered in accordance with these Regulations shall have access to electronic reverse auction process which shall be open, equal and unrestricted to all eligible bidders.

Access to electronic reverse auction process

(2) Where the suppliers are pre-qualified before the electronic reverse auction, the pre-qualification process shall be conducted online in the e-GP system or offline in accordance with the Act, these Regulations, circulars and instructions issued by the Authority.

(3) A procuring entity shall not use an electronic reverse auction where pre-qualification has reduced the number of bidders to a level that materially affects competition, and under no circumstances shall there be less than three independent bidders.

48. (1) A procuring entity shall award a contract under electronic reverse auction based on ranking of prices at the lowest price to the corresponding qualified bidder.

Contract award under electronic reverse auction

(2) A procuring entity shall, as soon as is practicable, publish a contract award from electronic reverse auction online in the appropriate section of e-GP system, and the name of the successful bidder and the awarded price.

(3) A procuring entity and a bidder shall not engage in any negotiation during or after the electronic reverse auction process is closed.

Progress,
monitoring
and control
of contract
awarded
under
electronic
reverse
auction

49. (1) A contract awarded under the electronic reverse auction shall be managed in accordance with Part XVI of these Regulations.

(2) The e-GP system shall provide a tracking mechanism for all contracts.

(3) A procuring entity shall, for the purposes of a contract awarded under the electronic reverse auction, appoint a contract manager who shall have responsibilities as provided in Part XVI of these Regulations.

(4) A contract manager appointed under subregulation (3) shall, where a contract needs to be amended by the e-GP system, notify the Procurement Unit through e notification to commence the process of amending the contract and the provisions of regulation 217 shall apply for the purposes of the amendment.

Certification
of goods

50. A procuring entity shall use standard forms generated from the e-GP system for purposes of accepting goods.

Force
account

51. (1) A procuring entity may use force account in the circumstances provided under section 50 of the Act.

(2) A procuring entity that uses force account shall ensure that the user department prepares a detailed proposal on the—

(a) scope of works or services;

(b) status of the project;

(c) justification for use of force account method, and where applicable, a statement that there is an emergency which requires prompt attention;

(d) list of materials and bills of quantities to be procured;

(e) whether the procuring entity has officers with relevant experience, qualifications and competencies to undertake the procurement;

(f) whether the procuring entity has the relevant equipment and machinery to undertake the procurement; and

(g) cost analysis of fees or rates.

(3) A user department shall submit a proposal made under subregulation (2) to the head of Procurement Unit for review which shall contain a recommendation to the controlling officer or chief executive officer to approve the proposal.

(4) A user department and Procurement Unit shall, where the controlling officer or chief executive officer approves the proposal, commence implementing force account in accordance with the Act and these Regulations.

(5) A procuring entity shall, for the purposes of force account, ensure that the procurement of the materials or services to be used as inputs is in accordance with the provisions of the Act and these Regulations.

52. (1) A procuring entity may involve a community to participate in the supply and delivery of goods, works and services in the circumstances specified under section 53 of the Act. Community participation

(2) A community may participate in the supply and delivery of goods, works and services in the following manner:

- (a) direct community participation; or
- (b) organised community participation through the appointment of community based service providers.

53. (1) A community that intends to participate in the supply and delivery of goods, works and services shall constitute a project management committee which consists of five part time members elected by the community. Establishment of project management committee

(2) The functions of the project management committee are to—

- (a) participate in the preparation, management and implementation of the project;
- (b) monitor the implementation of the project; and
- (c) report to the controlling officer of the procuring entity or any other designated representative.

54. A procuring entity that intends to use community participation as a method of procurement shall— Conditions for community participation

- (a) prepare a project proposal in line with its strategic plan which shall include—
 - (i) setting out the key result areas and the specific roles of the target community; and
 - (ii) the objectives, estimated budget and the target community beneficiaries; and
- (b) ensure that the project—
 - (i) is aligned to the procuring entity's mandate and strategic plan;
 - (ii) has positive social outcomes with the community as its main beneficiary;

(iii) requires community involvement, in whole or in part, for success and continued implementation; and

(iv) is included in the annual procurement plan for that procuring entity.

Procedure
for direct
community
participation

55. (1) A procuring entity that calls for direct community participation may—

(a) organise a meeting with the community in order to inform the community on the activity, the scope of the participation and the benefit of the project to the community;

(b) explain to the community the document containing obligations of both parties, the amount to be paid to the community, the period in which participants shall be paid, payment modalities and any other details relating to goods, works or services;

(c) establish a list of community members committed to participate in the procurement proceedings and each of the community members shall affix the signature or fingerprint to that list;

(d) identify a contact person for the procuring entity and require the community to elect or nominate a representative for purposes of communication and conducting other transaction processes between the procuring entity and the community;

(e) avail technical equipment needed for the execution of the community project, where applicable;

(g) in the supervision of works execution, use the procuring entity's public officers, and may hire a consultant to offer technical assistance to the community, where appropriate;

(h) require a participant to provide full identification and where applicable, the participants' bank account where the payment may be deposited; or

(i) engage a procurement agent or procurement service provider in accordance with regulation 32 to organise community participation, where the procuring entity is unable to do so.

(2) Where there is a change of representatives under subregulation (1)(d), each party shall communicate the change to the other party.

56. A procuring entity that calls for community participation shall appoint a project supervisor from within the procuring entity or a consultant where a procuring entity does not have the internal capacity to supervise the project. Appointment of project supervisor
57. (1) A procuring entity that intends to use the services of a community based service provider shall— Services of community-based service provider
- (a) use the appropriate method provided under the Act and these Regulations;
- (b) post the invitation for bids to use the services of a community based service provider in at least two conspicuous public places and on the notice board of the procuring entity, within the community project implementation area; and
- (c) ensure that the community based service provider—
- (i) is registered with a non governmental organisation, cooperative society or any other recognised association in the Republic;
- (ii) has an office or members who are residents, within the community where the community project is implemented;
- (iii) has a bank account opened in the name of that community based service provider or a mobile payment service provider account; and
- (d) has a physical address.
- (2) A procuring entity may use pre-determined rates approach in which a community service provider shall bid for the goods, works or services to determine the successful bidder, where the goods, works or services are simplified.
- (3) The community based service provider shall prepare a monthly report during project implementation and submit a final report to the procuring entity on completion of the project.
- (4) For purposes of this regulation—
- “community based service provider” means organised community members intending to act as a service provider or contractor for a project or its component and may include community service organisations, non governmental organisations, community based organisation or registered organised community groups.
58. (1) A procuring entity shall, where a project component under community participation requires the use of labour intensive technology— Use of labour intensive technology

- (a) prepare a detailed scope of work and specifications;
- (b) identify the categories of skills and equipment required; and
- (c) select individuals or a community based service provider that possess the required skills.

(2) A procuring entity shall appoint a contract manager to supervise the execution of the works under subregulation (1) in accordance with Part XVI of these Regulations.

PART VI

PROCUREMENT PLANNING

Annual
procurement
planning

59. (1) A Procurement Unit shall, in consultation with a user department, prepare a procurement plan for the procuring entity in Form III set out in the First Schedule to be submitted to the Authority by the end of the first month of each financial year, containing the information required under regulation 60.

(2) A procuring entity shall integrate its annual procurement planning with the budget processes and shall base the plan on the indicative or approved budget of the procuring entity, as appropriate.

(3) A procuring entity shall revise or update its procurement plan, as appropriate, after the approval of the budget for that financial year or during the course of each financial year.

(4) A procuring entity shall publish, in a daily newspaper of general circulation in the Republic or post on the procuring entity's website, e procurement portal and on the procuring entity's notice board, the following information relating to the procurement plan:

- (a) source of the funding; and
- (b) expected publication and execution dates.

Contents of
annual
procurement
plan

60. An annual procurement plan for each procuring entity shall include—

- (a) a detailed breakdown of the goods, works and services required, the procuring entity's priorities and an indication as to whether it shall be necessary to carry out a prior study for tenders of works;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common use items;

- (d) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding;
- (e) an indication of the rules applicable to the procurement, where any procurement is not subject to these Regulations;
- (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
- (g) an indication of whether the goods, works or services shall be procured by the Procurement Unit, any special agency designated to procure common use items or any other body;
- (h) an indication of the resources available for managing the procurement workload;
- (i) an indication whether there shall be local or regional preferences for certain types of tender;
- (j) a specification of whether there is a requirement for no objection for an award of contract;
- (k) a specification of planning schedules under which different processes for tendering shall be undertaken;
- (l) a specification of schedules for the execution of contracts; and
- (m) the details of any committed or planned procurement expenditure under existing multi-year contracts.

61. (1) A procuring entity shall aggregate procurement requirements, where appropriate, in order to achieve economies of scale.

Aggregation
of
requirements

(2) A Procurement Unit shall, in deciding where aggregation is appropriate, consider all relevant factors, including—

- (a) which items are of a similar nature and likely to attract the same bidders;
- (b) which items shall be ready for bidding at the same time and when delivery, implementation or completion is required;
- (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;

- (d) the need to apply any applicable measures to promote the participation of national suppliers or other target groups;
- (e) which items shall be subject to the same bidding requirements and conditions of contract; and
- (f) the potential to realise savings in time, transaction costs or facilitate contracts management by the procuring entity.

Division
into lots

62. (1) Despite regulation 61, a procuring entity may divide a procurement requirement, which can be procured as a single contract, into a package, consisting of several lots which are to be tendered together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.

(2) A procuring entity may divide a requirement into a package of separate lots where it is likely to increase the number of responsive bids by enabling the participation of—

- (a) bidders who are able to bid for some, and not all types of items; or
- (b) small suppliers who are not qualified to bid for the complete package as a single contract.

(3) A procuring entity shall not divide a requirement into lots—

- (a) for the sole purpose of avoiding thresholds or levels of authority;
- (b) where the award of several separate contracts shall create problems of compatibility or inter changeability between items purchased as separate lots;
- (c) where the award of several separate contracts shall invalidate or otherwise restrict any supplier's warranty or liability; or
- (d) where the award of several separate contracts shall increase the costs of servicing, maintenance or similar requirements.

(4) Where a procuring entity divides a requirement into lots, which may result in separate contracts, the selection of the procurement method shall be determined by the estimated total value of all the lots.

(5) Where a procuring entity divides a requirement which can be procured as a single contract into lots, the procuring entity shall—

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and

(b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

63. (1) A user department shall document all procurement requirements in a procurement requisition in Form IV set out in the First Schedule, which shall include—

Requisition
and
authorisation

- (a) a statement of requirements, in accordance with these Regulations, as appropriate;
- (b) the estimated value of the goods, works or services; and
- (c) details of the funds budgeted for the requirement, including any funds from future budgets for multi year contracts.

(2) A user department shall in —

- (a) preparing the statement of requirements, ensure that it seeks technical advice, where required; and
- (b) estimating the value of the goods, works or services, ensure that the estimate is realistic and based on up to date information on economic and market conditions.

(3) A requisition shall be approved by the controlling officer or chief executive officer or by an officer designated by the controlling officer or chief executive officer to perform the function of approving a requisition prior to the initiation of procurement proceedings.

(4) An approval of a requisition shall include confirmation of the—

- (a) need for the items listed and authority to proceed with the procurement; and
- (b) availability of funds for the procurement.

(5) A requisition approved under subregulation (3) shall be submitted to the Procurement Unit to initiate procurement proceedings.

64. (1) A user department shall ensure that adequate funds are budgeted prior to initiating procurement proceedings, taking into account all costs involved in the procurement.

Confirmation
of funds

(2) The costs involved may, in addition to the total contract price, include—

- (a) contingencies, including any anticipated contract variations, exchange rate fluctuations or allowance for price adjustment;

- (b) other costs relating to the successful delivery of a procurement requirement and for which the procuring entity shall be liable, which may include freight, insurance, customs clearance, inland delivery, import taxes or duties, inspection, installation or any costs relating to service or maintenance agreements;
- (c) costs relating to facilities, services or resources to be provided by the procuring entity, which may include office space or communication facilities for consultants or counterpart staff; or
- (d) the cost of any other related contract, which is necessary for the successful implementation of the procurement, which may include a contract for engineering supervision of a construction contract.

(3) A Procurement Unit shall ensure that adequate funds are available for managing the procurement proceedings, including any funds required for publication of notices.

(4) A procuring entity that intends to initiate procurement proceedings for a multi year contract which shall commit the procuring entity to make payments in subsequent financial years, shall ensure that funds for—

- (a) the current financial year are budgeted; and
- (b) future financial years are included in budgets for subsequent financial years.

Statement of requirements for goods

65. (1) A requisition for the procurement of goods shall be accompanied by a complete, precise and unambiguous description of the goods required, in the form of a statement of requirements.

(2) A statement of requirements under subregulation (1) shall include, where appropriate—

- (a) a list of the goods and the quantities required, incidental services or works, including delivery, installation, commissioning, maintenance, repair, user training or the provisions of after sales services;
- (b) a delivery and completion schedule;
- (c) specifications; and
- (d) drawings.

(3) The specifications under subregulation (2)(c) shall include, where appropriate—

- (a) the purpose and objectives of the goods;
- (b) a full description of the requirements;

- (c) a generic specification to an appropriate level of detail;
- (d) a functional description of goods, including any environmental or safety features;
- (e) the performance parameters, including outputs, time scales and any indicators or criteria by which satisfactory performance can be determined;
- (f) the process and material descriptions;
- (g) the dimensions, symbols, terminology language, packaging, marking and labeling requirements;
- (h) the inspection and testing requirements; and
- (i) any Zambian or other applicable standards.

66. (1) A statement of requirements for goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included and the description shall serve only as a benchmark during the evaluation process.

Use of
brand names

(2) Despite subregulation (1), where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is required for reasons of technical compatibility, servicing, maintenance or preservation of warranty, such description may be used, subject to written justification.

67. (1) A requisition for the procurement of works shall be accompanied by a complete, precise and unambiguous description of the works required, in the form of a statement of requirements.

Statement of
requirements
for works

(2) A statement of requirements under subregulation (1) shall include, where appropriate —

- (a) a description of the scope of the works, which may include design, construction or installation of equipment;
- (b) the purpose and objectives of the works;
- (c) the duration or completion schedule for the works;
- (d) details of the supervision requirements, working relationships and other administrative arrangements;
- (e) drawings or design requirements;
- (f) specifications and standards;
- (g) bill of quantities or its equivalent; and
- (h) inspection and testing requirements.

Statement of requirements for services

68. (1) A requisition for the procurement of services shall be accompanied by a complete, precise and unambiguous description of the services required in the form of a statement of requirements.

(2) A statement of requirements under subregulation (1) shall consist of terms of reference, which shall include, where appropriate —

- (a) a background narrative to the required services;
- (b) the objectives of the services and targets to be achieved;
- (c) a list of specific tasks or duties;
- (d) deliverables or outputs for the assignment;
- (e) the role, qualifications or experience required for any key staff;
- (f) management and reporting lines for the supplier, including administrative arrangements and reporting requirements;
- (g) any facilities, services or resources to be provided by the procuring entity;
- (h) inspection or quality testing requirements or indicators of successful performance; and
- (i) the duration or completion schedule.

Individual procurement plans

69. (1) A Procurement Unit shall, following receipt of an approved requisition, prepare a procurement plan for each individual procurement requirement.

(2) An individual procurement plan referred to under subregulation (1) shall include—

- (a) a description of the requirement, including the schedule required for delivery, implementation or completion of the goods, works or services and any division into lots;
- (b) the estimated value of the requirement and, where applicable, individual lots;
- (c) the proposed procurement method and a justification for the use of any method other than open bidding or open selection;
- (d) an indication of whether pre-qualification or post qualification shall be required, or whether the procurement requirement shall make use of any pre-qualification for a group of contracts;
- (e) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;

- (f) the proposed type of contract in accordance with these Regulations;
- (g) the rules applicable to the procurement, where any procurement is subject to alternative rules in accordance with the Act;
- (h) an indication of the resources required and available for management of the procurement process and contracts management; and
- (i) any other relevant information.

70. (1) A procuring entity shall select the most appropriate method of procurement for each requirement, as part of the procurement planning process.

Choice of
procurement
method

(2) The choice of procurement method shall take into account the—

- (a) estimated value of the procurement in accordance with the thresholds for that kind of procurement as specified in the Second Schedule;
- (b) potential sources for the procurement, in accordance with these Regulations;
- (c) nature of the goods, works or services required; and
- (d) circumstances surrounding the procurement, such as the existence of an emergency need.

(3) A procuring entity shall clearly state in the procurement record the reasons for the selection of a procurement method, except for open bidding or open selection.

(4) A procuring entity shall obtain the prior authorisation of the approvals authority, for the use of—

- (a) limited bidding or limited selection;
- (b) direct bidding, except where the method is used on grounds of low value, in accordance with these Regulations; or
- (c) direct selection.

71. (1) A Procurement Unit shall, in considering the potential sources for any procurement requirement, consider all relevant factors, including—

Potential
sources

- (a) the competitiveness of the national, regional or international market for the goods, works or services to ensure value for money is achieved with public funds;
- (b) the likely interest of national, regional or international bidders, given the size and nature of the requirement;

- (c) whether items should be purchased from the manufacturer or from a distributor or agent;
- (d) any restrictions relating to existing copyright, intellectual property rights, patent or proprietary rights;
- (e) whether there are functionally equivalent goods, works or services which may meet the needs of the procuring entity;
- (f) any applicable written laws or Regulations that restrict sources;
- (g) the need for compatibility or interchangeability with existing goods, works or services;
- (h) the requirements for servicing and maintenance of items purchased and any restrictions related to conditions of warranty;
- (i) any impact on conditions relating to warranty or a supplier's liability, if alternative suppliers are used for additional or continued work;
- (j) potential benefits such as the use of experience acquired or savings in mobilisation costs; and
- (k) any applicable regional or international agreements or obligations.

(2) A recommendation to use a limited number of suppliers or a single source as the criterion for determining the choice of procurement method shall include—

- (a) a comprehensive analysis of the market for the required goods, works or services;
- (b) full details of the relevant factors under subregulation (1);
- (c) a clear statement that no other sources can be used to open the requirement up to a more competitive procurement method; and
- (d) a justification for any part of the statement of requirements that restrict the number of potential sources.

Emergency
procurement

72. (1) An emergency situation shall include circumstances which are urgent, unforeseeable and not caused by the dilatory conduct of the procuring entity where—

- (a) the country is threatened by or confronted with a disaster, catastrophe, pandemic or war;
- (b) life, or the quality of life or environment may be seriously compromised;

- (c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain the actual value or usefulness; or
- (d) an investment project is seriously delayed for want of minor items.

(2) The general maintenance of equipment shall not be regarded as an emergency unless the conditions specified in subregulation (1) exist.

(3) A procuring entity may recommend to the controlling officer or chief executive officer to use an emergency situation as the criterion for determining the choice of procurement which shall include a comprehensive justification for its use and the reasons giving rise to the emergency situation.

(4) Where an emergency situation affects the choice of a procurement method, the procuring entity shall not automatically exclude competitive methods of procurement and shall obtain competition to the maximum extent practical in the circumstances.

(5) A procuring entity shall, where the procuring entity uses limited bidding, limited selection, direct bidding or direct selection on grounds of an emergency situation, limit the procurement to the quantity needed to deal with the emergency.

(6) The Procurement Unit shall, where a procuring entity conducts a procurement on the ground of an emergency need—

- (a) confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) notify the approvals authority;
- (c) develop a shortlist in the case of simplified and limited bidding or simplified and limited selection or identify a suitable bidder in the case of direct bidding or direct selection;
- (d) prepare an appropriate solicitation document containing a statement of requirements for the goods, works, or services required, and a statement of the proposed contract form and terms and conditions of contract;
- (e) issue a solicitation document to the bidder and obtain written bids;
- (f) proceed to evaluate in accordance with these Regulations;
- (g) negotiate with the best evaluated bidder if required, in accordance with these Regulations; and

(h) prepare a brief report, for submission to the approvals authority, which shall contain—

- (i) details of the requirement and the emergency circumstances;
- (ii) a summary of the action taken to invite, evaluate and negotiate; and
- (iii) a recommendation to award the contract or take other appropriate action.

(7) The chairperson of the Procurement Committee, or any other member designated by the chairperson may, in order to ensure that the emergency procurement proceeds promptly, give any prior authorisations, other than authorisation to award contract, unless alternative arrangements are agreed by the Procurement Committee.

(8) A Procurement Committee shall meet promptly to consider any contract award recommendation and where the Procurement Committee is unable to meet within a reasonable time, a majority of the members, may, in writing, authorise a contract award unless alternative arrangements are agreed by the Procurement Committee.

Selection of appropriate type of contract

73. A Procurement Unit shall select the appropriate type of contract from among the types specified in these Regulations as part of the procurement planning process, taking into account—

- (a) the nature, value and complexity of the procurement requirement;
- (b) the need to offer an equitable contract to bidders to ensure effective competition;
- (c) the need to maximise value for money and minimise risks for the procuring entity;
- (d) the likelihood of any delays or unforeseen circumstances requiring contract variations;
- (e) the procuring entity's ability to define its precise requirements, including the quantities or inputs and delivery or completion dates required;
- (f) the need for effective contracts management and cost control; and
- (g) the resources available for contract management.

Selection of bid submission methods

74. (1) A procuring entity shall select the most appropriate bid submission method for each requirement, as part of the procurement planning process.

(2) A bid submission method may be a —

- (a) one stage single envelope method, in which a bid, containing both technical and financial information, is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening;
- (b) one stage two envelope method, in which a bid is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial bids, which are opened on different dates in separate bid openings; or
- (c) two stage method, in which separate technical and financial bids are submitted on different dates.

(3) A selection of a bid submission method shall take into account the evaluation methodology to be used and the circumstances of the procurement requirement, in accordance with the following:

- (a) the one stage single envelope method shall be used where all stages of the evaluation are to be conducted together and a combined technical and financial evaluation report produced;
- (b) the one stage two envelope method shall be used where the technical evaluation is to be conducted without reference to financial information; and
- (c) the two stage method may be used—
 - (i) where alternative technical bids are possible and the procuring entity needs to evaluate the initial technical bids in order to determine a single technical standard with which all bidders are invited to conform by submitting revised technical bids and supplementary financial bids; or
 - (ii) for large and complex contracts, where technically unequal bids are likely and more than one equally acceptable technical solution is available to the procuring entity, which needs to ensure that all technical bids conform to the same technical standard before financial bids are prepared.

(4) A solicitation document shall state that bids shall be submitted in plain outer envelopes securely sealed in a manner that opening and resealing cannot be achieved undetected.

(5) A bidder may choose that bidder's preferred method of envelope sealing, but a procuring entity may reject, at the opening, any envelope that is unsealed.

(6) A solicitation document shall contain instructions on the details of labeling and references to be detailed on each envelope.

PART VII

BIDDING PROCESS FOR OPEN AND LIMITED BIDDING

Use of open
and limited
bidding
procedures

75. (1) A procuring entity shall comply with all relevant requirements of these Regulations, prior to initiating open or limited bidding procedures in accordance with this Part.

(2) A procuring entity shall use open national bidding as provided under section 39 of the Act.

(3) A procuring entity may, where a procuring entity uses open national bidding and there are no successful citizen bids, undertake a second procurement process.

(4) Where a procuring entity undertakes a second procurement process, participation shall be limited to local bidders and in the event that a local bidder is awarded a contract, the local bidder shall partner with a citizen supplier.

(5) A local bidder who participates in the procurement process under subregulation (3) shall include in the bid—

(a) the name of the citizen bidder that the local bidder shall partner with if awarded the contract;

(b) the documentation on the partnership arrangements between the local bidder and citizen supplier or bidder; and

(c) any other documentation stated in the solicitation document.

(6) The procedure for the second procurement process under subregulation (3) shall be in accordance with this Part.

(7) A procuring entity shall use open international bidding in circumstances referred to under section 39(4) of the Act.

Use of one
or two stage
bidding

76. (1) The procurement process described in this Part shall apply to the one stage single envelope bid submission method.

(2) Where a procuring entity uses the two stage bid submission method in accordance with these Regulations, it shall follow the procedures in this Part, subject to the following modifications:

(a) for the first stage of two stage tendering, the solicitation document shall call on bidders to submit initial bids without a bid price;

- (b) the solicitation document shall invite bids relating to the technical quality or other characteristics of the goods, works or services as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence and qualifications of the bidders;
- (c) the procuring entity shall, at the conclusion of the first stage, finalise technical or contractual terms in a revised solicitation document;
- (d) the revised solicitation document shall be sent to all bidders whose bids have not been rejected; and
- (e) for the second stage of two stage tendering, the procuring entity shall invite bidders to submit final bids with prices following the first stage and communicated to bidders in the revised solicitation document.

77. (1) A procuring entity may use pre-qualification under open bidding to obtain a shortlist of bidders who have been assessed to be capable of effectively performing the proposed contract, using prescribed qualification criteria in accordance with the Act and these Regulations.

Use of pre-qualification

- (2) Pre-qualification may be used where the—
 - (a) goods, works or services are highly complex, specialised or require detailed design or methodology;
 - (b) costs of preparing a detailed bid may discourage competition;
 - (c) evaluation is particularly detailed and the evaluation of a large number of bids may require excessive time and resources from a procuring entity; or
 - (d) bidding is for a group of contracts, in accordance with regulation 81.

78. (1) Where the procuring entity conducts pre-qualification in accordance with regulation 77, the procuring entity shall publish a pre-qualification notice, inviting all potential applicants to submit applications to pre-qualify.

Pre-qualification notices

- (2) Pre-qualification notices shall contain—
 - (a) the name, address and contact details of the procuring entity;
 - (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;

- (c) a statement of the key requirements and criteria to pre-qualify, including any restriction of eligibility to citizen or local bidders under open national bidding;
- (d) details of any margin of preference or reservation scheme which shall apply to the procurement;
- (e) instructions on obtaining the pre-qualification documents, including any price payable; and
- (f) instructions on the location and deadline for submission of applications to pre-qualify.

(3) The pre-qualification notice shall be published in accordance with these Regulations.

Pre-qualification documents

79. (1) A Procurement Unit shall promptly issue pre-qualification documents to an applicant who may request the pre-qualification documents and shall maintain a record of all applicants to whom documents are issued.

(2) A pre-qualification document shall contain all the information required by applicants to prepare and submit applications to pre-qualify and shall include—

- (a) the name, address and contact details of the procuring entity;
- (b) details of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) the qualification criteria;
- (d) instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from applicants;
- (e) instructions on the sealing, labeling and submission of applications to pre-qualify, including the location and deadline for submission; and
- (f) information on how applications shall be evaluated.

(3) A procuring entity shall allow a sufficient period of time to enable applicants to prepare and submit the applications to pre-qualify, which shall be—

- (a) two weeks, where the publication of a notice is national; or
- (b) three weeks where the publication of a notice is regional or international.

(4) A Procurement Unit shall, in determining the pre-qualification period, take into account the factors in regulation 86(4).

(5) A solicitation document shall state that a bidder may seek clarification of the solicitation document and shall state the final date after which that clarification may not be sought and that date shall allow adequate time for bidders, including foreign bidders, to receive and study the solicitation document.

80. (1) An application to pre-qualify received on time shall be evaluated by an evaluation committee appointed in accordance with regulation 97.

Evaluation
of applicants

(2) Evaluation shall be on a pass or fail basis against the criteria in the pre-qualification document.

(3) An evaluation committee shall prepare a record of its evaluation of applications, which shall clearly state which applicants the evaluation committee determines as qualified and the reasons for the disqualification of applicants.

(4) An evaluation committee shall submit the results of the pre-qualification, including the record of the evaluation of applications, to the approvals authority for authorisation.

(5) A procuring entity shall invite all pre-qualified applicants to submit applications to the procuring entity.

81. (1) Pre-qualification may be used to pre-qualify bidders for a group of similar contracts in order to avoid the need for repeated pre-qualification exercises or facilitate the preparation of shortlists.

Pre-
qualification
for group of
contracts

(2) Where pre-qualification is conducted for a group of contracts, the procedure for pre-qualification shall be in accordance with this Part, except that—

(a) the invitation notice to pre-qualify and the pre-qualification document shall state the time period covered by the pre-qualification and details of the estimated number, value and timing of contracts;

(b) a procuring entity shall not be obliged to invite all pre-qualified applicants to submit bids, where the estimated value of a contract is less than the threshold permitted under simplified bidding and shall ensure a rotation of pre-qualified applicants on successive shortlists;

(c) a limit on the number or total value of contract awards to an applicant may be made on the basis of the applicant's qualifications;

(d) the list of pre-qualified applicants shall be updated periodically; and

(e) pre-qualification information shall be verified prior to contract award.

- Inviting bids 82. A procuring entity shall invite bids—
- (a) in the case of open bidding, through the publication of a bid notice in accordance with regulation 83 where no pre-qualification has been conducted;
 - (b) in the case of open bidding, from the list of pre-qualified applicants where a pre-qualification has been conducted under regulation 79(2); and
 - (c) in the case of limited bidding, from a shortlist of bidders in accordance with regulation 84.
- Bid notices 83. (1) A bid notice published by a procuring entity under regulation 82 shall invite all potential bidders to submit bids.
- (2) A bid notice shall contain—
- (a) the name, address and contact details of the procuring entity;
 - (b) the nature of the procurement requirement, including the quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
 - (c) an indication of the procurement method being used;
 - (d) a statement of any key technical requirements, eligibility or qualification requirements and evaluation criteria, including the requirement for the—
 - (i) provision of local after sales services;
 - (ii) restriction of eligibility to citizen bidders under open national bidding; or
 - (iii) application of a margin of preference or a reservation scheme;
 - (iv) restriction of eligibility to local bidders where citizen bidders are not successful under an initial procurement process undertaken under open national bidding;
 - (e) instructions on obtaining the solicitation documents, including any price payable; and
 - (f) instructions on the location and deadline for submission of bids.
- (3) A bid notice shall be published and distributed in accordance with these Regulations.
- Shortlists for limited bidding 84. (1) Where a procuring entity invites bids from a shortlist of bidders under regulation 82(c), the shortlist shall include—
- (a) all potential bidders, where limited bidding is used on the grounds of a limited number of sources; or

- (b) at least three bidders, where limited bidding is on the grounds of an emergency situation.
- (2) A Procurement Unit may, in developing a shortlist for the purposes of subregulation (1), use —
- (a) supplier databases or lists maintained in accordance with the Act and these Regulations;
 - (b) lists of pre-qualified applicants;
 - (c) its own knowledge of the market; or
 - (d) any other appropriate source of information.
- (3) A procuring entity shall not include any bidder on a shortlist unless the bidder is expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.
- (4) A Procurement Unit shall record the names of the bidders included on a shortlist and the reasons for the inclusion, and the shortlist shall be kept as part of the procurement record.
- (5) A bidder included on a shortlist shall not have a controlling interest in the ownership of the other bidder's company who are on the shortlist.
- (6) A procuring entity that uses limited bidding on the grounds of a limited number of sources shall publish a notice, in accordance with these Regulations, which shall state—
- (a) the nature of the procurement requirement;
 - (b) that the procuring entity is using limited bidding on the grounds of a limited number of sources;
 - (c) the proposed shortlist of bidders; and
 - (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement, may contact the Procurement Unit of the procuring entity.
- (7) The approvals authority shall authorise the proposed shortlist prior to issue of the solicitation documents.

85. (1) A procuring entity shall, for the purposes of open and limited bidding, use the appropriate standard solicitation document issued by the Authority for drafting individual solicitation documents.

(2) A solicitation document shall provide bidders with all the information that the bidder may require in order to submit bids that are responsive to the needs of the procuring entity.

(3) A solicitation document shall include —

- (a) a clear statement of requirements for the goods, works or services required under regulations 65, 67 and 68;

Contents of
solicitation
document
for open and
limited
bidding

- (b) instructions on the preparation of bids, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- (c) a statement of whether alternative bids are permitted and any instructions relating to alternative bids;
- (d) instructions on the sealing, labelling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, clarifications, modification or substitution of bids;
- (e) the eligibility criteria and any documentation required as evidence of eligibility;
- (f) any qualification criteria and the procedure for post qualification or verification of pre-qualification information;
- (g) information on the methodology for the evaluation of bids, any evaluation criteria to be applied and the manner in which the criteria shall be applied;
- (h) any margin of preference or reservation to be applied;
- (i) information on the procedure for contract award, including the requirements for publication of notice of best evaluated bidder;
- (j) the type of contract to be awarded;
- (k) the terms and conditions of the proposed contract;
- (l) information on the suspension of bidders and the bidder's right to appeal;
- (m) information on the beneficial ownership of the bid; and
- (n) the methodology for calculating and applying any adjustment to the bid price.

(4) A procuring entity may, where appropriate, include additional evaluation criteria in the solicitation document, which shall be taken into account in determining the evaluated price of each bid.

Minimum
bidding
periods

86. (1) The bidding period shall start on the date of the first publication of the bid notice or issue of the solicitation document to all pre-qualified or short listed bidders and shall end on the date of the bid submission deadline.

(2) The minimum bidding period shall be—

- (a) four weeks for open national bidding;
- (b) six weeks for open international bidding;
- (c) four weeks for limited bidding where shortlisted bidders are only citizen or local bidders; or

(d) six weeks for limited bidding where short listed bidders include foreign bidders.

(3) Despite subregulation (2), where limited bidding is used on grounds of urgency, the minimum bidding period shall not apply.

(4) A Procurement Unit shall, in determining the appropriate bidding period for each requirement, take into account, in addition to the minimum bidding period—

(a) the time required for preparation of bids, considering the level of detail required and the complexity of bids;

(b) any need for bidders to submit authenticated legal documents or similar documents as part of the bids and the time required to obtain such documents;

(c) the location of shortlisted or potential bidders and the time required to obtain the solicitation document and to deliver and submit the bids to the procuring entity;

(d) the extent of anticipated sub contracting; and

(e) any restrictions relating to the time the goods, works or services are required.

87. (1) A procuring entity shall issue a solicitation document that is authorised by an approvals authority to—

(a) all bidders responding to a bid notice; or

(b) all bidders on the shortlist or list of pre-qualified bidders.

(2) A procuring entity that intends to issue a solicitation document to short listed or pre-qualified bidders shall issue that solicitation document to bidders at the same time.

(3) A Procurement Unit shall maintain a record of all bidders to whom the solicitation document is issued.

(4) A procuring entity may charge a non refundable fee for the solicitation document.

(5) Despite subregulation (4), a procuring entity may refund a bidder a fee paid for a solicitation document where the procurement process has been cancelled in accordance with these Regulations.

(6) A Procurement Unit shall, where a solicitation document is sold to the bidders—

(a) issue a signed receipt to the bidders and request the bidder to submit a copy of the receipt with the bid; and

(b) allow potential bidders to inspect the solicitation document.

Issue and
sale of
solicitation
documents

(7) A procuring entity shall remit forty percent of the non refundable fee referred to under subregulation (4) to the Authority after conclusion of the procurement process.

(8) Despite subregulation (7), a procuring entity shall not remit forty percent of the fees for a procurement process that has been cancelled.

Bid security
and bid
securing
declaration

88. (1) A procuring entity shall require a bid security or bid securing declaration for any procurement conducted using open and limited bidding in order to deter irresponsible bids and encourage bidders to fulfill the conditions of the bids.

(2) A bid securing declaration under subregulation (1) shall be in Form V set out in the First Schedule.

(3) A solicitation document shall state the requirement for a bid security for any procurement referred to under subregulation (1).

(4) The value of any required bid security shall be expressed as a fixed amount or as a percentage and the amount shall not be less than two percent of the estimated value of the contract.

(5) A Procurement Unit shall, in determining the amount of bid security required, take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders failing to fulfill the conditions of the bid, and the amount shall be sufficiently high to deter irresponsible bids, and not so high as to discourage competition.

(6) A solicitation document shall state that a bid security shall be—

(a) in accordance with the format and wording provided in the solicitation document;

(b) in a form acceptable to the procuring entity, which may be—

(i) manager's or certified cheque or payable order;

(ii) an insurance bond or bank guarantee; or

(iii) an equivalent instrument, including a stand by letter of credit;

(c) from an institution acceptable to the procuring entity in the case of instruments issued by financial institutions; and

(d) valid for the period specified in the solicitation document, which shall normally be twenty eight days beyond the expiry of the bid validity period.

(7) The conditions for forfeiture of a bid security or bid securing declaration shall be specified in the solicitation document.

(8) A Procurement Unit shall release the bid security promptly to unsuccessful bidders on expiry of the term of the bid security or on entering into a contract with the successful bidder and on receipt of any required performance security from the successful bidder, whichever is earlier.

(9) A Procurement Unit shall not release a bid security of a successful bidder until it receives the required performance security.

(10) A procuring entity may accept a bid securing declaration as an alternative to a bid security, if such a requirement is specified in the solicitation document.

(11) A citizen or citizen group shall complete a bid securing declaration in Form V set out in the First Schedule as specified under section 63(5) of the Act.

89. (1) A Procurement Unit shall, where a request for clarification is received from a bidder, promptly provide a clarification in writing and that clarification shall be copied to all bidders and shall include a description of the inquiry, without identifying the source.

Clarification
and
amendment
of
solicitation
documents

(2) A procuring entity may, in accordance with the solicitation document, either at its own initiative or in response to a request for clarification from a bidder, amend the solicitation document by issuing an addendum, in writing, to all bidders at the same time.

(3) A procuring entity shall number all addenda sequentially.

(4) A clarification and addendum to the solicitation document is binding on all bidders.

90. A procuring entity may, in order to give bidders reasonable time to take into account a clarification or addendum in preparing the bids, extend the deadline for the submission of bids, through the issuance of an addendum.

Extension of
bidding
period

91. (1) A procuring entity shall state in the solicitation document that bidders may withdraw, substitute or modify the bids at any time prior to the deadline for submission of bids, without forfeiting any bid security.

Withdrawal,
substitution
or
modification
of bids

(2) A solicitation document shall state the procedures to be followed for withdrawal, substitution or modification of bids.

92. (1) A procuring entity shall not permit alternative bids, except where specifically indicated in the solicitation document.

Alternative
bids

- (2) A procuring entity may permit alternative bids—
- (a) where it is anticipated that bidders may be able to offer goods, works or services which do not conform precisely to the statement of requirements, and which meet the objectives of the procurement in an alternative manner;
 - (b) in areas of rapidly changing technology; or
 - (c) where a procurement need can be satisfied in a number of different ways and the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.

(3) A procuring entity shall, where alternative bids are permitted under subregulation (2), state in the solicitation document that the alternative bids do not need to conform precisely to the statement of requirements, but shall—

- (a) meet the objectives or performance requirements specified in the statement of requirements;
- (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the solicitation document; and
- (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the statement of requirements, in terms of technical performance, price, operating costs or any other benefit.

(4) A procuring entity shall evaluate an alternative bid in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements specified in the statement of requirements.

Pre-bid
conferences
and site
visits

93. (1) A procuring entity may organise a—

- (a) pre bid conference in order to brief bidders or to offer the opportunity for the bidders to seek clarifications; or
- (b) site visit, to enable bidders to gain access to the site for delivery of any proposed works or services.

(2) A solicitation document and, where possible, the invitation to bid notice issued by a procuring entity, shall for the purposes of subregulation (1) state the details of the pre bid conference or site visit, including the date, time and location.

(3) Despite subregulation (2), a procuring entity may issue a request for a pre bid conference or site visit as an addendum.

(4) A procuring entity shall ensure that the date of any pre bid conference or site visit is sufficiently early in the bidding period to enable bidders to take the information into account in preparing the bids, but that date shall not be so early as to make the attendance difficult for any bidder.

(5) A Procurement Unit shall prepare minutes of a pre bid conference and promptly send the minutes to all bidders to whom the solicitation document had been issued.

(6) The minutes of a pre bid conference shall include—

(a) all information provided as part of any briefing;

(b) the details of any clarification requested, without identifying the source of the inquiry; and

(c) the details of responses provided to any clarification.

(7) A Procurement Unit shall, after a pre bid conference or site visit, where required, issue clarifications or amend the solicitation document in accordance with regulation 89.

94. (1) A Procurement Unit shall make arrangements for the receipt and safe keeping of bids until the deadline for submission of bids, which shall be by use of a bid box in which bidders are responsible for depositing the bids directly and which shall remain locked until the time for bid opening.

Receipts of
bids

(2) A Procurement Unit shall, where a bid is too large for a bid box or samples are required to be submitted separately, receive the bid or samples and issue a signed receipt showing the precise date and time of receipt and keep the bid or samples in a secure location until the time for bid opening.

(3) A Procurement Unit shall maintain a record of all bids and samples received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt.

(4) A Procurement Unit shall receive bids electronically or by other means which do not permit signed and sealed bids in accordance with the Act and these Regulations.

(5) A procuring entity shall not be held liable for the loss or delay in delivery of a bid delivered by mail or courier.

(6) A Procurement Unit shall ensure all bidders have access to the bid box during working hours prior to the deadline.

(7) A procuring entity shall not disclose the number or identity of bids received, prior to bid opening.

Bid closing

95. (1) A Procurement Unit shall ensure that bidding is closed at the precise date and time of the deadline for submission of bids stated in the solicitation document and no further bid is placed in the bid box or received in any other way.

(2) A Procurement Unit shall assign suitable and experienced staff to manage the bid closing.

(3) A Procurement Unit shall not accept any bid that is received after the date and time of the deadline for submission of bids, and shall declare the bid late.

(4) A Procurement Unit shall ensure that a late bid is labeled as late, stating the date and time of actual receipt and shall return that bid unopened to the bidder.

(5) A Procurement Unit shall leave any late bid which is not labeled with the bidder's name unopened for seven days after which the unopened envelope shall be destroyed.

(6) Despite subregulation (5), where a bid is submitted using a two envelope system, the Procurement Unit may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes, except that the inner envelopes shall not be opened and shall be returned unopened to the bidder or left unopened for seven days and thereafter destroyed.

(7) A Procurement Unit shall ensure that, immediately after the bid closing, the bids received are taken to the location for bid opening.

(8) A Procurement Unit shall keep a record of the details of all the bids that are received late.

Public opening of bids

96. (1) A Procurement Unit shall open, in public, all bids received on time at the date, time and location indicated in the solicitation document.

(2) The time for bid opening shall be the same as, or immediately after, the time of the deadline for submission of bids.

(3) A Procurement Unit shall manage the opening of bids.

(4) A bid shall be opened on a working day other than a public holiday, or the day following a public holiday.

(5) A Procurement Unit shall permit bidders or the bidders' representatives, to attend the opening of bids.

(6) A Procurement Unit shall first open envelopes marked "withdrawal" and the corresponding bids shall be located and returned unopened to the bidders.

(7) A Procurement Unit shall open all other envelopes, including substitutions, modifications and alternative bids and the details indicated in the solicitation document read out, which shall include—

- (a) the name of the bidder;
- (b) the presence or absence of a bid security or bid securing declaration, if one is required; and
- (c) the total price of the bid, including the currency and amount and any discounts offered, except where the opening is of technical bids only.

(8) A person presiding at the bid opening shall stamp all bids opened on key pages, which shall include at least the priced and signed pages.

(9) A Procurement Unit shall not accept, reject or evaluate any bid in any manner at the bid opening, except late bids, but shall note any discrepancies or missing documents in the record of bid opening.

(10) A Procurement Unit shall make a record of the bid opening, which shall be kept as part of the procurement record and the record shall include the details read out in accordance with subregulation (7) and the names of all staff and bidders' representatives who attended the bid opening.

(11) A Procurement Unit shall request all bidders' representatives attending the bid opening to sign the record and the absence of any signature shall not invalidate the record.

(12) A Procurement Unit shall immediately take all opened bids to a secure location, where the opened bids shall be kept until the evaluation begins.

97. (1) A controlling officer or chief executive officer shall establish an evaluation committee for each procurement requirement.

Evaluation
committee

(2) The functions of an evaluation committee are to—

- (a) evaluate bids in accordance with the Act, these Regulations and solicitation document; and
- (b) prepare an evaluation report for submission to the approvals authority.

(3) The number and level of members of an evaluation committee shall depend on the value and complexity of the procurement requirement and shall not be less than three members.

(4) The members of an evaluation committee shall have the skills, knowledge and experience relevant to the procurement requirement, which may include—

- (a) the technical skills relevant to the procurement requirement;

- (b) end-user representation;
- (c) procurement and contracting skills;
- (d) financial management or analysis skills; and
- (e) legal expertise.

(5) A member of a Procurement Committee shall not be a member of an evaluation committee.

(6) The restriction in subregulation (5) shall not apply to the head of the Procurement Unit.

(7) Where a person is appointed as a member of an evaluation committee and that person, or that person's relative has, or intends to acquire, a direct or indirect personal interest in any matter submitted to the evaluation committee for consideration and decision, that person shall—

- (a) disclose that interest to the controlling officer, chief executive officer or the evaluation committee; and
- (b) not take part in any consideration or discussion of, or vote on, the matter in question.

(8) A disclosure of interest made under subregulation (7) shall be recorded in the record of the procurement proceedings.

(9) The evaluation committee shall commence the evaluation of bids within five working days of opening the tender.

(10) An evaluation committee shall, within twenty one days of the commencement of an evaluation, submit an evaluation report and recommendations to the approvals authority or report to the approvals authority the anticipated completion date of the evaluation report.

Details of
evaluation
methodology
and criteria

98. (1) The methodology for the evaluation of bids shall consist of —

- (a) a comparison of each bid to the technical requirements of the statement of requirements on a pass or fail basis, to determine whether the bids are substantially responsive;
- (b) the determination of the bid with the lowest evaluated price; and
- (c) a merit point system using numerical weights to determine the best evaluated bidder, where applicable.

(2) Despite subregulation (1), the Authority may approve the use of an alternative evaluation methodology for specialised procurement requirements, in which case the methodology for conducting the technical and financial evaluations specified in these Regulations shall be modified as required.

(3) The evaluation criteria shall be related to the performance, characteristics or terms and conditions of a bid, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service, operating or maintenance costs or the productivity of equipment.

(4) An evaluation criteria shall be designed to measure the advantage or disadvantage of a factor to the procuring entity.

(5) An advantage or disadvantage referred to in subregulation (4) shall be quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only.

99. (1) A procuring entity's determination of a bid's responsiveness shall be based on the contents of the bid itself, subject to any clarifications received as specified under regulation 89.

Assessing
responsiveness
of bids

(2) A substantially responsive bid shall be one that conforms to all the instructions, requirements, terms and conditions of the solicitation document, without material deviation, reservation or omission.

(3) A material deviation, reservation or omission shall be one that—

- (a) affects, in any substantial way, the scope, quality or performance of the goods, works or services specified in the solicitation document;
- (b) may limit, in any substantial way, the procuring entity's rights or the bidder's obligations under any resulting contract or may be inconsistent with the solicitation document; or
- (c) if corrected, may unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

(4) An evaluation committee shall reject a bid which contains a material deviation, reservation or omission, and is therefore not subsequently responsive, and that bid shall not be subsequently made responsive by the bidder or the procuring entity.

(5) The classification of a deviation, reservation or omission as material or non material shall be determined by the objectives and requirements of the individual procurement requirement, as stated in the solicitation document, and shall take into account the impact on key factors, including cost, risk, time and quality.

(6) A material deviation, reservation or omission under this regulation may include—

- (a) unacceptable time schedules, where it is stated in the solicitation document that time is of the essence;

- (b) unacceptable alternative technical details, which includes the design, materials, workmanship, specifications, standards or methodologies; and
- (c) unacceptable key contract terms and conditions, including payment terms, price adjustment, liquidated damages, sub contracting or warranty.

(7) The classification of deviations, reservations and omissions as material or non material, by a procuring entity shall be consistently applied to all bids.

Correction
of non
conformities,
errors and
omissions

100. (1) An evaluation committee may, where a bid is substantially responsive, waive, clarify or correct any non conformity, error or omission which does not constitute a material deviation.

(2) An evaluation committee shall quantify a non conformity, error or omission in monetary terms to the extent possible and take it into account in the financial evaluation and comparison of bids.

(3) An evaluation committee may correct arithmetical errors in bids in accordance with the following procedure:

- (a) where there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity and frequency, the unit rate shall prevail and the total price shall be corrected;
- (b) where there is an error in the total price corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total price shall be corrected; and
- (c) where there is a discrepancy between the rates in figures and in words, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error in which case the amount in figures shall prevail subject to paragraphs (a) and (b).

(4) An evaluation committee shall notify bidders of any arithmetical corrections and request them to agree, in writing, to the correction and any bidder who does not accept the correction of an arithmetical error shall be rejected and their bid security may be forfeited.

Clarification
of bids

101. (1) An evaluation committee may seek clarification on a bid from the bidder.

(2) A request for clarification on a bid under subregulation (1) and clarification given shall be in writing.

(3) A request for clarification on a bid shall not seek, and the bidder shall not be permitted, to—

- (a) amend that bidder's price, except to accept the correction of arithmetic errors;
- (b) change the substance of the bid; or
- (c) substantially alter anything which is a deciding factor in the evaluation.

(4) A bidder shall provide clarification on a bid to the evaluation committee, in writing, within two days of a request for the clarification.

(5) A failure by a bidder to reply to a request for clarification from the evaluation committee may result in the rejection of the bid.

(6) Any clarification received on a bid which is not in response to a request from the evaluation committee shall not be taken into account by the evaluation committee.

102. (1) An evaluation committee shall conduct a preliminary examination to determine whether bids are complete and responsive to the basic instructions and requirements of the solicitation document.

Preliminary
examination

(2) A preliminary examination shall determine whether—

- (a) the bid has been submitted in the correct format;
- (b) a required bid security or bid securing declaration has been submitted in the correct form and amount and is valid for the required period;
- (c) the bid has been submitted without material reservations or deviations from the terms and conditions of the solicitation document;
- (d) the bid has been correctly signed and authorised;
- (e) the bid is valid for the required period;
- (f) all key documents and information required have been submitted;
- (g) any required samples have been submitted;
- (h) bidders are eligible, where this has not been determined before inviting bids; and
- (i) the bid meets any other key requirement of the solicitation document.

(3) An evaluation committee shall, where it considers any deviation to be a material deviation, reject the bid and that bid shall not be subject to a technical evaluation, except that deviations which are considered to be non material shall not result in the rejection of the bid.

Technical
evaluation

103. (1) An evaluation committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the statement of requirements in the solicitation document, to determine whether the bids are substantially responsive.

(2) An evaluation committee shall, in a technical evaluation, take into account factors indicated in the solicitation document which include—

- (a) conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
- (b) satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
- (c) suitable staffing or arrangements for supervision or management of an assignment.

(3) An evaluation committee shall not take into account any requirement which was not included in the solicitation document.

(4) A material deviation shall result in rejection of the bid and that bid shall not be subject to financial evaluation and comparison.

(5) A non material deviation may be corrected in accordance with regulation 100 or clarified in accordance with regulation 101.

Commercial
evaluation.

104. (1) An evaluation committee shall conduct a commercial evaluation by comparing each bid to the commercial requirements in the solicitation document, to determine whether the bids are substantially responsive.

(2) An evaluation committee shall, in a commercial evaluation, take into account factors indicated in the solicitation document which include—

- (a) conformity to proposed currency;
- (b) applicable set of commercial or trade rules which specifies the responsibility of a procuring entity and a bidder;
- (c) payment methods and terms;
- (b) delivery periods and schedules; or
- (d) warranty.

(3) An evaluation committee shall not take into account any requirement which was not included in the solicitation document.

(4) A material deviation shall result in rejection of the bid and that bid shall not be subject to financial evaluation and comparison.

(5) A non material deviation may be corrected in accordance with regulation 100 or clarified in accordance with regulation 101.

105. (1) An evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each bid and determine the lowest priced bid, which is substantially responsive to the requirements of the solicitation document.

Financial
evaluation
and
comparison

(2) An evaluation committee shall determine the evaluated price for each bid by—

- (a) taking the bid price as read out at the bid opening;
- (b) correcting any arithmetic errors in accordance with the methodology stated in the solicitation document;
- (c) applying any non conditional discounts offered in the bid;
- (d) making adjustments for any non material, non conformity error or omission;
- (e) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the solicitation document; and
- (f) applying any margin of preference indicated in the solicitation document.

(3) An evaluation committee shall compare the bids by ranking the bids according to the evaluated price and determining the bid with the lowest evaluated price, which shall be the best evaluated bid.

(4) An evaluation committee shall, where the solicitation document included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, conduct a further financial evaluation to determine the lowest evaluated combination of bids.

(5) An evaluation committee may, where the best evaluated bid is below the market price range issued by the Authority in accordance with regulation 11(5), reject the bid if the evaluation committee has—

- (a) requested for a written explanation of the bid or of those parts which the procuring entity considers may contribute to the bid being below the market price range;
- (b) taken account of the information provided in response to a request in writing; and
- (c) determined that the written explanation from the bidder is not satisfactory.

(6) A request for a written explanation in subregulation 5(a) may include—

- (a) the economics of the method of construction, the manufacturing process or the services provided;

- (b) the technical solutions suggested by the bidder or the exceptionally favourable conditions available to the bidder for the execution of the work or works, for the supply of goods or for the provision of the services;
- (c) the originality of the work, works, goods or services proposed by the bidder; or
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed.

(7) An evaluation committee may, where the best evaluated bid is above the available budget, conduct negotiations as specified in section 68 of the Act.

Application
of discounts

106. (1) An evaluation committee may permit bidders to offer discounts to the bids only if the discount is included in the bid and read out at the bid opening.

(2) An evaluation committee shall not take into account any discount offered by a bidder after the deadline for submission of bids.

(3) An evaluation committee shall take into account any non conditional discount in the financial evaluation and comparison of bids as specified in regulation 105(2).

(4) An evaluation committee may permit bidders to offer discounts, which are conditional on the award of one or more lots.

(5) An evaluation committee shall take into account any conditional discounts in a further financial evaluation as specified in regulation 105(4).

(6) Any prompt payment discount included in a bid shall become a term of the contract, if that bid is accepted, and shall be utilised by the procuring entity, if payment is made in accordance with the terms of the discount, except that any prompt payment discount shall not be considered in the evaluation and comparison of bids, unless that discount is taken into account through the application of any additional evaluation criteria.

Post
qualification

107. (1) A procuring entity may, if indicated in the solicitation document, conduct a post qualification of the bidder, who submitted the best evaluated bid, to determine whether the bidder is qualified to perform the contract effectively.

(2) The criteria for post qualification shall be as set out in the solicitation document and these Regulations.

(3) A procuring entity shall, where it determines under subregulation (1) that a bidder is not qualified, reject the bid and conduct a post qualification on the bidder who submitted the next lowest evaluated responsive bid.

(4) A procuring entity shall, where a pre-qualification has been conducted, verify the information by the bidder who submitted the best evaluated responsive bid and if the bidder no longer meets the qualification criteria, the bidder shall be rejected and the qualifications of the next bidder verified.

108. (1) An evaluation committee shall prepare an evaluation report for submission to the approvals authority.

Evaluation
report and
recommend-
ations

(2) An evaluation report shall be signed by all members of the evaluation committee before submission to the approvals authority.

(3) An evaluation report shall include—

- (a) a summary of the bids received and opened;
- (b) the results of the preliminary examination;
- (d) reasons for declaring the bids non responsive;
- (e) details of any non material deviations, which were accepted and the way in which the non-material deviations were quantified and taken into account in the financial evaluation;
- (f) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- (g) the ranking of the bids, according to the total evaluated price;
- (h) a statement of the best evaluated bid, for each lot where applicable;
- (i) a summary of the application of any conditional discounts and the best evaluated combination of bids, where applicable;
- (j) the results of any post qualification; and
- (k) a recommendation to award the contract or contracts to the best evaluated bid or combination of bids or other appropriate recommendation, such as any requirement for negotiations or the cancellation of the procurement process.

(4) The approvals authority shall approve an evaluation report and recommendations before proceeding with contract award, in accordance with the Act and these Regulations, or any other action, including negotiations or cancellation of the procurement process.

Scope of negotiations for open and limited bidding

109. (1) A Procurement Unit may, after obtaining the approval of the approvals authority, hold negotiations only with the best evaluated bidder.

(2) Despite subregulation (1), a procuring entity may conduct negotiations under the circumstances specified in section 68(4) of the Act.

(3) Negotiations under this regulation may relate to —

- (a) minor amendments to the special conditions of contract;
- (b) minor changes to the delivery, completion or installation schedule to accommodate any changes required by the procuring entity;
- (c) minor alterations to the technical details of the statement of requirements;
- (d) reduction of quantities for budgetary reasons;
- (e) minor amendments to finalise the payment arrangements;
- (f) clarifying details that were not apparent or not finalised at the time of bidding; or
- (g) price, where the circumstances in subregulation (2) arise or if the price of the bid has not been taken into account in the evaluation methodology.

(4) Negotiations shall not be conducted to—

- (a) substantially change the technical quality or details of the bid, including the scope of the responsibilities of the bidder;
- (b) materially alter the terms and conditions of the proposed contract; or
- (c) reduce prices or unit rates, except as specified under section 68(4) of the Act or where changes are required to reflect any agreed changes to the technical specification.

(5) A procuring entity may, where there is a tie in the lowest evaluated price by two or more bidders or in the highest combined score points, request the bidders with tied bids to submit revised bid prices.

Procedure for negotiations for open and limited bidding

110. (1) A procuring entity shall not conduct negotiations until after the evaluation report has been approved by the approvals authority.

(2) A procuring entity shall hold negotiations with the bidder recommended for contract award, except where negotiations fail, a procuring entity shall hold negotiations with the next ranked bidder where the Procurement Unit obtains the prior authorisation of the approvals authority to commence negotiations with the next ranked bidder.

(3) A Procurement Unit shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.

(4) A controlling officer or chief executive officer shall appoint a minimum of two members of staff of a procuring entity to conduct negotiations and the members of staff appointed shall not commit the procuring entity to any proposed arrangement or agreements, and shall seek the prior authorisation of the approvals authority, before confirming any agreement reached.

(5) A procuring entity shall ensure that at least one of the members of staff appointed under subregulation (4) to conduct negotiations, is a member of the evaluation committee.

(6) The members of staff of the procuring entity that conduct the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the bidder's written agreement that the minutes are a true and accurate record of the negotiations held.

PART VIII

BIDDING PROCESS FOR OPEN AND LIMITED SELECTION FOR CONSULTING SERVICES

111. (1) A procuring entity shall comply with the requirements of these Regulations prior to initiating the open or limited selection procedures in accordance with this Part.

Use of open
and limited
selection
procedures

(2) A procuring entity shall use open national selection as specified under section 41(1) of the Act.

(3) A procuring entity may, where a procuring entity uses open national selection and there are no successful citizen bids, undertake a second procurement process.

(4) A procuring entity that undertakes a second procurement process under subregulation (3) shall limit participation to local bidders and comply with the provisions of this Part.

(5) A procuring entity shall use open international selection in the circumstances specified under section 41(2) of the Act.

Selection of
bidders

112. (1) A procuring entity shall select bidders for the purposes of this Part in accordance with section 61 of the Act.

(2) A procuring entity may, for the purposes of the selection of bidders specified under section 61(c) of the Act, invite requests for proposals from bidders depending on the nature of the consulting services without inviting expressions of interest.

(3) Where a procuring entity directly invites request for proposals from bidders under subregulation (2), the appropriate procedures in this Part shall apply.

Notices
inviting
expression
of interest

113. (1) A procuring entity shall publish a notice requesting expressions of interest inviting all potential applicants to submit expressions of interest.

(2) A notice requesting expressions of interest referred to under subregulation (1) shall contain—

- (a) the name, address and contact details of the procuring entity;
- (b) details of the scope of the assignment;
- (c) a statement of any restriction of eligibility to citizen or local bidders under open national selection;
- (d) in the case of open international selection, a requirement that a foreign bidder should partner with a citizen bidder;
- (e) a statement of the key criteria for short listing, which shall relate to the applicant's experience, qualifications, personnel and any other factor related to the ability to successfully perform the assignment;
- (f) details of any margin of preference or reservation scheme to be applied;
- (g) details of the information to be included in the expressions of interest, including any information or documentation required to verify the applicant's eligibility or qualifications; and
- (h) the date, time and address for submission and any special instructions on sealing, marking or submission of expressions of interest.

(3) A notice requesting expressions of interest under subregulation (1) shall be published and distributed in accordance with these Regulations.

(4) A notice seeking expressions of interest under subregulation (1) shall be published at least two weeks before the deadline for submission.

(5) A Procurement Unit shall close and open all expressions of interest received on the date, time and location indicated in the solicitation document.

114. (1) An evaluation committee shall evaluate all expressions of interest against the criteria stated in the notice requesting expressions of interest, in order to develop a shortlist of bidders who are expected to be able to meet the procuring entity's requirements.

Evaluation of expression of interest and development of short lists

(2) A procuring entity shall, where the number of suitable bidders is greater than the number of bidders to be included on the shortlist, include on the short list the applicants who best meet the procuring entity's requirements.

(3) A shortlist shall include sufficient bidders to ensure effective competition, which shall be between four and six bidders, where possible.

(4) A procuring entity shall not include a bidder on the shortlist unless that bidder is expected to fully satisfy the procuring entity's requirements, including the requirements related to eligibility, qualifications, capacity, resources and experience.

(5) A bidder included on a shortlist shall not have a controlling interest in the ownership of the other bidders' companies who are on the shortlist.

(6) An approvals authority shall authorise the results of the evaluation of the expressions of interest and the proposed shortlist before issuing the solicitation document.

(7) A procuring entity shall maintain a record of the evaluation of expressions of interest.

115. (1) A procuring entity may develop a shortlist, without seeking expressions of interest, and that shortlist shall include—

Shortlists for limited selection

- (a) all potential bidders, where limited selection is used on the grounds of a limited number of sources; or
- (b) at least three bidders, where limited selection is used on the grounds of an emergency situation.

(2) A Procurement Unit may, in developing a shortlist under subregulation (1), use —

- (a) supplier databases or lists maintained by the Authority in accordance with these Regulations;
- (b) its own knowledge of the market; or
- (c) any other appropriate sources of information.

(3) A shortlist shall comply with the provisions of regulation 114.

(4) Where a procuring entity uses limited selection on the grounds of a limited number of sources, that procuring entity shall publish a notice, in accordance with these Regulations, which shall state—

- (a) the nature of the procurement requirement;
- (b) that the procuring entity is using limited selection on the grounds of a limited number of sources;
- (c) the proposed shortlist of bidders; and
- (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement may contact the Procurement Unit of the procuring entity.

(5) A proposed shortlist shall be authorised by the approvals authority before the issue of the solicitation documents.

Contents of solicitation document for open and limited selection for consultancy

116. (1) A procuring entity shall, for the purposes of consulting services, use the appropriate standard solicitation document issued by the Authority for drafting individual solicitation documents.

(2) A solicitation document under subregulation (1) shall include—

- (a) information necessary to enable bidders to participate in the procurement proceedings and submit proposals that are responsive to the needs of the procuring entity;
- (b) a clear statement of requirements for the services required;
- (c) instructions on the preparation of technical and financial proposals, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- (d) instructions on the sealing, labelling and submission of proposals, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of proposals;

- (e) information relating to eligibility to bid, including restrictions relating to conflict of interest and any restriction of eligibility to citizen or local bidders under open national selection;
- (f) information on the selection method, the evaluation criteria and points to be applied, and any minimum technical score required;
- (g) any margin of preference or reservation to be applied;
- (h) information on the procedure for contract award, including the requirement for publication of a notice of best evaluated bidder;
- (i) the type of contract to be awarded;
- (j) the terms and conditions of the proposed contract;
- (k) information on the suspension of a bidder and the bidder's right to appeal under the Act and these Regulations; and
- (l) information on the beneficial ownership of the bidder.

117. (1) A procuring entity shall select the most appropriate selection method for consulting services and shall state the evaluation methodology in the solicitation document.

Choice of
selection
method

- (2) The selection method may be any of the following:—
- (a) quality and cost based selection, which takes into account both the quality and the cost of proposals and selects the proposal which offers the optimum balance of quality and cost;
 - (b) quality based selection, which focuses on quality and selects the highest quality proposal;
 - (c) fixed budget selection, which selects the highest quality proposal, which is within the procuring entity's pre disclosed budget;
 - (d) least cost selection, which selects the lowest priced proposal, which meets the procuring entity's technical requirements;
 - (e) selection based on the consultant's qualifications, which establishes a shortlist and selects the firm with the appropriate qualifications and references; or

- (f) selection based on individual consultant's qualifications which establishes a shortlist and selects the consultant with the appropriate qualifications and experience.
- (3) Subject to subregulations (4), (5) and (6), quality and cost based selection shall be the preferred selection method.
- (4) A procuring entity may use quality based selection for—
- (a) highly specialised assignments, where it is difficult to define precise terms of reference and inputs and bidders are expected to demonstrate innovation in their bids;
 - (b) assignments which shall have a high downstream impact and the procuring entity wishes to contract the best consultant; or
 - (c) assignments that can be carried out in substantially different ways and where the value of the services depends on their quality.
- (5) A procuring entity may use fixed budget selection for assignments which are simple and can be precisely defined and where the budget is fixed.
- (6) A procuring entity may use least cost selection for assignments of a standard or routine nature, where well established practices and standards exist.
- (7) A procuring entity may use a selection method under subregulation (2)(e) for small assignments.
- (8) A procuring entity may use a selection method under subregulation (2)(f) where an individual consultant is employed on assignments for which—
- (a) teams of personnel are not required;
 - (b) no additional professional support is required; and
 - (c) the experience and qualifications of the individual are the paramount requirements.
- (9) Permanent staff or associates of a consulting firm may be available as individual consultants for purposes of subregulation (2)(f).

Selection based on consultant's qualifications

118. (1) A consulting firm may be engaged for assignments for which the need for issuing a request for proposals, and preparing and evaluating competitive proposals, is not justified.
- (2) A procuring entity that intends to engage a consulting firm as specified in subregulation (1) shall —

- (a) prepare the terms of reference;
- (b) obtain expressions of interest that include information on the experience and qualifications of consulting firms; and
- (c) evaluate the expressions of interest and select a firm with the best qualifications.

(3) A procuring entity shall request a consultant to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract.

119. (1) A solicitation document for consulting services shall require bidders to submit separately sealed technical and financial proposals, both sealed in an outer envelope.

Submission
of proposals

(2) Despite subregulation (1), where the selection method is—

- (a) quality based selection, the solicitation document may require bidders to submit a technical proposal only, with a financial proposal to be submitted at a later date by the bidder with the highest technical score only; and
- (b) based on consultant's qualifications, the firm with the best qualifications and references shall be selected to submit the technical and financial proposals.

(3) The minimum bidding period for the purposes of consulting services shall be as follows:

- (a) four weeks for open national selection;
- (b) six weeks for open international selection;
- (c) four weeks for limited selection where shortlisted bidders are only citizen or local bidders; and
- (d) six weeks for limited selection where short listed bidders include foreign bidders.

(4) Despite subregulation (3), the minimum bidding period shall not apply where limited selection is used on the ground of urgency.

120. (1) A solicitation document for consulting services shall state the evaluation criteria to be applied during the technical evaluation.

Evaluation
criteria

(2) The evaluation criteria shall be designed to assess the ability of bidders to—

- (a) perform the assignment, through assessment of their experience, methodology or personnel; or
- (b) meet objectives of the assignment, such as the transfer of knowledge or involvement of national consultants in the assignment.

(3) Each evaluation criterion shall be allocated a maximum number of points and the total for all criteria shall equal one hundred.

(4) The number of points allocated to each evaluation criterion shall be directly related to its importance to the procurement, except that the points allocated to experience may be limited, where experience has already been taken into account in the development of the shortlist.

(5) A solicitation document may include sub criteria to provide further guidance on the allocation of points under each main evaluation criterion.

(6) Where appropriate, a proportion of points may be allocated to the performance of bidders, or the key staff, in interviews.

Issue of
solicitation
document

121. (1) A solicitation document for consulting services shall be approved by the approvals authority, before its issue.

(2) A Procurement Unit shall issue a solicitation document under subregulation (1) to all shortlisted bidders at the same time and shall maintain a record of the issue of the documents.

Clarification
and
amendment
of
solicitation
document

122. (1) A solicitation document for consulting services shall state that a bidder may seek clarification of the solicitation document and shall state the final date after which such clarification may not be sought.

(2) A Procurement Unit that receives a request for clarification from a bidder shall provide the clarification within the period specified in the solicitation document, which shall be copied to all bidders and shall include a description of the inquiry but without identifying the source.

(3) A procuring entity may, at any time prior to the deadline for submission of proposals, either at its own initiative or in response to a request for clarification from a bidder, amend the solicitation document by issuing an addendum, in writing, to all bidders at the same time.

(4) A procuring entity shall number all addenda sequentially.

(5) All clarifications and addenda to a solicitation document shall be binding on all bidders.

Extension
of bidding
period

123. A procuring entity may extend the deadline for the submission of proposals, through the issue of an addendum, in order to give bidders reasonable time to take into account a clarification or addendum referred to in regulation 122.

Receipt of
proposals

124. (1) A Procurement Unit shall make arrangements for the receipt and safe keeping of proposals up until the deadline for submission of proposals, which shall normally be by use of a bid box, in which bidders are responsible for depositing their proposals directly and which shall remain locked until the time for proposal opening.

(2) A Procurement Unit shall, where any proposal is too large for the bid box, receive the proposal and issue a signed receipt showing the precise date and time of receipt and keep the proposal in a secure location until the time for proposal opening.

(3) A Procurement Unit shall maintain a record of all proposals received under subregulation (2), indicating the name of each bidder, the date and time of receipt, and the name of the person responsible for receipt.

(4) A Procurement Unit shall receive a proposal electronically or by other means which do not permit signed and sealed proposals in accordance with the Act and these Regulations.

(5) A procuring entity shall not be held liable for the loss or delay in delivery of any proposal delivered by mail or courier.

(6) A Procurement Unit shall ensure that bidders have access to the bid box during working hours prior to the deadline.

(7) A procuring entity shall not disclose the number or identity of proposals received prior to the proposal opening.

125. (1) A Procurement Unit shall ensure that bidding is closed at the precise time and date of the submission deadline and that no further proposals are placed in the bid box or received in any other way.

Deadline for
submission
of proposals

(2) A Procurement Unit shall not accept any proposal received after the deadline for the submission of proposals but shall declare the proposal late, label it as such and return it to the bidder unopened.

(3) Despite subregulation (2), a Procurement Unit may open the outer envelope of the proposal, for the purpose of identifying the name and address of the bidder on the inner envelope, except that the inner envelope shall not be opened, but shall be returned unopened to the bidder or left unopened for seven days and thereafter destroyed.

(4) A Procurement Unit shall, after the deadline for submission of proposals, ensure that all proposals are kept securely and taken immediately to the location for the proposal opening.

126. (1) A Procurement Unit shall open, in public, all proposals received on time, at the date, time and location indicated in the solicitation document.

Opening of
technical
proposals

(2) The time for proposal opening shall be the same as, or immediately after, the time of the deadline for submission of proposals.

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- (3) A Procurement Unit shall manage the opening of proposals on a day other than a public holiday or the day following a public holiday.
- (4) A Procurement Unit shall permit all bidders, or their representatives, to attend the opening and details of the proposal opening shall be recorded.
- (5) A Procurement Unit shall first open any envelope marked “withdrawn” and shall locate the corresponding proposals and return the envelopes unopened to the bidder.
- (6) A Procurement Unit shall open the outer envelopes of all other envelopes, including substitutions and modifications, and open the technical proposal.
- (7) The details indicated in the technical proposal shall be read out as provided in the solicitation document, and shall include—
- (a) the name of the bidder; and
 - (b) whether or not a separately sealed financial proposal has been submitted, if required.
- (8) A Procurement Unit shall stamp all the technical proposals that have been opened on key pages, which shall include at least the signed pages.
- (9) A Procurement Unit shall not accept, reject or evaluate a proposal in any way at the proposal opening, except for late proposals.
- (10) A Procurement Unit shall note any discrepancies or missing documents in the record of the proposal.
- (11) A Procurement Unit shall make a record of the proposal opening, which shall be kept as part of the procurement record which shall include, at least, the details read out in accordance with subregulation (7) and the names of all staff and the representatives of the bidders who attended the opening.
- (12) A Procurement Unit shall request all the representatives of the bidders that attend a proposal opening to sign the record referred to under subregulation (11), except that the absence of any signature shall not invalidate the record.
- (13) A Procurement Unit shall take the technical proposals to a secure location, where they shall be kept until the evaluation begins, and any financial proposals shall be kept unopened in a secure location, until the time for opening of the financial proposals.

127. (1) A controlling officer or chief executive officer shall establish an evaluation committee in the manner specified under regulation 97, for the purposes of an evaluation for consulting services.

Responsibility
of evaluation
committee
for
consulting
services

(2) An evaluation committee established under subregulation (1), shall be responsible for the evaluation of proposals in accordance with the Act, these Regulations and the solicitation document and shall prepare the technical and financial evaluation reports for submission to the approvals authority.

(3) The evaluation of bids shall commence within five working days of opening technical proposals.

(4) An evaluation committee shall, within twenty one days of the commencement of a technical or financial evaluation, submit a technical or financial evaluation report and recommendations to the approvals authority or report to the approvals authority the anticipated completion date of the technical or financial evaluation.

128. (1) An evaluation committee shall conduct a preliminary examination to determine whether proposals are complete and responsive to the basic instructions and requirements of the solicitation document.

Preliminary
examination

(2) An evaluation committee shall, during a preliminary examination, determine whether—

- (a) the proposal has been submitted in the correct format;
- (b) the proposal has been submitted without material reservations or deviations from the terms and conditions of the solicitation document;
- (c) the proposal has been correctly signed and authorised;
- (d) a separately sealed financial proposal has been submitted, if required;
- (e) the proposal is valid for at least the period required;
- (f) the curriculum vitae have been correctly signed, if required;
- (g) all key documents and information have been submitted; and
- (h) the proposal meets any other key requirements of the solicitation document.

(3) An evaluation committee shall reject any proposal which has any material deviations and shall not subject the proposal to a technical evaluation.

(4) A preliminary examination shall determine whether the bidders are eligible, where this has not been determined before inviting proposals.

Scoring of proposals for technical evaluation

129. (1) An evaluation committee shall, prior to commencing the technical evaluation, discuss the evaluation criteria in order to ensure that all members have a common understanding of the criteria and their relative importance.

(2) Each member of the evaluation committee shall independently conduct a technical evaluation of each proposal, awarding scores against each criterion, which scores shall be recorded and the score sheets signed by the member.

(3) An evaluation committee shall ensure that scores from each member of the evaluation committee are compiled and an average score for each proposal is calculated from the individual scores awarded by members of the evaluation committee.

(4) An evaluation committee shall consider any significant deviations from the average score or inconsistencies in scoring and may require the members to justify the scores awarded.

(5) Where a member of an evaluation committee has misunderstood a proposal or the criteria or has evaluated a proposal in an inconsistent manner, that member may be permitted to adjust the scores but shall not make adjustments to scores without justification.

(6) Where a member of an evaluation committee adjusts any score, as provided under subregulation (5), the evaluation committee shall keep the original score sheet as part of the record of the evaluation, and shall record the adjusted scores on a new score sheet and the reasons for making the adjustments.

(7) For evaluation purposes, the average score for each proposal shall be the total technical score for that proposal.

Technical evaluation for quality and cost-based selection, fixed-budget selection and least-cost selection

130. (1) An evaluation committee shall, for the purposes of a selection method under regulation 117(2) (a), (c) and (d), compare the total technical score of each proposal to the minimum technical qualifying mark stated in the solicitation document, and any proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.

(2) An evaluation committee shall recommend all proposals with a score equal to or higher than the minimum technical qualifying mark for financial evaluation.

(3) An evaluation committee shall prepare a technical evaluation report, which shall include—

- (a) the minutes of the opening of technical proposals;
- (b) the results of the preliminary examination, with reasons why any proposals were rejected;
- (c) the technical scores awarded by each evaluator for each proposal;
- (d) a summary of the relative strengths and weaknesses of each proposal;
- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to the scores;
- (f) the total technical score for each proposal;
- (g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to open the financial proposals of the bidders; and
- (h) a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.

(4) An evaluation committee shall submit a technical evaluation report to the approvals authority for prior authorisation, before proceeding with the opening and evaluation of financial proposals or the rejection of any proposals.

131. (1) An evaluation committee shall, for the purposes of a selection method under regulation 117 (2) (b), compare the total technical scores of all the proposals and recommend the proposal with the highest total technical score for financial evaluation.

Technical evaluation for quality-based selection

(2) An evaluation committee shall prepare a technical evaluation report which shall include—

- (a) the minutes of the opening of technical proposals;
- (b) the results of the preliminary examination, with reasons why any proposals were rejected;
- (c) the technical scores awarded by each evaluator for each proposal;
- (d) a summary of the relative strengths and weaknesses of each proposal;

- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (f) the total technical score for each proposal;
- (g) a recommendation to—
 - (i) open the financial proposal of the bidder with the highest technical score, where both the technical and financial proposals were requested from the bidder; or
 - (ii) request the bidder with the highest technical score to submit a financial proposal, where only the technical proposal was requested; and
- (h) a recommendation to reject the other technical and financial proposals, except the technical and financial proposal of the bidder with the highest technical score.

(3) An evaluation committee shall submit the technical evaluation report referred to under subregulation (2) to the approvals authority for prior authorisation, before proceeding with the opening and evaluation of the financial proposal or the rejection of other proposals.

Notification
of results of
technical
evaluation

132. (1) A Procurement Unit shall, following the authorisation of the technical evaluation report by the approvals authority, notify the bidder or bidders whose proposals shall be proceeding to the financial evaluation of the date and time set for the opening of financial proposals.

(2) The opening date to be notified under subregulation (1) shall not be sooner than two weeks after the notification date, where foreign bidders are included, or one week, where all bidders are national.

(3) Despite subregulation (1), a Procurement Unit shall, in the case of quality based selection where only technical proposals have been submitted, notify the bidder who achieved the highest technical score and shall request the bidder to submit a financial proposal.

Financial
opening

133. (1) A Procurement Unit shall open the recommended financial proposal or proposals at the time, date and location notified to bidders.

(2) A Procurement Unit shall permit the representatives of the bidders to attend and witness the opening.

(3) A Procurement Unit shall stamp the key pages of the financial proposals and shall read out and record the following information:—

- (a) the name of the bidder;
- (b) the bidder's total technical score; and
- (c) the total bid price.

(4) A Procurement Unit shall take the opened financial proposals, immediately, to a secure location, where they shall be kept until the financial evaluation begins.

(5) A Procurement Unit shall maintain a record of the financial proposal opening, which shall form part of the procurement record.

(6) A Procurement Unit shall request all the representatives of the bidders attending the financial proposal opening to sign the record, but the absence of any signature shall not invalidate the record.

134. (1) An evaluation committee shall, for purposes of the selection method under regulation 117(2) (a), determine the evaluated price of each proposal by—

- (a) correcting any arithmetic errors in the proposal;
- (b) determining whether financial proposals are complete and have determined the cost of all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
- (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the solicitation document.

Financial
evaluation
for quality
and cost
based
selection

(2) An evaluation committee shall—

- (a) give the lowest priced proposal a financial score of one hundred and other proposals shall be given a financial score which is inversely proportional to the lowest evaluated price, using the methodology stated in the solicitation document;
- (b) weigh the technical and financial scores of each proposal using the weights stated in the solicitation document; and
- (c) add together the weighted technical and financial scores to give a total score for each proposal.

(3) An evaluation committee shall rank the proposal with the highest total score as the best evaluated bid and recommend for the award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a financial evaluation report for quality and cost-based selection, which shall include—

- (a) the minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
- (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
- (c) the financial score of each proposal and the methodology used for allocating financial scores;
- (d) the weighting of the technical and financial scores;
- (e) the total score for each proposal;
- (f) a recommendation to award the contract to the bidder obtaining the highest total score, subject to any negotiations required; and
- (g) the currency and price of the proposed contract, subject to any changes following negotiations.

(5) An evaluation committee shall submit a financial evaluation report to the approvals authority for prior authorisation, before proceeding with the negotiations, where required, or the award of the contract.

Financial
evaluation
for quality
based
selection

135. (1) An evaluation committee shall, for the purposes of a selection method under regulation 117(2) (b), correct any arithmetic errors and determine whether the financial proposal is complete and has determined the cost for all corresponding inputs in the technical proposal and offers value for money.

(2) A financial proposal with the highest technical score shall be the best evaluated bid and the evaluation committee shall recommend the bidder for the award of contract, subject to any negotiations required.

(3) An evaluation committee shall prepare a financial evaluation report for quality-based selection, which shall include—

- (a) the minutes of the opening of the financial proposal, including the technical score and proposal price read out;

- (b) any corrections to arithmetic errors and a statement of whether the proposal is complete;
- (c) a recommendation to award the contract to the bidder, subject to any negotiations required; and
- (d) the currency and price of the proposed contract, subject to any changes following negotiations.

(4) An evaluation committee shall submit the financial evaluation report to the approvals authority for prior authorisation, before proceeding with any negotiations, where required, or the award of contract.

136. (1) An evaluation committee shall, for the purposes of a selection method under regulation 117(2) (c), determine the evaluated price of each financial proposal by—

Financial
evaluation
for fixed-
budget
selection

- (a) correcting any arithmetic errors in the proposal;
- (b) determining whether the financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
- (c) converting all the proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the solicitation document.

(2) An evaluation committee shall compare the evaluated price of the financial proposals to the budget indicated in the solicitation document and reject any proposal which exceeds the budget, and shall rank all proposals which are within the budget according to their technical score.

(3) An evaluation committee shall rank the financial proposal with the highest technical score, which is within the budget, as the best evaluated bid and recommend for award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a financial evaluation report for fixed-budget selection, which shall include—

- (a) the minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
- (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;

- (c) a statement of any proposals which exceeded the budget and were rejected;
- (d) the technical score of each proposal within the budget;
- (e) a recommendation to award the contract to the bidder obtaining the highest technical score, which is within the budget, subject to any negotiations required; and
- (f) the currency and price of the proposed contract, subject to any changes following negotiations.

(5) An evaluation committee shall submit the financial evaluation report prepared under subregulation (4) to the approvals authority for prior authorisation, before proceeding with any negotiations required or award of contract.

Financial
evaluation
for least-cost
selection

137. (1) An evaluation committee shall, for the purposes of a selection method under regulation 117(2) (d), determine the evaluated price of each proposal by—

- (a) correcting any arithmetic errors in the proposal;
- (b) determining whether the financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
- (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the solicitation document.

(2) An evaluation committee shall rank the proposals according to their evaluated price.

(3) An evaluation committee shall rank the financial proposal with the lowest evaluated price as the best evaluated bid and recommend for award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a financial evaluation report for least-cost selection, which shall include the following—

- (a) the minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
- (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;

- (c) a recommendation to award the contract to the bidder with the lowest evaluated price, subject to any negotiations required; and
- (d) the currency and price of the proposed contract, subject to any changes following negotiations.

(5) An evaluation committee shall submit the financial evaluation report prepared under subregulation (4) to the approvals authority for prior authorisation, before proceeding with any negotiations required or award of contract.

138. (1) A procuring entity shall select an individual consultant on the basis of—

Evaluation for selection based on individual consultant's qualifications

- (a) qualifications for the assignments;
- (b) comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the procuring entity; and
- (c) capacity based on academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and organisation.

(2) A procuring entity may select an individual consultant on a direct selection basis with due justification in exceptional cases where—

- (a) a task is a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
- (b) assignments are of a total duration of less than six months;
- (c) there is an emergency situation resulting from natural disasters; and
- (d) the individual is the only consultant qualified for the assignment.

(3) An evaluation committee shall prepare a combined technical and financial evaluation report, which shall include—

- (a) the minutes of the opening of the combined technical and financial proposal;
- (b) the results of the preliminary examination;

- (c) the results of the combined technical and financial evaluation;
- (d) a summary of the relative strengths and weaknesses of the proposal; and
- (e) a recommendation for an award of contract to an individual consultant who meets the minimum qualifications and the criteria in the solicitation document, subject to any negotiations required.

(4) An evaluation committee shall submit the combined technical and financial evaluation report under subregulation (1) to the approvals authority for authorisation.

139. (1) A procuring entity shall conduct negotiations for consultancy services where there is—

- (a) minor alteration to the terms of reference, methodology and staffing;
- (b) minor amendment to the special conditions of contract;
- (c) a mobilisation arrangement, the work plan and completion schedule; or
- (d) an input required from the procuring entity.

(2) A procuring entity shall not conduct negotiations for consultancy services which—

- (a) substantially change the technical quality or details of the proposal, including the tasks or responsibilities of the bidder;—
- (b) materially alter the terms and conditions of contract; or
- (c) reduces fee rates or reimbursable costs, except where changes are required to reflect any agreed changes to the technical proposal.

(3) Despite subregulation (2), where an evaluation is conducted using quality based selection, negotiations may relate to the total proposal price and its constituent costs, to obtain value for money.

140. (1) A procuring entity shall not conduct negotiations for consultancy service until after the financial evaluation report has been approved by the approvals authority.

(2) A procuring entity shall only conduct negotiations with the bidder recommended for the contract award.

(3) The Procurement Unit shall, where negotiations fail with the bidder recommended for the contract award under subsection

(2), obtain the prior authorisation of the approvals authority to conduct negotiations with the next ranked bidder.

(4) A Procurement Unit shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved, and the parameters for negotiation.

(5) A controlling officer or chief executive officer shall appoint a minimum of two members of staff of a procuring entity to conduct negotiations for consultancy services and the members of staff appointed shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the prior authorisation of the approvals authority, before confirming any agreement reached.

(6) A procuring entity shall ensure that at least one of the members of staff appointed under subregulation (5) to conduct negotiations, is a member of the evaluation committee.

(7) Members of staff of the procuring entity that conduct the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the bidder's written agreement that the minutes are a true and accurate record of the negotiations held.

PART IX

BIDDING PROCESS FOR SIMPLIFIED BIDDING

141. A procuring entity shall comply with the requirements of these Regulations prior to initiating simplified bidding procedures in accordance with this Part.

Use of
simplified
bidding
procedures

142. (1) A Procurement Unit shall, for the purposes of simplified bidding, prepare a written request for quotations using the appropriate standard document issued by the Authority.

Contents of
request for
quotations
for
simplified
bidding

(2) A request for quotations under subregulation (1) shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit quotations that are responsive to the needs of the procuring entity.

(3) A request for quotations shall include—

- (a) instructions on the conduct of the procurement process, including the preparation and submission of quotations and information on the evaluation of quotations and award of the contract;

- (b) instructions on any documents required with the quotation;
- (c) a statement of requirements for the goods, works or services required;
- (d) information on the methodology and criteria for the evaluation of quotations;
- (e) a statement on the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
- (f) the terms and conditions of contract which shall apply;
- (g) information on the suspension of bidders and the bidder's right to appeal under the Act and these Regulations; and
- (h) information on the beneficial ownership of the bidder.

143. (1) A Procurement Unit shall, for the purposes of simplified bidding, request for written quotations from a shortlist of not less than three bidders.

(2) Despite subregulation (1), a shortlist may consist of less than three bidders, where less than three suitable sources exist.

(3) A Procurement Unit shall maintain a record of bidders to whom the request for quotations was issued and the reasons for their inclusion, and where a shortlist consists of less than three bidders, the record shall include the reasons thereof.

(4) A Procurement Unit may, in developing a shortlist of bidders, use—

- (a) supplier databases or lists maintained in accordance with these Regulations;
- (b) lists of pre-qualified applicants; or
- (c) its own knowledge of the market;
- (d) any other appropriate sources of information.

(5) A Procurement Unit shall, in developing a shortlist of bidders, comply with the following rules:

- (a) a fair and equal opportunity shall be afforded to all potential bidders and there shall be a rotation of different bidders on successive shortlists; and
- (b) the shortlist shall not include any bidders who are not expected to fully satisfy any eligibility and qualification requirements.

144. (1) A request for quotations under regulation 143 shall specify the—

Submission and receipt of quotations

- (a) method of submission permitted, which may include submission by—
 - (i) postal or courier service;
 - (ii) facsimile;
 - (iii) electronic mail; or
 - (iv) any other form which leaves a record of the quotation; and
- (b) location, date and time for submission of quotations.

(2) A Procurement Unit shall reject any quotation received after the deadline for submission.

(3) A Procurement Unit shall keep securely all quotations received until after the deadline for submission of quotations.

(4) A Procurement Unit shall, where quotations are received in an unsealed form before the submission deadline, keep the contents of the quotation confidential and not reveal the content to any person, other than the officer responsible for receiving the quotation.

145. (1) A Procurement Unit shall, for the purposes of simplified bidding, evaluate the quotations received, and may seek technical assistance from the user department, where necessary.

Evaluation of quotations for simplified bidding

(2) Despite subregulation (1), a Procurement Unit may, where a procurement is complex, recommend to the controlling officer or chief executive officer to appoint an evaluation committee.

(3) A controlling officer or chief executive officer shall, where there is a recommendation under subregulation (2), appoint an evaluation committee as provided in these Regulations.

(4) A Procurement Unit shall conduct an evaluation of quotations received under subregulation (1) in accordance with these Regulations and the following:

- (a) alternative quotations shall not be permitted except where it was provided for in the request for quotations;
- (b) quotations from different bidders with the same beneficial ownership shall be disqualified;

- (c) the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria;
- (d) where the best evaluated bid is below the market price range, the procedure in regulation 105(5) and (6) shall apply; and
- (e) where the best evaluated bid is above the available budget, negotiations may be conducted in accordance with these Regulations.

(5) A Procurement Unit shall recommend for award of contract the quotation with the lowest evaluated price that is substantially responsive to the requirements of the procuring entity.

PART X

BIDDING PROCESS FOR SIMPLIFIED BIDDING SELECTION

Use of
simplified
bidding
procedures

146. A procuring entity shall comply with the requirements of these Regulations prior to initiating simplified selection procedures in accordance with this Part.

Contents of
request for
proposals
for
simplified
selection

147. (1) A Procurement Unit shall, for the purposes of simplified selection, prepare a written request for proposals using the appropriate standard document issued by the Authority.

(2) A request for proposals under subregulation (1) shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity.

(3) A request for proposals shall include—

- (a) instructions on the conduct of the procurement process, including the preparation and submission of proposals and information on the evaluation of proposals and award of the contract;
- (b) instructions on any documents required with the proposal;
- (c) a statement of requirements for the services required;
- (d) information on the methodology and criteria for the evaluation of proposal;
- (e) a statement on the form and type of contract to be awarded;
- (f) the terms and conditions of contract which shall apply;

(g) information on the suspension of a bidder and that bidder's right to appeal under the Act and in accordance with these Regulations; and

(h) information on the beneficial ownership of the proposal.

148. (1) A Procurement Unit shall request for written proposals from a shortlist of not less than three bidders.

Invitation of proposals and development of shortlist

(2) Despite subregulation (1), a shortlist may consist of less than three bidders, where less than three suitable sources exist.

(3) A Procurement Unit shall maintain a record of bidders to whom the request for proposals was issued and the reasons for their inclusion, and where a shortlist consists of less than three bidders, the record shall include the reasons thereof.

(4) A Procurement Unit may, in developing a shortlist of bidders, use—

(a) supplier databases or lists maintained in accordance with these Regulations;

(b) lists of pre-qualified applicants;

(c) its own knowledge of the market; or

(d) any other appropriate sources of information.

(5) A Procurement Unit shall, in developing a shortlist of bidders, comply with the following rules:

(a) a fair and equal opportunity shall be afforded to all potential bidders and there shall be a rotation of different bidders on successive shortlists;

(b) the shortlist shall not include any bidders who are not expected to fully satisfy any eligibility and qualification requirements; and

(c) the shortlist shall not include bidders with the same ownership.

149. (1) A request for proposals under regulation 148 shall specify the—

Submission and receipt of proposals

(a) method of submission permitted, which may include submission by—

(i) postal or courier service;

(ii) facsimile;

(iii) electronic mail; or

(iv) any other form which leaves a record of the proposal; and

(b) location, date and time for submission of proposals.

(2) A Procurement Unit shall reject any proposal received after the deadline for submission.

(3) A Procurement Unit shall keep securely all proposals received until after the deadline for submission of proposals.

(4) A Procurement Unit shall, where proposals are received in an unsealed form before the submission deadline, keep the contents of the proposals confidential and not reveal the content to any person, other than the officer responsible for receiving the proposal.

Evaluation
of proposals
for
simplified
selection

150. (1) A Procurement Unit shall, for the purposes of simplified selection, evaluate the proposals received, and may seek technical assistance from the user department.

(2) Despite subregulation (1), a Procurement Unit may, where a procurement is complex, recommend to the controlling officer or chief executive officer to appoint an evaluation committee.

(3) A controlling officer or chief executive officer shall, where there is a recommendation under subregulation (2), appoint an evaluation committee as provided in these Regulations.

(4) A Procurement Unit shall conduct an evaluation of proposals in accordance with the provisions of Part VIII of these Regulations.

PART XI

BIDDING PROCESS FOR DIRECT BIDDING

Use of
direct
bidding
procedures

151. A procuring entity shall comply with the requirements of these Regulations, in particular Part VI, before initiating direct bidding procedures in accordance with this Part.

Procedure
for low value
procurement

152. Where a procuring entity conducts direct bidding on the grounds of low value, the procedure shall be as follows:

(a) the Procurement Unit shall initially confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;

(b) the Procurement Unit shall identify a suitable bidder;

(c) the Procurement Unit shall proceed to request a quotation, from the identified bidder, based on the statement of requirements included in the requisition;

- (d) the Procurement Unit shall conduct an evaluation of the quotation, and submit a recommendation to the approvals authority, if satisfied that the quotation meets its needs and offers value for money; and
- (e) the controlling officer or chief executive officer shall proceed to award a contract if approval is granted and issue a written purchase order or similar document, provided that funds have been committed for the purchase.

153. The Procurement Unit shall, where a procuring entity conducts direct bidding on the grounds that a single source is able to meet the procuring entity's needs—

Procedure
for
procurement
from a sole
source

- (a) prepare a written invitation, containing a statement of requirements for the goods, works or services and a statement of the proposed contract form and terms and conditions of contract;
- (b) issue the written invitation to the sole supplier and obtain a written bid;
- (c) evaluate the bid in accordance with regulation 154;
- (d) negotiate with the bidder, if required, in accordance with regulation 155;
- (e) prepare a report for submission to the approvals authority, which shall contain—
 - (i) a summary of the evaluation of the bid;
 - (ii) a record of any negotiations held; and
 - (iii) a recommendation to award the contract or take other appropriate action.

154. (1) An evaluation committee established in accordance with regulation 97, shall conduct the evaluation of a sole bid to determine whether the bid—

Evaluation
of sole bid

- (a) meets the procuring entity's technical needs, as defined by the statement of requirements;
- (b) conforms to the contractual terms and conditions proposed by the procuring entity or offers other terms and conditions which are acceptable to the procuring entity; and
- (c) offers value for money, based on prices previously obtained for similar goods, works or services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement.

(2) An evaluation committee shall, based on the evaluation conducted under subregulation (1), determine whether negotiations are required with the bidder.

(3) An evaluation committee shall submit an evaluation report and recommendations to the approvals authority, prior to any negotiations or contract award.

Procedure
for
negotiations
for direct
bidding

155. (1) An evaluation committee shall, for the purposes of direct bidding, prepare a plan for the negotiations which shall specify the issues to be negotiated and objectives to be achieved, and the parameters for the negotiation.

(2) A procuring entity shall appoint a minimum of two members of staff to conduct negotiations and those members of staff shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the prior authorisation of the approvals authority, before confirming any agreement reached.

(3) A procuring entity shall ensure that at least one of the members of staff appointed to conduct negotiations under subregulation (2), is a member of the evaluation committee.

(4) Members of staff of the procuring entity that conduct the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement, and shall obtain the bidder's written agreement that the minutes are a true and accurate record of the negotiations held.

Procedures
for
emergency
procurement
for direct
bidding

156. A Procurement Unit shall, where a procuring entity intends to conduct direct bidding on the ground of an emergency need—

- (a) confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) notify the approvals authority;
- (c) proceed to identify a suitable bidder;
- (d) prepare written request for a bid, containing statement of requirements for the goods, works or services required, and conditions of contract;
- (e) issue a written request to the sole supplier and obtain a written bid;
- (f) proceed to evaluate the bid in accordance with regulation 154;

- (g) negotiate with the bidder, if required, in accordance with the procedure for negotiation in accordance with regulation 155; and
- (h) prepare brief report, for submission to the approvals authority, which shall contain—
 - (i) details of the requirement and the emergency circumstances;
 - (ii) a summary of the action taken to invite, evaluate and negotiate the bid; and
 - (iii) recommendation to award the contract or take other appropriate action.

PART XII

BIDDING PROCESS FOR SELECTION

157. A procuring entity shall comply with the requirements of these Regulations, in particular Part VI, before initiating direct selection procedures in accordance with this Part.

Use of direct selection procedures

158. A Procurement Unit shall, where a procuring entity conducts direct selection on the grounds that a single source is able to meet the procuring entity's needs—

Procedure for procurement from a sole source

- (a) prepare a written invitation, containing a statement of requirements for services, and a statement of the proposed contract form and terms and conditions of contract;
- (b) issue the written invitation to the sole supplier and obtain a written proposal;
- (c) evaluate the proposal in accordance with regulation 159 and the applicable procedures in Part VIII of these Regulations;
- (d) negotiate with the bidder, if required, in accordance with regulation 155;
- (e) prepare a report for submission to the approvals authority, which shall contain—
 - (i) a summary of the evaluation of the proposal;
 - (ii) a record of any negotiations held; and
 - (iii) a recommendation to award the contract or take other appropriate action.

Evaluation
of sole
proposal

159. (1) An evaluation committee established in accordance with regulation 97 shall conduct the evaluation of a sole proposal to determine whether the proposal—

- (a) meets the procuring entity's technical needs, as defined by the statement of requirements;
- (b) conforms to the contractual terms and conditions proposed by the procuring entity or offers other terms and conditions which are acceptable to the procuring entity; and
- (c) offers value for money, based on prices previously obtained for similar services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement.

(2) An evaluation committee shall, based on the evaluation conducted under subregulation (1), determine whether negotiations are required with the bidder.

(3) An evaluation committee shall submit an evaluation report and recommendations to the approvals committee, prior to any negotiations or contract award.

Procedure
for
negotiations
for direct
selection

160. An evaluation committee shall, for the purposes of direct selection, conduct negotiations, where required, in accordance with regulation 155.

Procedure
for
emergency
procurement
for direct
selection

161. A Procurement Unit shall, where a procuring entity conducts direct selection on the grounds of an emergency need—

- (a) confirm that the services required are not available under any existing framework contract or similar arrangement;
- (b) notify the approvals authority;
- (c) proceed to identify a suitable bidder;
- (d) prepare written request for a proposal, containing statement of requirements for the services required and conditions of contract;
- (e) issue a written request to the sole supplier and obtain a written proposal;
- (f) evaluate the proposal in accordance with regulation 159 and the applicable procedures in Part VIII of these Regulations;
- (g) negotiate with the bidder, if required, in accordance with regulation 155; and

- (h) prepare brief report, for submission to the approvals authority, which shall contain—
- (i) details of the requirement and the emergency circumstances;
 - (ii) a summary of the action taken to invite, evaluate and negotiate the bid; and
 - (iii) recommendation to award the contract or take other appropriate action.

PART XIII

BIDDING PROCESS FOR ELECTRONIC PROCUREMENT

162. For the purposes of this Part, unless the context otherwise requires— Interpretation

“auditor” means the Auditor-General appointed in accordance with the Constitution or the Auditor-General’s representative or any external, internal and information technology auditors recognised by national and international professional bodies or a government and assigned for the purpose of auditing the e GP system;

Cap. 1

“dashboard ” means an interactive user interface in the e-procurement portal that organises and presents information and links to the different relevant functions into a unified display in a way that is easy to access, track and transact;

“ e-GP system ” means the electronic Government Procurement system, hosted and operated by the Authority or its agent to enable users carry out e-procurement;

“ electronic ” has the meaning assigned to the word in the Electronic Communications and Transactions Act, 2021;

Act No. 4 of 2021

“ electronic communication ” has the meaning assigned to the words in the Electronic Communications and Transactions Act, 2021;

Act No. 4 of 2021

“ e-procurement ” means the use of information and communication technology in conducting procurement functions;

“e-procurement portal” means a single web portal from where and through which procuring entities perform

all or some of their e procurement related functions which include publishing of annual procurement plans, invitation of tenders, request for quotations, tender proposals submission, tender opening, evaluation, auction, contract award notices, contract management, e payments, procurement management information functions and any other functions required by the Act and these Regulations;

“electronic reverse auction” means an online, real time dynamic auction between a procuring entity and suppliers who compete against each other to win the contract by submitting successively lower priced bids;

“financial service provider” has the meaning assigned to the words in the Banking and Financial Services Act, 2017;

“late submission” means a bid that has not been completely uploaded before the bid submission deadline; and

“user” means a person who is, or entity which is, authorised by the Authority to use the e-GP system.

Act No. 7 of
2017

Objectives
and usage

163. (1) The objective of the e-GP system is to enhance efficiency and ensure transparency in public procurement through the implementation of a comprehensive e-GP system to be used for carrying out e procurement.

(2) A bidder, procuring entity, financial service provider, e-GP system administrator and an auditor may access the e-GP system and information provided in the terms and conditions of use, disclaimer and privacy policy on successful registration to the system in accordance with regulation 165.

(3) The e-GP system shall consist of several modules that may be interlinked sub systems, which shall be used individually or in combination, in order to accomplish functions relating to e procurement processes.

(4) The Authority may add, update or remove other modules, sub systems and features on the e-GP system or make integration with other system required under any other written law, Government directives or special needs of the procurement processes.

Access to
e- GP
system
features

164. (1) A user who intends to access the features of the e-GP system that are not available in the public section shall register on the e-GP system in accordance with regulation 165.

(2) A user shall comply with security requirements and any other technical and operational guidelines issued by the Authority.

(3) A user shall be responsible for maintaining the confidentiality of the particulars associated with the accounts and the activities relating to use of the account particulars in the e-GP system.

165. (1) A prospective user shall register on the e-GP system under an appropriate user category in order to have appropriate access to the customised working dashboard.

Registration
of users of
e-GP system

(2) The user categories acceptable by the e-GP system are procuring entities, prospective bidders, systems administrators, auditors, Attorney-General, Treasury, banks and financial institutions and any other group as approved by the Authority.

(3) A prospective user applying to use the e-GP system shall provide the required information including accepting the terms and conditions of e-GP system use and confirmation of awareness of disclaimer and privacy policy of the e-GP system.

(4) The Authority shall prepare validation procedures for verification of user credentials which may require furnishing of original hard copy credentials in cases where reliable verification process cannot be completed online.

(5) A prospective user shall complete the registration on the e-GP system after the validation of credentials under subregulation (4), on payment of the registration fees, and confirmation of registration by the Authority.

(6) A prospective user shall, on successful registration in any category, be assigned a secured dashboard with features that enable the user to perform the user's role in the e-GP system.

(7) The Authority may suspend or cancel the registration of a user at any time due to a violation of any terms and conditions of the e-GP system.

(8) The Authority shall issue manuals relating to the procedures for the use of a specific dashboard under each user category.

166. (1) A procuring entity shall prepare an invitation for a bid using an online template available on its secured dashboard.

Preparation
of invitation
to bid for
electronic
reverse
auction

(2) A procuring entity shall publish the invitation for a bid under subregulation (1) in the e procurement portal and in accordance with these Regulations.

(3) An invitation to bid shall contain a detailed description of the goods, works or services, time schedule and any other conditions and where applicable, the bidding documents shall be made available on the e procurement portal.

(4) The date of the bid notice published in the e-procurement portal shall be considered as the start date of the bidding period.

Bid
preparation

167. (1) A bidder shall prepare a bid required to be uploaded on the e-GP system within the period specified in the instructions to bidders which has been signed by an authorised representative of the bidder.

(2) A bidder shall submit its bid on the e-GP system before the closing date and time, after which the e-GP system shall automatically reject any late submission.

Uploading
tender
documents on
e GP System

168. (1) A bidder shall submit its bid online before the deadline specified in the invitation.

(2) A bidder may, before final submission of a bid, upload documents, fill in required online forms, modify and verify the documents and complete other activities part by part, before the closing date and time, after which the e-GP system shall automatically reject any late submission.

(3) A procuring entity may, where there is an e-GP system failure, follow the e-GP system malfunction and mitigation guidelines issued by the Authority or reschedule the bid submission deadline on receiving confirmation of the system failure from the Authority.

Amendment
of
solicitation
documents

169. (1) A procuring entity may amend a solicitation document, where necessary, to the extent permissible under the Act and these Regulations.

(2) A procuring entity shall, where a procuring entity amends a solicitation document in accordance with subregulation (1), issue and publish an addendum in the relevant section of the e-GP system accessible to all prospective bidders.

(3) A procuring entity shall submit, through the e-GP system or by email, to a bidder an addendum issued under subregulation (2).

Submission of
bid on e-GP
system

170. (1) A bid submitted on the e-GP system shall be considered to be a true and legal version, duly authorised and executed by the bidder or the bidder's authorised representative.

(2) A bidder shall, where a bidder has submitted a bid through the e GP system, receive an acknowledgment of receipt of a bid or amendment through the e-GP system.

(3) Where there is an e-GP system failure, a procuring entity may follow the e-GP system malfunction and mitigation guidelines or reschedule the bid submission deadline on receiving confirmation of the system failure from the Authority.

(4) A bidder shall ensure the integrity, completeness and authenticity of the bid submitted.

(5) A procuring entity shall not consider any bid which is transmitted through the e-GP system that contains files that are unreadable for any reason.

171. (1) A procuring entity receiving a bid shall use the appropriate dashboard on the e-GP system to perform all tender opening functions in the e procurement portal as specified in the manuals issued by the Authority.

On line
tender
opening

(2) A bidder may be present physically at the tender opening meeting and the tender opening staff shall post the tender opening records in the appropriate section of the e-GP system.

172. (1) A controlling officer or chief executive officer shall appoint an evaluation committee in accordance with regulation 97 for purposes of conducting an evaluation on the e-GP system.

Appointment
of
evaluation
committee

(2) A controlling officer or chief executive officer shall ensure that members of the evaluation committee are conversant with the online tools to enable the members of the evaluation committee to effectively and efficiently accomplish the evaluation process.

173. (1) An evaluation committee shall have access to the dashboard for a period of twenty-one days.

(2) A member of the evaluation committee shall fill and sign the online declaration forms before evaluation, and jointly approve an evaluation as provided by the e-GP.

Use of e GP
system by
evaluation
committee

(3) A procuring entity may only use the e-GP system to automatically generate results of the evaluation, based on the criteria specified by the procuring entity.

(4) Despite subregulation (3), a procuring entity may finalise any component of the evaluation offline, where it is specified in the solicitation document, and the results shall be entered into the e-GP system to proceed with the generation of the final evaluation report.

(5) An evaluation committee shall not alter any information provided by the bidder or the final report that determines the successful bidder.

Approval,
notification
of award and
contract
signing

174. (1) A Procurement Unit shall submit, through the e-GP system, the final evaluation report to the appropriate approvals authority.

(2) A procuring entity shall, where a procurement is conducted using open or limited bidding or open or limited selection, publish a notice of the best evaluated bidder within two working days of a decision to award a contract.

(3) Despite subregulation (2), the requirement for publication of the notice of the best evaluated bidder may be waived where a procuring entity uses limited bidding or limited selection on the grounds of an emergency.

(4) A procuring entity shall award a contract after ten working days from the date on which the notice under subregulation (2) is published.

(5) A procuring entity shall issue an award online, notifying a successful evaluated bidder through that bidder's dashboard and email, and the bidder shall acknowledge receipt of the notification through the e-GP system.

(6) A procuring entity and a bidder may conduct contract negotiations online or offline, if applicable, to a specific procurement type or category in accordance with the Act and these Regulations.

(7) The e-GP system shall publish the contract award information on the e-procurement portal in the appropriate public section in accordance with these Regulations.

Fees

175. The Authority may charge a user fee for the different services relating to transactions made by the user on the e-GP system.

Payment for
use of e-GP
system

176. The e-GP system shall have features for e-payment and the procedures for making payment shall be provided by the Authority through the e-GP system user manual issued by the Authority.

PART XIV

CONTRACT AWARD

177. (1) A contract award decision shall be made by the appropriate approvals authority in accordance with the levels of authority specified in the Act and the Third Schedule.

Contract
award
decisions

(2) An appropriate approvals authority shall be determined by the actual value of the recommended contract and not the estimated value prepared during the procurement planning process.

(3) An approvals authority shall make a contract award decision in response to a recommendation for contract award contained in an evaluation report, unless otherwise permitted by these Regulations.

(4) A contract award decision by an approvals authority shall not constitute a contract, but only a decision as to the successful or recommended bidder.

178. (1) A procuring entity shall, where a procurement is conducted using open or limited bidding or open or limited selection, publish a notice of best evaluated bidder within two working days of a decision to award a contract.

Notice of
best
evaluated
bidder

(2) Despite subregulation (1), where a procuring entity uses limited bidding or limited selection on grounds of an emergency, the requirement for publication of a notice of the best evaluated bidder may be waived.

(3) A notice of the best evaluated bidder shall specify—

- (a) the name and address of the bidder recommended for the award;
- (b) the proposed contract price;
- (c) the procurement reference number and description; and
- (d) that bidders have the right to appeal as provided in the Act and these Regulations.

(4) A notice issued under subregulation (3) shall—

- (a) clearly state that it does not constitute an award of a contract;
- (b) be sent directly to all bidders;
- (c) be published on the procuring entity's website; and
- (d) be displayed on the notice board or at another prominent place in the procuring entity's offices.

(5) A procuring entity shall not award any contract until ten working days have elapsed after publication of the notice of best evaluated bidder.

Commitment
of funds

179. (1) A procuring entity shall, after a contract award decision by an approvals authority, commit the required funds before proceeding to award the contract.

(2) A procuring entity shall, where required, commit the funds for other costs related to the contract, as provided in these Regulations.

Contract
award under
open or
limited
bidding or
selection

180. (1) A procuring entity shall, after the commitment of funds in accordance with regulation 179, and the publication of the notice of best evaluated bidder as specified under regulation 178, and provided no application for review under these Regulations has been received, award the contract by issuing a letter of bid acceptance to the recommended bidder.

(2) A letter of bid acceptance under subregulation (1), shall state—

- (a) the name and address of the procuring entity;
- (b) the name and address of the bidder;
- (c) the date and reference number of the bid being accepted;
- (d) any modifications to the bid, resulting from clarifications, corrections or negotiations;
- (e) any items excluded from the contract or variations in quantity or any other detail;
- (f) the total contract price; and
- (g) that the letter of bid acceptance does not constitute a contract between the procuring entity and the bidder, until a time that a formal contract is signed.

(3) A Procurement Unit shall obtain a signed acknowledgment from the bidder, confirming that it has received the letter of bid acceptance.

(4) A procuring entity shall, where the recommended bidder fails to conclude a contract, or provide a performance security or any other action required by the solicitation document, annul the contract award and award the contract to the next ranked bidder, subject to the bidder being qualified and with the prior authorisation of the approvals authority.

181. (1) A Procurement Unit shall, after the issue of a letter of bid acceptance, prepare a written contract using the contract included in the solicitation document.

Contract preparation and signature under open or limited bidding and open or limited selection

(2) A Procurement Unit shall obtain prior authorisation of the contract document from the controlling officer or chief executive officer, Treasury and Attorney-General before sending it to the supplier for signature.

(3) A Procurement Unit shall ensure that the supplier signs and returns a copy of the contract within fourteen days of receipt of the draft contract.

182. (1) A Procurement Unit shall, where a procurement is conducted using simplified bidding or simplified selection after the contract award decision by an approvals authority and the commitment of funds, prepare a written purchase order and send it to the successful bidder.

Contract award under simplified bidding or simplified selection

(2) A purchase order prepared under subregulation (1) shall include the following:

- (a) start and end date;
- (b) date of the purchase order;
- (c) purchase order number;
- (d) quotation reference number;
- (e) description of the goods, works or services; and
- (f) any other terms and conditions as agreed by the parties.

(3) Despite subregulation (2), a purchase order shall not contain any terms, conditions or requirements which differ from the bidder's quotation, unless those terms, conditions or requirements have been agreed, in writing, with the bidder.

(4) A purchase order shall constitute a contract between the procuring entity and the bidder.

(5) Despite subregulation (4), a procuring entity may use a standard contract issued by the Authority for simplified bidding or simplified selection where a purchase order is not sufficient for the contractual arrangement between the procuring entity and supplier.

(6) A procuring entity shall require the supplier to provide written confirmation that the supplier has received the purchase order and is proceeding with performance of the contract, but any failure by that supplier to provide confirmation shall not invalidate the contract.

Contract
award under
direct
bidding or
direct
selection

183. (1) Where a procuring entity conducts direct bidding on the grounds of low value, the procuring entity shall award the contract in accordance with regulation 182.

(2) A Procurement Unit shall, where a procuring entity conducts direct bidding or direct selection on any other grounds, following the contract award decision by the approvals authority and the commitment of funds, prepare a written contract or purchase order and send it to the recommended bidder.

(3) A procuring entity may, where appropriate, send a letter of bid acceptance to the bidder, prior to sending the contract document.

(4) A Procurement Unit shall obtain a signed acknowledgment from the bidder, confirming that the bidder has received the letter of bid acceptance, contract or purchase order and that the bidder is proceeding with performance of the contract, but any failure by that bidder to provide confirmation shall not invalidate the contract.

Performance
securities

184. (1) A procuring entity shall request from a bidder a performance security for all contracts for goods, works and non consulting services that exceed the simplified bidding threshold set out in the Second Schedule, to secure the supplier's obligation to fulfil the contract.

(2) A solicitation document and contract for goods, works and services exceeding the threshold for simplified bidding set out in the Second Schedule shall state the requirement for a performance security which may cover warranty obligations, if so stated in the contract.

(3) A Procurement Unit shall require a successful bidder to provide a performance security within twenty-one days of signing a contract or of receipt of the letter of bid acceptance, whichever is the earliest.

(4) A bidder who fails to provide a performance security as required under subregulation (3) shall be suspended from participation in public procurement.

(5) A bidder shall express the value of any required performance security either as a fixed amount or as a percentage of the contract value, except that the amount shall be between five and ten percent of the contract value.

(6) A Procurement Unit shall, in determining the amount of performance security required, take into account the cost to the supplier of obtaining a performance security, the value of the

contract, the risk of a supplier failing to fulfil the contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.

(7) Where appropriate, the value of the performance security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or non consulting services to which the security relates.

(8) A solicitation document and contract shall state that the performance security shall be—

- (a) in accordance with the format and wording provided in the contract;
- (b) in a form acceptable to the procuring entity, which may be—
 - (i) a manager's or certified cheque or payable order;
 - (ii) an insurance bond or a bank guarantee; or
 - (iii) an equivalent instrument, such as a stand by letter of credit;
- (c) from an institution acceptable to the procuring entity, where the security is issued by the financial institution; and
- (d) valid for the period specified in the contract, which shall normally be thirty days beyond the anticipated completion date of the contract.

(9) The conditions for forfeiture of the performance security shall be specified in the contract.

(10) A Procurement Unit shall release the performance security promptly to the supplier on completion of the supplier's contractual obligations.

185. (1) A Procurement Unit shall, before signing a contract, notify the other bidders that the bids have not been successful and shall give reasons for its decision.

(2) A Procurement Unit shall, when rejecting unsuccessful bids, return any bid securities and any unopened financial proposals to the unsuccessful bidders.

(3) A Procurement Unit shall provide all unsuccessful bidders with a debrief of the reasons for the failure of their bids or applications to pre-qualify, including—

Rejection of bids and debriefing unsuccessful bidders

- (a) the stage at which the evaluation of the bid was rejected;
- (b) the details of any material deviation;
- (c) the reservation or omission leading to the rejection of the bid; or
- (d) any other matter relating to the bidding.

(4) A Procurement Unit shall not, in providing the reasons for the rejection of any bidder, provide details on any other bids, other than information that is publicly available from bid openings or published notices.

Public notice of contract award

186. (1) A procuring entity shall publish a notice of contract award for all contracts which exceed the threshold set out in the Fourth Schedule.

(2) A notice of contract award under subregulation (1) shall be in Form II set out in the First Schedule and published in accordance with these Regulations.

Type of contract and pricing approach

187. (1) A procuring entity may use any of the contract types and pricing approaches specified in this Part, or any other contract type authorised by the Authority.

(2) A Procuring entity shall use a contract form included in the standard solicitation document issued by the Authority.

Lump sum contract

188. (1) A procuring entity may use a lump sum contract for goods, works or services, where the content, duration and outputs of the contract are well defined.

(2) A lump sum contract shall consist of an agreed total price for the performance of the contract.

(3) A procuring entity shall, subject to the conditions of the contract, pay the supplier the agreed lump sum price.

(4) Payments under a lump sum contract shall be dependent on clearly specified outputs, deliverables or events, which may include—

- (a) deliveries of goods, as evidenced by the appropriate delivery documentation specified in the contract;
- (b) installation or commissioning of goods;
- (c) milestones in construction;
- (d) provisional or final acceptance of goods or works;

- (e) reports or recommendations;
- (f) the completion of drawings, bills of quantities, activity schedules or solicitation documents;
- (g) software programmes; or
- (h) workshops or training programmes.

189. (1) A procuring entity may use a—

- (a) time based contract for services, where the scope and duration of the contract are difficult to define; or
- (b) measured works contract for works, which are not well defined, likely to change in quantity or specification or where difficult or unforeseen site conditions are likely to occur.

Time based
or
measured-
works
contract

(2) A payment by a procuring entity under a time based or measured works contract shall be for the actual quantity delivered or performed, using fixed unit prices for different items specified in the contract.

(3) A payment by a procuring entity for any contract for services shall be based on—

- (a) agreed fee rates for a specified period of time, for either nominated personnel or a certain type or grade of personnel; and
- (b) reimbursable items, such as transportation and subsistence, using either actual expenses or agreed unit prices.

(4) A payment by a procuring entity for any contracts for works shall be based on agreed rates for various items of work, as priced by the supplier in the bill of quantities.

(5) A procuring entity shall include a maximum amount of total payments for time based and measured works contracts, which may include a contingency amount for unforeseen work, except that the procuring entity shall not exceed the maximum amount without obtaining authorisation for a contract amendment.

(6) A contract manager or contract management team shall monitor time based and measured works contracts closely, to ensure that progress is in accordance with the contract and that payments claimed by the supplier are appropriate and as provided in the contract.

Rate
contract

190. (1) A procuring entity may use a rate contract for goods, works or services—

- (a) where the items are needed “on call”, but where the quantity and timing of the requirements cannot be defined in advance; or
- (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time, by having those items available on a “call off” basis.

(2) A payment by a procuring entity under a rate contract shall be for the actual quantity delivered or performed during the time period covered by the contract, using the fixed unit prices specified in the contract.

(3) A rate contract under subregulation (1) may include an estimated quantity or value, but shall not commit a procuring entity to purchase the estimated quantity or value.

(4) A rate contract under subregulation (1) shall specify the arrangements for obtaining specific requirements during the period of the contract, using “call off” or delivery orders.

Running
contract

191. (1) A procuring entity may use a running contract for goods, works or services which shall run for a maximum period of one year—

- (a) where the items are needed “on call”, but where the precise quantity and timing of the requirements can not be defined in advance; or
- (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time, by having them available on a “call off” basis.

(2) Despite subregulation (1), a procuring entity may enter into running contracts for audit and insurance services for a maximum period of three years.

(3) A payment by a procuring entity under a running contract shall be for the actual quantity delivered or performed during the time period covered by the contract, using the fixed unit prices specified in the contract.

(4) A running contract under subregulation (1) may commit to purchasing a minimum quantity or value or to purchasing all similar requirements from the supplier, where this is necessary or preferable to obtain competitive prices, and may specify a maximum quantity or value to be purchased under the contract.

(5) A running contract under subregulation (1) shall specify the arrangements for obtaining specific requirements during the period of the contract, using “call off” or delivery orders.

192. (1) A procuring entity may use a percentage based contract where it is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.

(2) A percentage based contract under subregulation (1) shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.

(3) A percentage based contract under subregulation (1) may include—

- (a) a fixed target cost or amount;
- (b) minimum or maximum fees;
- (c) a sliding scale of fees; or
- (d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or anything similar.

193. (1) A procuring entity may use a cost reimbursable or target price contract for—

- (a) emergency works, where there is insufficient time to fully calculate the costs involved; or
- (b) high risk works, where it is more economical for the procuring entity to bear the risk of price variations than to pay the supplier to accept the risk, or where a supplier shall not accept the risk.

(2) A payment by a procuring entity under a cost reimbursable and target contract shall be for—

- (a) the actual cost of the works, as evidenced by receipts and other appropriate documentation; and
- (b) a fee or profit, as specified in the contract.

(3) A procuring entity may, where a target price can be agreed on by the procuring entity and the supplier, make an incentive payment for any cost savings.

194. (1) A procuring entity shall use the contract form included in the appropriate standard solicitation document issued by the Authority for drafting individual contract documents.

Cost
reimbursable
and target
price
contract

Contents of
contract

(2) Where procurement is conducted using open or limited bidding or open or limited selection, a draft contract shall be included in the solicitation document issued, except that in all other cases, where the draft contract is not included, any solicitation document shall clearly state the type of contract and key contract terms which shall apply to the procurement.

(3) A contract document shall include contract terms and conditions, in particular—

- (a) the general conditions of contract or, a statement of the general conditions which apply;
- (b) the special conditions of contract;
- (c) a statement that the special conditions of contract prevail over the general conditions and the order of priority of other contract documents;
- (d) a clear description of the goods, works or services purchased by the contract, including the technical requirements, quantity and delivery or completion schedule, based on the statement of requirements included in the solicitation document and the supplier's bid, subject to any modifications agreed;
- (e) the total contract price and, if applicable, the conditions applicable to varying, adjusting, modifying or recalculating the actual price payable;
- (f) the payment conditions, including the payment period, schedule, currency and documentation required;
- (g) any requirement for securities;
- (h) the procedures agreed for dispute settlement;
- (i) other key contract terms as required by the standard documents, including warranties, insurance, sub contracting, inspection and acceptance, contract completion, delays in performance or other non performance, *force majeure*, variation, modification and termination of the contract; and
- (j) information on the Government's policy on fraud and corruption, including the suspension of bidders.

(4) The pricing of a contract shall be in accordance with one of the contract types permitted under this Part.

195. (1) A procuring entity may, for contracts with a duration of more than twelve months, include a price adjustment provision, where it determines that it is more economical for the procuring entity to accept the risk of increased costs than to pay an additional cost for the supplier to accept the risk.

Price
adjustment

(2) A contract shall, where a price adjustment provision is included in accordance with subregulation (1), state—

- (a) the formula for calculating adjustments, which shall separate the total price into components, such as labour, equipment, materials and fuel;
- (b) price indices for each component specified in the formula;
- (c) any correction factor to take into account, differences in the payment currency, and the currencies of the source of the input and price index;
- (d) the base date for application of the formula;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(3) Where a price adjustment methodology cannot be based on the provisions detailed under subregulation (2), alternative provisions may be included which base adjustment on the submission by the supplier of documentary evidence which shall include actual invoices provided by the supplier evidencing increases in costs, and where this is permitted, the contract shall state—

- (a) the actual costs that are subject to price adjustment, such as labor, equipment, materials and fuel;
- (b) the method for calculating adjustments;
- (c) any correction factor to take into account, differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the methodology;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(4) A contract may provide that where the price adjustment provisions result in an increase exceeding twenty-five percent of the original contract price, the procuring entity may terminate the contract.

Payment
term

196. (1) A contract shall state the period for payment.

(2) A contract shall provide for interest to be paid to the supplier, where a procuring entity fails to make payment within the period specified in the contract.

(3) A contract shall clearly state the—

(a) interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest;

(b) currency or currencies of payment and, where required, the exchange rate or the source of exchange rate applicable; and

(c) payment schedule, which may include advance payments, progress payments and retained payments.

Advance
payment

197. (1) A contract may provide for advance payments to the supplier, where this is necessary to ensure effective implementation of the contract or to obtain competitive prices.

(2) A procuring entity may make an advance payment referred to under subregulation (1) for costs for mobilisation, start up, the purchase of materials or costs related to goods which are specially or custom manufactured for the procuring entity.

(3) The total amount of an advance payment referred to under subregulation (1) shall not exceed twenty five percent of the total contract price.

(4) A procuring entity shall only pay an advance payment against the provision by the supplier of an advance payment guarantee or bond, covering the full amount of the advance payment.

(5) A contract shall state that materials, equipment and personnel for which an advance payment is received, shall only be used for performance of that contract.

(6) A contract for works may require that materials, equipment and personnel for which an advance payment is received, shall be committed to the site or sites of the works.

(7) Where so specified in the contract, advance payment may be recovered from subsequent payments to the supplier, which shall be subject to a percentage deduction equal to the percentage paid as the advance payment.

(8) Subregulations (3) and (4) do not apply to the procurement of air tickets, conference and lodging services.

198. (1) A contract may provide for progress payments to a supplier.

Progress
payment

(2) A progress payment shall be a payment—

- (a) of a specified percentage or amount of the contract value following particular events, milestones or submission of deliverables specified in the contract; or
- (b) for the actual quantities of goods, works or services delivered or completed.

(3) A progress payment shall not exceed the cost or value of the goods, works or services delivered or completed.

(4) A progress payment shall only be made against interim certificates or other documentation that prove delivery or completion of the goods, works or services subject to the progress payment or submission of the deliverables specified.

199. (1) A contract may provide for a specified percentage or amount of payments to the supplier to be retained.

Retained
payment

(2) A contract shall specify the—

- (a) percentage or amount to be retained;
- (b) period or event at which the retention is to be released, which may include, installation of goods, completion of the contract or expiry of a warranty or defects liability period; and
- (c) documents required to prove completion of the event or period in paragraph (b).

(3) A supplier may, where so specified in the contract, substitute a payment security for a retention payment.

200. (1) A contract shall require the supplier to submit an original invoice for each payment requested.

Payment
document

(2) A contract shall state the documents against which payments shall be made.

(3) The documents required for purposes of subregulation (2) shall relate to the delivery, progress or performance of the contract for which the payment is due or provide evidence of fulfillment of contract terms and conditions, and may include—

(a) goods received notes, bills of lading, air waybills or other documentation proving

delivery or receipt of goods, in accordance with the terms of the contract;

(b) packing lists, or other documentation that prove the content of any consignments delivered;

(c) inspection certificates or reports, or other documentation that prove that goods, works or services have passed inspection;

(d) installation, commissioning, acceptance or handover certificates, or other documentation that prove that goods, works or services have been accepted;

(e) insurance certificates or other documentation that prove the supplier has taken out the required insurance for the goods, works or services;

(f) certificates of origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;

(g) interim certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments; or

(h) receipts or other documentation, proving that specified costs have been incurred relating to air tickets or time sheets for personnel.

Payment
security

201. (1) A procuring entity shall require a payment security from the supplier, where the contract permits payments to a supplier prior to the delivery or completion of the goods, works or services to which the payment relates.

(2) The value of any payment security shall be equal to the payment to which it relates and, where appropriate, the value of a security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or services to which the payment relates.

(3) A contract shall state that the payment security shall be—

(a) in accordance with the format and wording provided in the contract;

(b) in a form acceptable to the procuring entity;

(c) from an institution acceptable to the procuring entity; and

(d) valid for the period specified in the contract, which shall be at least thirty days beyond the anticipated due date of the payment.

(4) A contract shall specify the conditions for forfeiture of the payment security.

(5) A Procurement Unit shall release the payment security promptly to the supplier on completion of that supplier's contractual obligations which are subject to the security or on expiry of the security.

PART XV

FRAME WORK AGREEMENTS

202. A procuring entity may enter into a framework agreement as provided under the Act and these Regulations through open tender which shall specify—

Framework agreement

- (a) that the intention is to establish a framework agreement;
- (b) that the framework agreement is with single or multiple suppliers, and if the framework agreement is with multiple suppliers, the number of suppliers;
- (c) the duration of the framework agreement; and
- (d) the estimate of the total volume or scope of work or quantity of purchases expected to be made for the duration of the framework agreement, as appropriate.

203. (1) A procuring entity shall apply the evaluation criteria set out in the solicitation document before entering into any framework agreement for goods, works or services.

Evaluation criteria for framework agreement

(2) A procuring entity shall award a framework agreement to the best evaluated bidder based on the criteria in the solicitation document and on the basis of the lowest evaluated price.

(3) A procuring entity may consider the following when conducting an evaluation of framework agreements:

- (a) quality;
- (b) price;
- (c) technical merit;
- (d) aesthetic and functional characteristics;
- (e) environmental characteristics;
- (f) running costs;

- (g) cost effectiveness;
- (h) after sales service and technical assistance; and
- (i) delivery date and delivery period or period of completion.

Duration of
framework
agreement

204. The duration of a framework agreement shall be the period specified under section 102(3) of the Act.

Restriction
on
framework
agreement

205. A procuring entity may not use a framework agreement to prevent, restrict or distort competition.

Annual
assessment of
framework
agreement

206. (1) A procuring entity shall conduct an annual assessment of a framework agreement taking into consideration the reports prepared in accordance with section 102 (7) of the Act.

(2) A procuring entity shall, where a procuring entity establishes, after an annual assessment under subregulation (1), that the framework agreement is not providing value for money and is not competitive, terminate that framework agreement.

Framework
agreement
with a
single
supplier or
contractor

207. (1) A procuring entity may award a contract under the framework agreement with a single supplier or contractor, where the price has been determined in the framework agreement entered into, within the limits of the terms specified in the agreement.

(2) A procuring entity may, before awarding any contract under a framework agreement, negotiate with a successful bidder in accordance with section 68 of the Act and these Regulations.

(3) A procuring entity may make a call offs order for goods, works or services based on the procuring entity's needs.

Framework
agreement
with a
several
supplier or
contractor

208. (1) A procuring entity may enter into a framework agreement with several suppliers or contractors and the number of suppliers or contractors shall not be less than three.

(2) A procuring entity may award a contract for a framework agreement entered into with several suppliers or contractors either—

- (a) through call offs order by applying the terms specified in the agreement without reopening competition; or
- (b) by inviting a mini-competition among the suppliers that have entered into the framework agreement, where the terms may be modified, if necessary.

(3) For the purposes of subregulation (2) (b), the appropriate procedure for awarding a contract for a framework agreement is as follows:

- (a) for each contract to be awarded, the procuring entity shall invite the suppliers or contractors that have entered into the framework agreement and are capable of performing the contract;
- (b) the procuring entity shall give a minimum of seven days for bidders to submit their documents and shall take into account factors relating to the complexity of the subject matter of the contract and the time needed to submit bids;
- (c) suppliers or contractors shall submit the bids in writing;
- (d) the procuring entity shall keep the content of the bids confidential until the deadline for receiving the bids has expired; and
- (e) the procuring entity shall award the contract to the bidder that has submitted the best bid on the basis of the award criteria set out in the specifications of the framework agreement.

(4) A procuring entity may, from time to time, make a call off order for goods, works or services from a successful supplier or bidder based on the procuring entity's needs.

209. A procuring entity may use any of the following framework agreements:

Types of
framework
agreements

- (a) definite quantity framework agreements;
- (b) indefinite delivery framework agreements;
- (c) requirements framework agreements;
- (d) indefinite quantity framework agreements; or
- (e) any other framework agreement as a procuring entity may consider appropriate.

210. A procuring entity may use a definite quantity framework agreement under regulation 209(a) when it can be determined in advance—

Conditions
of use of
definite
quantity
framework
agreement

- (a) that a definite quantity of goods or services are required during the agreement period;
- (b) that the goods or services are regularly available or shall be available after a short lead time; and
- (c) the bills of quantities for purposes of works.

Conditions of use of indefinite delivery framework and indefinite quantity agreement

211. A procuring entity may use an indefinite delivery or indefinite quantity framework agreement under regulation 209(b) and (d) to—

- (a) acquire goods or services when the exact times or exact quantities of future deliveries are not known at the time of contract award;
- (b) permit stocks to be maintained at minimum levels; and
- (c) acquire goods and services as and when required.

Condition of use of requirements framework agreement

212. (1) A procuring entity may use a requirements framework agreement under regulation 209 (c) to acquire goods or services when a procuring entity anticipates recurring requirements and cannot predetermine the precise quantities of goods, works or services that a procuring entity's activities shall need, during a specified agreement period, with deliveries or performance to be scheduled by placing orders with the supplier.

(2) A procuring entity shall not initiate a procurement process for the goods, works or services that are specified in a subsisting framework agreement except where there is evidence demonstrating that—

- (a) the prices of the framework agreement bids are above market prices;
- (b) material governance issues have been detected; or
- (c) the contractor is unable to meet the requirements.

PART XVI

CONTRACT MANAGEMENT

Selection of contract manager

213. (1) A controlling officer or chief executive officer shall appoint a member of staff of the procuring entity as the contract manager for every contract awarded, except that where a contract is particularly large or complex, the controlling officer or chief executive officer shall appoint a team of staff to manage the contract.

(2) A controlling officer or chief executive officer may appoint a contract manager, or members of the contract management team, from the Procurement Unit, the user department, a stores department or any other relevant part of the procuring entity, except that the contract manager or a member of the contract management team may be external to the procuring entity, where the required skills or experience are not available within the procuring entity.

(3) A contract manager or contract management team shall be of an appropriate level of seniority, experience and skills for the

contract management and achievement of deliverables required under the contract.

(4) A controlling officer or chief executive officer, in selecting a contract manager, or contract management team, may take into account the need for—

- (a) user department or end user representation, particularly where the delivery of services involves the user or user training is required;
- (b) technical skills relevant to the goods, works or services, especially where technical supervision or inspection is required;
- (c) receipt of goods into stores or installation of goods at a particular location; or
- (d) contracting legal or financial management skills.

(5) The procurement of an external contract manager or external member of the contract management team shall be treated as procurement for consulting services and shall be done in accordance with these Regulations.

214. (1) A contract manager shall be responsible for—

- (a) monitoring the performance of the supplier to ensure that all delivery or performance obligations are met or appropriate action is taken by the procuring entity in the event of obligations not being met;
- (b) ensuring that the supplier submits all required documentation;
- (c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
- (d) ensuring that there is adequate cost, quality and time control, where required;
- (e) preparing any required contract variations or change orders and obtaining all required approvals before the issue;
- (f) referring any required contract amendments to the Procurement Unit for preparation;
- (g) managing any handover or acceptance procedures;
- (h) referring any recommendations for contract termination to the Procurement Unit;

Contract
management
responsibilities

Inspection
of goods,
works and
services

215. (1) A contract shall state that the procuring entity has the right to inspect goods, works and services at any reasonable time or place, including—

- (a) during manufacture or construction;
- (b) prior to shipment;
- (c) on delivery or completion; or
- (d) prior to final acceptance of the goods, works or services.

(2) A contract shall require suppliers to ensure that the procuring entity's right of inspection is extended to sub contractors of the supplier.

(3) A procuring entity may—

- (a) observe tests conducted by the supplier, or any sub contractor, under supplier's or sub contractor's own quality control procedures;
- (b) conduct its own inspection; or
- (c) employ an independent third party to undertake technical inspection.

(4) A contract shall state all requirements relating to inspections, including—

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location for inspection;
- (c) the person to carry out the inspection or tests;
- (d) when an inspection is to be conducted;
- (e) who is responsible for payment of the various costs of inspection;
- (f) any notification or documentation required from suppliers relating to inspection or testing;
- (g) that samples provided for testing shall be provided free of charge by the supplier; and
- (h) that where goods, works or services fail an inspection, the supplier is liable for the correction of any defects at the supplier's own expense and the costs of any re inspection required.

216. A contract manager shall, prior to accepting goods, works or services or signing any interim or completion certificate, goods received notes or similar documents, ensure that—
- Acceptance of goods, works and services
- (a) the correct quantity or inputs of goods, works or services have been received;
 - (b) the goods, works or services meet the specifications and technical standards defined in the contract;
 - (c) the goods, works or services have been delivered or completed on time, or that any delay has been noted;
 - (d) all required deliverables have been submitted; and
 - (e) all required manuals or documentation have been received.
217. (1) A Procurement Unit and contract manager shall, where any change to the terms and conditions of a contract is required, prepare a written amendment to the contract.
- contract amendment
- (2) An amendment to a contract referred to in subregulation (1) shall be valid when signed by authorised representatives of both the procuring entity and the supplier.
- (3) A Procurement Unit shall obtain the prior authorisation of the approvals authority, for any contract amendment.
- (4) A controlling officer or chief executive officer shall obtain the approval of the Treasury and legal advice of the Attorney-General before effecting any contract amendment.
218. (1) A contract may, where appropriate, in order to facilitate adaptations to unanticipated events or changes in requirements, permit—
- Contract variation
- (a) the contract manager, supervising engineer or other designated official to recommend variations to the statement of requirements for goods, works or services, the price or the completion date of the contract; or
 - (b) defined compensation events to justify variations in the price or completion date of the contract.
- (2) A procuring entity shall, where a variation results in a change in price, commit the additional funds before issue of the variation, unless those funds are already provided by any committed amount for contingencies or similar matters.

(3) A variation to a contract shall only be valid when signed by authorised representatives of both the procuring entity and the supplier.

(4) A Procurement Unit shall obtain the prior authorisation of the approvals authority for any contract variation.

(5) A controlling officer or chief executive officer shall obtain the approval of the Treasury and legal advice of the Attorney-General before effecting any contract variation.

(6) The cumulative value of contract variations and amendments shall not result in an increment of the total contract price by more than twenty five percent of the original contract price.

Contract
termination

219. (1) A contract shall specify the grounds on which the contract may be terminated and the procedures applicable to the termination.

(2) A Procurement Unit shall obtain the prior authorisation of the approvals authority, which authorised the original contract, before terminating the contract, and the request for authorisation shall state—

- (a) the reasons for the termination of the contract;
- (b) actions which have been taken to avoid the need for the termination of the contract;
- (c) the contractual grounds for the termination of the contract; and
- (d) the costs, if any, for which the procuring entity shall be liable following the termination of the contract.

(3) A procuring entity shall submit a report of any contract termination to the Authority within ten working days from the date of terminating the contract.

PART XVII

DEVIATIONS AND ACCREDITATION

220. (1) A procuring entity shall apply to the Authority for a deviation from the use of a public procurement method, rule, process or document in Form VI set out in the First Schedule.

Procedure
for applying
for deviation

(2) The Authority shall consider each application and issue its decision within ten working days from the date of receipt of the application.

(3) The Authority may approve an application as submitted, approve an application with modifications or conditions, or reject an application and state the reasons for the rejection.

(4) The Authority shall, where it approves an application to deviate from a public procurement method, rule, process or document, state whether the approval is for a single requirement or for a number of requirements of the same class.

(5) The Authority shall, where the approval is for a number of requirements, state the duration, maximum value or other limitations, circumstances or conditions of use of the alternative procurement method.

(6) A procuring entity may submit an application for the renewal of a deviation from a public procurement method, rule, process or document in accordance with this regulation.

(7) The Authority may, where a deviation is requested from a standard document, and where it considers it appropriate, adopt the proposed alternative document as an additional standard document.

(8) Despite subregulation (1), the Authority may issue circulars authorising procuring entities to deviate from the use of a procurement method, rule, process or document.

221. (1) The Authority shall maintain a register of the deviations issued to a procuring entity.

Monitoring
and profile
analysis of
deviations

(2) A register referred to under subregulation (1) shall contain details necessary for the Authority to—

- (a) monitor compliance with the terms of any deviation granted;
- (b) assess the effectiveness of any deviation granted; and
- (c) analyse trends in the profile of any deviation granted.

(3) The Authority may, where a procuring entity does not comply with the terms of a deviation granted—

- (a) require a controlling officer or chief executive officer of that procuring entity to take steps to ensure compliance; or
- (b) revoke the deviation in writing, stating the reasons for the revocation.

(4) The Authority shall assess the effectiveness of an individual deviation to determine whether it provides an effective solution to the problem that led to the need for the deviation.

(5) The Authority shall, on a periodic basis, analyse trends in the profile of deviations granted to determine whether —

- (a) any changes are required to the Act, these Regulations or standard documents;
- (b) additional circulars or instructions, providing further rules and guidance on a particular issue should be issued; or
- (c) additional standard documents are required to meet a particular need.

Procedure for accreditation of alternative procurement system

222. (1) A controlling officer or chief executive officer shall apply to the Authority for accreditation of an alternative procurement system in Form VII set out in the First Schedule.

(2) The Authority shall issue its decision within twenty working days from the date of receipt of the application for accreditation.

(3) The Authority may approve or reject an application for accreditation, or approve the application for accreditation with modifications or subject to such terms and conditions as the Authority may determine.

(4) The Authority shall, where the Authority rejects an application, give reasons, in writing, to the procuring entity.

(5) The Authority shall monitor the operation of an accredited procurement system and shall require changes to the system or withdraw the accreditation, where appropriate.

PART XVIII

BIDDERS AND SUPPLIERS

Evidence of bidders' eligibility

223. (1) A procuring entity shall clearly state in the solicitation document any documentation required as evidence of a bidder's eligibility, which may include the following:

- (a) copies of the bidder's certificate of registration, certificate of incorporation or similar document;
- (b) any other statutory obligation;
- (c) copies of the bidder's tax registration, value added tax registration, tax clearance certificates or similar document;
- (d) a signed statement that the bidder does not have a conflict of interest in relation to the procurement;
- (e) a signed statement that the bidder, or any of its directors or officers, has not been convicted of any offence relating to professional conduct or convicted of any offence contrary to the Act within a period of five years preceding the commencement of the procurement proceedings; and
- (f) a signed statement that the bidder is not subject to suspension pursuant to the Act, or that any of its directors or officers have not been involved with a bidder or supplier who is suspended or subject to suspension.

(2) A procuring entity shall, in determining the documentation required under subregulation (1) permit the bidder to submit equivalent documents from the relevant authorities in the bidder's country of origin or submit statements certifying that equivalent documentation is not issued in the bidder's country of origin.

(3) The Authority may issue public procurement circulars providing guidance on documentation required for the verification of the bidders' eligibility.

(4) A procuring entity shall verify the documents submitted by a bidder with the issuing authority to determine a bidder's authenticity.

224. (1) A procuring entity shall verify the qualifications of bidders where the successful implementation of the contract is, to a significant extent, dependent on the supplier's qualifications.

Verification
of bidders'
qualifications

(2) A procuring entity may verify the qualifications of bidders through pre-qualification proceedings or post qualification proceedings in accordance with these Regulations.

(3) A procuring entity shall verify a bidder's qualification for consulting services as part of the short listing process in accordance with these Regulations, based on information provided in the expression of interest.

qualification
criteria

225. (1) A procuring entity shall design qualification criteria to ensure that the bidder is capable of effectively performing the proposed contract.

(2) The qualification criteria designed under subregulation (1) shall be limited to those necessary for the effective performance of the proposed contract and shall not be unduly restrictive or designed to reduce competition.

(3) A procuring entity shall prepare qualification criteria for each procurement requirement taking into account the size, complexity and technical requirements of the proposed contract.

(4) Qualification criteria designed by a procuring entity under this regulation may relate to—

- (a) technical competence and resources, including the availability of sufficient manpower, the qualifications and experience of key personnel or managers, available equipment, manufacturing or construction facilities;
- (b) available capacity to perform the proposed contract, including available manufacturing or production capacity, taking into account other commitments or manufacturer's authorisations to supply;
- (c) financial position, including financial soundness, sufficient turnover or sufficient cash flow; or
- (d) experience and satisfactory performance of similar contracts, taking into account relevant factors, including references and litigation record.

(5) A procuring entity shall state in a pre-qualification or solicitation document, the documentary evidence required from bidders, as evidence of their qualifications.

(6) A solicitation document shall state, where applicable, a point system for comparing the relative level of qualifications for participating bidders.

(7) Where a point system is provided in a solicitation document, an evaluation committee shall follow the procedures in regulation 130 with the necessary modifications.

Requirements
for sub-
contractors
and joint
venture
partners

226. A solicitation document shall state—

- (a) whether qualification criteria apply to lead suppliers, subcontractors or partners in a joint venture, consortium or association;

- (b) whether qualification criteria shall be applied individually or collectively to each supplier, subcontractor or partner; and
- (c) any alternative qualification which applies to subcontractors or partners in a joint venture, consortium or association.

227. (1) The procurement of goods, works or services may be subject to a preference scheme consistent with the Government's economic and social policies as specified in section 91 of the Act.

Preference schemes

(2) A preference scheme for citizen bidders or local suppliers shall have as its objective the development of businesses owned by citizens or local suppliers through giving such businesses a competitive advantage by deducting a specified margin to the evaluated price of bidders who are eligible for the preference during the financial evaluation of bids.

(3) A preference scheme for bids offering goods manufactured, mined, extracted or grown in the Republic shall have as its objective the development of the manufacturing industry, through giving such bids a competitive advantage by deducting a specified margin to the evaluated price of the bids which are eligible for the preference during the financial evaluation of the bids.

(4) Any instrument, document or solicitation document relating to a preference scheme shall state—

- (a) in the case of preferences for domestically manufactured goods, that the nationality of the bidder shall not be a condition for eligibility;
- (b) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of subcontracting or association with citizens or any other relevant factor;
- (c) the documentation required as evidence of eligibility for the margin of preference; and
- (d) the percentage of the margin of preference and the manner in which it shall be applied during the evaluation.

(5) The details in subregulation (4) shall be stated in the solicitation documents, with summary details provided in any bid or pre-qualification notice.

(6) The Authority shall, in collaboration with the Citizens Economic Empowerment Commission, other relevant Government departments and statutory bodies, set the percentages for preference to be applied for purposes of subregulations (2) and (3).

(7) The percentages for preference set under subregulation (6) may be reviewed annually.

(8) The level of preference accorded to a bidder shall be proportional to the percentage of the contract to be actually executed by the bidder.

(9) The Authority shall publish the levels of percentages for preference schemes, set under this regulation, in a daily newspaper of general circulation in the Republic and the Authority's website and e procurement portal.

Reservation schemes

228. (1) The procurement of goods, works or services may be subject to a reservation scheme, consistent with the Government's economic and social policy as provided under section 91 of the Act.

(2) A reservation scheme shall have as its objective the development of businesses owned by target groups by reserving certain public procurement contracts for the targeted groups.

(3) A target group for any reservation scheme may include the groups specified under section 91(2) of the Act.

(4) A procuring entity shall ensure that a procurement under a reservation scheme is competitive among eligible bidders and the supplier is qualified to perform the contract.

(5) A procuring entity shall state in the solicitation document and any bid or pre-qualification notice the application of a reservation scheme and eligibility to participate.

(6) A procuring entity shall publish in a daily newspaper of general circulation in the Republic, on its website and e procurement portal, a procurement plan for procurement of goods, works and services that are reserved for target groups.

Supplier databases of lists

229. (1) The Authority shall organise and maintain a supplier database or list by registering suppliers of goods, services and works in accordance with section 94 of the Act.

(2) A procuring entity may use a supplier database or list maintained by the Authority to record potential bidders or suppliers who are eligible for any preference or reservation scheme.

(3) Despite subregulation (2), a procuring entity that selects a bidder from a supplier database or list shall not be relieved from the need to advertise procurement opportunities or to verify the eligibility and qualifications of a bidder.

230. (1) The Authority may suspend or bar a bidder or supplier in accordance with sections 95, 96 and 97 of the Act.

Suspension
or bar of
bidder or
supplier

(2) The Authority may, in addition to the grounds specified in section 97 of the Act, permanently prohibit a bidder or supplier from participating in public procurement, if that bidder or supplier has been permanently barred by a multilateral institution or a public procurement regulatory or oversight body of another country.

(3) A law enforcement agency, procuring entity or institution that intends to recommend to the Authority to permanently prohibit a bidder or supplier from participation in public procurement shall submit the recommendation, in writing, stating—

- (a) the name of the bidder or supplier;
- (b) the grounds for the recommendation to suspend or permanently bar the bidder or supplier;
- (c) details of the procurement proceedings or contract to which the recommendation relates;
- (d) documentary or other evidence supporting the recommendation; and
- (e) any other information relevant to the recommendation.

231. (1) The Authority shall, on receipt of the recommendation to suspend or permanently bar a bidder or supplier in accordance with regulation 230 immediately—

Investigation
of
suspension
or barring
by the
Authority

- (a) notify the bidder or supplier, in writing, giving full details of the recommendation to suspend or bar and invite the bidder or supplier to submit information or evidence in the bidder's or supplier's defence; and
- (b) institute an investigation.

(2) The Authority shall, in investigating the recommendation to bar or suspend a bidder or supplier, consider—

- (a) the information contained in the written recommendation;
- (b) any additional information provided by the procuring entity;
- (c) any information submitted by the bidder or supplier; and
- (d) any other relevant information.

(3) The Authority may obtain additional information from a procuring entity through written requests for information, an examination of the relevant procurement records or interviewing staff of the procuring entity or any external contract manager.

Appointment
of
committee

232. (1) The Director General shall, within five days of receipt of a recommendation to suspend or permanently bar a bidder or supplier under regulation 230, appoint a committee which consists of five members of staff of the Authority to hear and determine the recommendation.

(2) The members of the committee shall elect a chairperson from among themselves.

Date and
place of
hearing by
committee

233. The committee shall—

(a) fix the date and place of hearing; and

(b) inform all relevant parties and witnesses, if any, of the date and place of the hearing.

Procedure
for hearing
by
committee

234. (1) Subject to these Regulations, the committee may regulate its own procedure.

(2) The quorum at a hearing of the committee shall be three members, including the chairperson.

(3) The hearing of the committee shall be informal and the law relating to admissibility of evidence in a court of law shall not apply.

(4) A party to a hearing of the committee may appear in person or be represented by a legal practitioner or, if the party so elects, by any other person.

(5) A person who is present at a hearing of a committee at which any matter, is the subject of consideration and in which matter that person or that person's relative or associate is directly interested in a private capacity shall, as soon as practicable after the commencement of the hearing, disclose that interest and shall not, unless the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(6) A disclosure of interest made under regulation (5) shall be recorded in the minutes of the hearing at which the disclosure is made.

(7) The parties at the hearing of the committee shall be entitled to give evidence, call witnesses, cross examine witnesses and address the Authority and, at any time in the course of the hearing, request any other party to produce any document alleged to be in possession of that party which is relevant to the application.

(8) The parties to a hearing may conduct discoveries and exchange relevant documents on which they intend to rely on at the hearing.

(9) The chairperson may, on an application by a party to a hearing or on the committee's own motion, postpone the hearing to a later date.

(10) The committee shall, where the hearing has been postponed under subregulation (9), as soon as practicable—

- (a) give notice of the postponement to every party; and
- (b) inform every party of the date of the next hearing.

(11) The committee shall ensure, at all times, that the parties to the hearing are present at a hearing and heard by the committee unless a party waives the right to be heard.

(12) The committee shall cause to be kept a record of its proceedings and any party to the proceedings may obtain a copy of the proceedings at that party's own expense.

235. (1) The committee shall, on the bidder or supplier's request for documents relating to the hearing, submit to the bidder or supplier the documents promptly, unless the disclosure would be contrary to the requirement for confidentiality specified in the Act.

Disclosure of information and special measures for confidentiality

(2) The committee may request the bidder or supplier to produce documents relating to the hearing that are not in their possession.

(3) The committee shall, on its own motion or on the party's request, apply special measures to control the treatment of proprietary or confidential information or other information, the release of which would be contrary to the requirements for confidentiality specified in the Act.

236. The committee may dismiss a recommendation to suspend or bar a bidder or supplier for—

Dismissal of recommendation to suspend or bar

- (a) failure to comply with the requirements of these Regulations if the non-compliance is of a minor nature;
- (b) allegations that do not state a—
 - (i) valid basis for a recommendation to suspend or bar a bidder or supplier; or
 - (ii) legal and factual statement; or
- (c) failure to submit sufficient information to the committee.

Determination of period for suspension or decision to bar

237. The committee shall, in determining the period of any suspension or bar of a supplier or bidder, take into account—

- (a) the nature and severity of the offence;
- (b) any mitigating circumstances;
- (c) any previous suspensions; and
- (d) the period of suspension imposed in comparable cases.

Decision of committee to suspend or bar supplier or bidder

238. (1) The committee shall hear and determine a recommendation to suspend or bar a bidder or supplier within thirty working days from the date of the appointment of the members under regulation 232.

(2) A decision of the committee shall be by a majority of the members present and voting and in the event of an equality of votes, the chairperson shall have a casting vote in addition to the chairperson's deliberative vote.

(3) The decision of the committee shall be in writing and shall state—

- (a) whether the recommendation should be upheld in whole, in part or dismissed;
- (b) the reasons for the decision; and
- (c) any corrective measure that should be taken by the bidder or supplier.

(4) Any clerical mistakes or errors to the decision of the committee arising out of an accidental omission may be corrected and certified by the chairperson.

Contents of communication to suspend

239. (1) The Authority shall inform, in writing, the bidder or supplier, the committee's decision to suspend or bar the bidder or supplier stating—

- (a) the name and contact details of the bidder or supplier;
- (b) the details of the procurement requirement to which the suspension or barring relates, including any reference number;
- (c) that the bidder or supplier is excluded from participating in all public procurement for a specified period or permanently;
- (d) the grounds for the suspension or bar;
- (e) that the suspension or bar applies to any successor in interest, which shall include any entity which employs, or is associated with, any partner, director, or named officer of a suspended or barred entity; and

- (f) that the suspension or bar does not relieve the bidder or supplier of responsibility for obligations under any existing contracts entered into before the suspension or bar.

(2) Despite subregulation (1), the Authority may, where the Authority suspends or bars a bidder or supplier, recommend to the procuring entity, to terminate a contract with a suspended or a barred bidder or supplier in accordance with the conditions of the contract.

(3) The Authority shall, immediately, where a bidder or supplier is suspended or barred —

- (a) place the bidder or supplier on its list of suspended or barred organisations, including the names of partners, directors or other officers considered as successors in interest; and
- (b) notify all procuring entities of the suspension or debarment.

(4) A procuring entity shall enforce the list of suspended or barred bidders and suppliers issued by the Authority by not—

- (a) awarding contracts to a suspended or barred bidder or supplier;
- (b) selling or issuing solicitation documents to a suspended bidder or supplier or in any other way inviting bids from suspended or barred bidders or suppliers; and
- (c) entering into any other dealings or communications with a suspended or barred bidder or supplier, except in respect of existing contracts placed before the suspension or barring.

(5) For the purposes of this regulation, “successor in interest” means any natural person or incorporate body that takes over ownership or control of a suspended or permanently barred bidder or supplier”.

240. (1) A copy of the decision of the Authority shall be submitted to the controlling officer or chief executive officer of the law enforcement agency, procuring entity or institution that submitted the recommendation to bar or suspend a bidder or supplier.

Copy of
decisions of
Authority

(2) Despite subregulation (1), where a decision contains information which is subject to special measures for confidentiality—

- (a) a copy of the decision shall be provided only to individuals granted access to the information pursuant to the special measures; and

(b) a public version of the decision omitting the confidential information shall be issued to other parties, wherever possible.

(3) The Authority shall publicise its decision on the suspension or debarment of a supplier or bidder in any media of general circulation in the Republic and the Authority's website.

PART XIX

PROCEDURES FOR APEAL

Appeal to
Authority

241. (1) A bidder or supplier who is aggrieved with a decision made by a procuring entity may appeal against that decision to the Authority within the period specified under section 100 (3) of the Act.

(2) An appeal shall be in Form VIII set out in the First Schedule and accompanied by payment of a fee determined by the Authority under regulation 242.

(3) A bidder or supplier who lodges an appeal under subregulation (1) shall—

- (a) state the name and contact details of the bidder or supplier;
- (b) provide details of the procurement requirement to which the appeal relates, including any reference number;
- (c) state the name of the procuring entity to which the appeal relates;
- (d) state the legal and factual grounds of the appeal, including documentary or other evidence supporting the appeal;
- (e) provide information establishing that the bidder is an actual or prospective bidder, who has suffered, or that may suffer, loss or injury, due to a breach of duty imposed on a procuring entity;
- (f) provide information establishing the timeliness of the appeal, including the date that the bidder or supplier became aware of the circumstances giving rise to the appeal and the dates of any contract award; and
- (g) the remedy sought.

(4) A bidder or supplier who lodges an appeal may, in addition to the information specified under subregulation (3) request—

- (a) special measures for the handling of proprietary, commercial or other confidential information;
- (b) specific documents required by the bidder for the effective prosecution of its application, explaining the relevance of such documents to the grounds of the complaint or application; or
- (c) that a hearing be held, explaining the reasons why a hearing is needed to resolve the application.

(5) A bidder or supplier may withdraw an appeal at any time before the appeal committee renders a decision under regulation 248 and that bidder or supplier shall not revive the appeal that has been withdrawn.

242. (1) The Authority shall set fees for appeals by publication in public procurement circulars.

Fee for
appeal

(2) The Authority shall, in addition to the publication under subregulation (1), publish the fees in a daily newspaper of general circulation in the Republic and Authority's website.

(3) The level of fees set by the Authority shall be sufficient to deter frivolous complaints and applications, but shall not be set so high as to discourage genuine complaints and applications for appeal.

(4) The Authority shall not charge any fee in the absence of any circular setting fees.

(5) Any fees set by the Authority under this regulation shall accrue to the Authority and be part of the funds of the Authority as specified under paragraph 10 of the First Schedule of the Act.

243. (1) The Authority shall, immediately on receipt of an appeal, inform the controlling officer or chief executive officer of the procuring entity to which the appeal relates to suspend the procurement proceedings and the controlling officer or chief executive officer shall immediately suspend those procurement proceedings.

Suspension
of
procurement
proceedings
by
Authority
on receipt
of appeal

(2) The Authority shall institute an investigation to consider

- (a) information and evidence contained in the application;
- (b) information in the records kept by the procuring entity;
- (c) information provided by staff of the procuring entity;

- (d) any information provided by the bidder or supplier; and
- (e) any other relevant information.

(3) Any documentation requested by the Authority from a procuring entity for purposes of an appeal shall be submitted to the Authority within two working days of receipt of the request unless the procuring entity can show reasonable cause why the documents cannot be submitted within two working days.

(4) The Authority shall, within five working days of conducting the investigation under subregulation (2)—

- (a) make a decision on the matter without holding a hearing of the parties; or
- (b) hold a hearing of the parties in accordance with the Act and these Regulations.

Appointment
of appeal
committee

244. (1) The Director General shall appoint an appeal committee which consists of five members of staff of the Authority to hear and determine an appeal submitted by a bidder or supplier under regulation 241.

(2) The members of an appeal committee shall appoint a chairperson from among themselves.

Date and
place of
hearing by
appeal
committee

245. (1) An appeal committee shall fix the date and place of hearing for an appeal where—

- (a) a request for a hearing was made under regulation 241 (4) (c); or
- (b) the appeal committee determines that there is need for a hearing.

(2) The date fixed by the appeal committee under subregulation (1) shall not be later than five working days after the receipt of the application for an appeal.

(3) An appeal committee shall inform all relevant parties, and witnesses, if any, of the date and place of the hearing.

Procedure
for hearing
by appeal
committee

246. (1) Subject to these Regulations, the appeal committee may regulate its own procedure.

(2) The quorum at a hearing of an appeal committee shall be three members, including the chairperson.

(3) The hearing of an appeal committee shall be informal and the law relating to admissibility of evidence in a court of law shall not apply.

(4) A party to a hearing of the appeal committee may appear in person or be represented by a legal practitioner or, if the party so elects, by any other person.

(5) A person who is present at a hearing of an appeal committee at which any matter, is the subject of consideration and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the hearing, disclose that interest and shall not, unless the appeal committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(6) A disclosure of interest made under subregulation (5) shall be recorded in the minutes of the hearing at which it is made.

(7) An applicant and any respondent shall be entitled to give evidence, call witnesses, cross examine witnesses and address the Authority and, at any time in the course of the hearing, request any other party to produce any document alleged to be in possession of that party which is relevant to the application.

(8) The parties to an appeal may conduct discoveries and exchange relevant documents on which they intend to rely at the hearing.

(9) The chairperson may, on an application by a party to a hearing or on the appeal committee's own motion, postpone the hearing of an appeal committee to a later date.

(10) An appeal committee shall, where the hearing has been postponed under subregulation (9), as soon as possible—

- (a) give notice of the postponement to every party; and
- (b) inform every party of the date of the next hearing.

(11) An appeal committee shall ensure at all times that the parties to the cause are—

- (a) present at a hearing; and
- (b) heard by an appeal committee unless such party waives the right to be heard.

(12) An appeal committee shall cause to be kept a record of its proceedings and any party to the proceedings may obtain a copy of the proceedings at that party's own expense.

247. An appeal committee shall, in hearing an appeal, consider—

- (a) the information contained in the written application for appeal;

Information
to
consider
in appeal

- (b) supplementary information requested from or submitted by the applicant, in writing;
- (c) information obtained through an examination of the relevant procurement records;
- (d) written comments provided by the procuring entity;
- (e) information submitted by other bidders;
- (f) information obtained by examining staff of the procuring entity, the applicant, or any other relevant parties through means of statements or a hearing;
- (g) additional information or statements from other parties as may be necessary for the fair resolution of the application;
- (h) confidential information provided by the controlling officer, or chief executive officer; and
- (i) any other relevant information.

Decision of
appeal
committee

248. (1) An appeal committee shall, within ten working days of receipt of an appeal under regulation 241, hear and determine the appeal.

(2) A decision of an appeal committee shall be by a majority of the members present and voting and in the event of an equality of votes, the chairperson shall have a casting vote in addition to the chairperson's deliberative vote.

(3) The decision of an appeal committee shall be in writing and shall indicate—

- (a) whether the application should be upheld in whole, in part or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measure that should be taken by the bidder or supplier.

(4) Any clerical mistakes or errors of the decision of an appeal committee arising out of an accidental omission may be corrected and certified by the chairperson.

(5) A copy of the decision of an appeal committee shall be submitted to—

- (a) the applicant;
- (b) any other bidders or parties who participated in the review or appeal proceedings; and

(c) the controlling officer or chief executive officer of the concerned entity, for distribution to the Procurement Committee and head of the Procurement Unit.

(6) An appeal committee may publish the decision of the appeal committee on the Authority's website and in any other manner that the Authority considers appropriate.

(7) Despite subregulation (5) or any other regulation, where a decision contains information subject to special measures for confidentiality—

(a) a copy of the decision shall be provided only to individuals granted access to the information pursuant to the special measures; and

(b) a public version of the decision omitting the confidential information shall be issued to other parties, wherever possible.

(8) A decision of an appeal committee shall be binding on all parties concerned, including the Authority, subject to the parties submitting the matter to arbitration in accordance with section 101 of the Act.

(9) Subject to subregulation (7), a decision of an appeal committee shall be implemented by the parties on transmission of the decision to the parties concerned.

Remedies

249. (1) The Authority shall, in determining the appropriate remedy for the purposes of an appeal under this Part, consider all circumstances surrounding the procurement, including the—

(a) seriousness of the breach by the procuring entity;

(b) degree of prejudice to other parties or to the integrity of the procurement system;

(c) good faith of the parties;

(d) cost to the Government;

(e) urgency of the procurement; and

(f) impact of the remedies on the fulfillment of the procuring entity's functions.

(2) The Authority may grant one or more of the following remedies:

(a) prohibit a procuring entity from acting or deciding unlawfully or from following an unlawful procedure, and require the procuring entity to act or to proceed in a lawful manner or to reach a lawful decision;

- (b) annul in whole or in part an unlawful act or decision of the procuring entity;
- (c) require the payment of compensation for any reasonable costs incurred by the bidder or supplier who submitted the appeal in connection with the procurement proceedings as a result of an unlawful act or decision of the procuring entity;
- (d) order that the procurement proceedings be terminated;
- (e) recommend to the procuring entity that a contract be terminated; or
- (f) refer the matter or person for prosecution by relevant law enforcement agencies.

(3) Despite subregulation (2) (c), compensation shall be limited to costs related to bid preparation and may only be awarded to a bidder that would have been awarded the contract.

(4) The costs related to bid preparation referred to in subregulation (3) are—

- (a) cost of a solicitation document;
- (b) transportation costs incurred for bid submission;
- (c) costs related to site visits or pre bid conferences;
- (d) stationery costs; and
- (e) communication costs.

PART XX

GENERAL PROVISIONS

Exercise of
policy
functions

250. (1) The Authority shall, in the exercise of the policy functions of the Authority as specified under the Act, ensure that public procurement policy, systems and procedures are consistent with the fundamental principles under regulation 6 and integrated with other relevant Government policies, systems and procedures, including those for—

- (a) expenditure management;
- (b) private sector development and the development of Zambian suppliers and other target groups;
- (c) anti corruption initiatives;
- (d) decentralisation; and
- (e) the use of information and communications technology.

(2) The Authority shall establish procedures and mechanisms to ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, systems, procedures and standard documents.

251. (1) The Authority shall, in the exercise of the regulatory functions of the Authority as specified under the Act, keep under review and propose to the Government improvements to the public procurement laws, in accordance with international and regional best practices.

Exercise of
regulatory
functions

(2) The Authority shall provide opinions to procuring entities on the application of laws on public procurement, with a view to fostering harmonised interpretation and application of the Act and regulations issued under the Act, and in this respect may seek the assistance or confirmation of the Attorney General.

(3) The Authority shall, for the mandatory use by every procuring entity, develop standard solicitation documents, pre-qualification documents, standard forms of contract and such other standard documents and forms as the Authority may consider necessary or useful for the implementation of the Act and these Regulations.

(4) The Authority shall, in revising public procurement laws, and developing or revising circulars, standard documents or similar documents as specified under subregulations (1) and (3), respectively—

- (a) consult with interested parties in both the public and private sectors, where necessary; and
- (b) liaise with the Attorney-General regarding the introduction or issue of all legal documents, including general conditions of contract and contract forms contained in standard solicitation documents.

(5) The Authority may permit procuring entities to develop and use alternative solicitation documents where no suitable standard solicitation document has been issued by the Authority, except that a procuring entity shall submit the alternative solicitation documents to the Authority for approval before issue.

(6) The Authority shall date all public procurement circulars, issued by it, and sequentially number them.

(7) The Authority shall make available, in electronic form, standard documents to all procuring entities.

(8) The Authority shall issue instructions to procuring entities relating to fluctuations of the original contract price for short term contracts.

Transfer of functions of procuring entity to other body

252. (1) The Authority shall, before transferring the procurement function of the procuring entity to a body or procurement agency appointed by the Authority under section 110 of the Act—

- (a) notify a procuring entity of the grounds for the proposed transfer and the details of the alleged grounds;
- (b) give a procuring entity an opportunity to respond to the alleged grounds; and
- (c) undertake an investigation of the facts of the case.

(2) The Authority shall, after an investigation conducted under subregulation (1) (c) and the determination made that the functions of a procuring entity should be transferred to a body or procurement agency, notify in writing, the procuring entity whose functions the Authority intends to transfer including—

- (a) the name of the procuring entity where the procurement function shall be transferred;
- (b) the measures to be put in place by the procuring entity that shall satisfy the Authority that the causes of the contraventions have been rectified; and
- (c) the administrative details of how the procurement function shall be undertaken.

Exercise of monitoring functions

253. (1) The Authority shall ensure that public procurement proceedings are subject to regular monitoring for compliance with public procurement laws, the fundamental principles and guidelines issued under these Regulations.

(2) The Authority may, in conducting its monitoring functions as specified under the Act and these Regulations—

- (a) request any person or body to provide it with information relating to public procurement that the Authority may require in the performance of its functions;
- (b) co operate and work closely with other bodies responsible for oversight; and
- (c) refer cases to other public bodies for action, where appropriate.

(3) The Authority may participate in any mechanism or programme establishing—

- (a) systems for sharing information with other public oversight bodies;
- (b) common methodologies or standards for investigations and the collection of evidence;
- (c) joint teams to conduct oversight functions;
- (d) joint capacity building training relating to oversight functions;
- (e) scheduling work plans to avoid the duplication of effort or overlapping investigations; or
- (f) any other mechanisms or programmes which facilitate the conduct of oversight functions.

254. The Authority shall issue to an inspector appointed under the Act a certificate of appointment in Form IX set out in the First Schedule for purposes of carrying out investigations and inspections.

Certificate of appointment of inspector

255. (1) The Authority shall, in order to improve the functioning of the procurement function as stipulated under the Act, provide or coordinate capacity building and professional development, and shall develop standards, competence levels and certification requirements for staff involved in public procurement, in consultation with appropriate bodies responsible for training and development.

Exercise of capacity building and professionalisation functions

(2) The Authority shall, in developing standards, competence levels and certification requirements, take into account—

- (a) the differing types, volumes and complexity of public procurement managed by different procuring entities;
- (b) the needs of small procuring entities, where it may not be necessary to employ a full time procurement officer;
- (c) the skills needed in public bodies and parastatals, including local authorities;
- (d) the differing skills required by those involved in conducting, managing, authorising and monitoring public procurement; and
- (e) requirements for different levels of public procurement staff and requirements for career progression for procurement officers.

256. The Public Procurement Regulations, 2011 are revoked.

Revocation of S.I. No. 63 of 2011

FIRST SCHEDULE

(Regulations 14, 26, 59, 63, 88, 186, 220, 222, 241, and 254)

Form I
(Regulation 14(5))



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

DECLARATION OF INTEREST FORM

I hereby declare that:

I have no pecuniary or other personal interest, direct or indirect, in any item or matter on the agenda that raises or may raise a conflict with my duties.

I have pecuniary or other personal interest, direct or indirect, in an item or matter on the agenda that raises or may raise a conflict with my duties.

The particulars of interest are stated below:

I further acknowledge that I shall make another declaration to state any change in any matter contained in this declaration within one month after the change occurs and shall provide further information on the particulars contained in this declaration if so required by the procuring entity.

Signature:

Name:

Date:

Note:

Please put a in the appropriate box

Form II
(Regulations 26(1) and 186(2))



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

NOTICE OF CONTRACT AWARD

Insert Name of Procuring Entity

.....
.....
.....

The bidder named below has been awarded the contract for the procurement requirement detailed below.

Contract No.	
Name and Address of the Supplier/Contractor	
Description of the Goods, Works or Services to be purchased	
Date of contract award	
Contract Sum	
Duration of the Contract	
Name(s) of the beneficial owner of the supplier as they appear in the Register of Beneficial Owners maintained at the Patents and Companies Registration Agency	

Name:

Signature:
(Controlling Officer or Chief Executive Officer/Head/Procurement)

Date:

Form IV
(Regulation 63(1))

The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

PROCUREMENT REQUISITION FORM

Insert Name of Procuring Entity:

PROCUREMENT REQUISITION

Procurement Reference Number:							
Subject of Procurement:							
Consignee and Location for Delivery:		Date Required:					
Item No.	Description (A detailed list, statement of requirements or stock management information may be attached)	Quantity	Unit of Measure	Estimated Unit Cost	Estimated Total Cost		
Expand this table with continuation sheets for larger requirements but quote reference stated above. Attach additional related information.							
Funds Availability:	Allocation/ Vote No.	Programme	Sub-programme	Item	Balance Remaining	Currency:	
						Estimated Total Cost:	

Signatures are required below to certify that –

1. The goods, works or services described above are required and that the statement of requirements is accurate;
2. Approval is granted to proceed with the procurement; and
3. Funds are available or budgeted for the -

(a) Confirmation of Need:

(i) Originating Officer – User Department

Signature: _____ Name: _____

Position: _____ Date: _____

(ii) Head of Department

Signature: _____ Name: _____

Position: _____ Date: _____

(b) Confirmation of Funding (Controlling Officer, unless delegated)

Signature: _____ Name: _____

Position: _____ Date: _____

(c) Approval to procure

(Controlling Officer, unless delegated)

Signature: _____ Name: _____

Position: _____ Date: _____

4. Date of receipt of Procurement Requisition by the Procurement Unit or Department

.....
Signature

.....
Date



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

BID-SECURING DECLARATION

[The Bidder shall fill in this Form in accordance with the instructions indicated.]

Date:..... *[insert date (as day, month and year) of Bid Submission]*

Ref. No.:..... *[insert number of bidding process]*
[insert identification No if this is a Bid for an alternative]

Alternative No.:.....

To: *[insert complete name of Procuring Entity]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
2. We accept that we shall be liable to suspension from participating in public procurement in accordance with section 95 and 96 of the Public Procurement Act No. 8 of 2020, if we are in breach of our obligation(s) under the bid conditions because we-
 - (a) have withdrawn our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or
 - (b) having been notified of the acceptance of our Bid by the Procuring Entity during the period of bid validity -
 - (i) fail or refuse to execute the Contract, if required; or
 - (ii) fail or refuse to furnish the Performance Security, in accordance with the Instructions to Bidders.
3. We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, on the earlier of –
 - (a) our receipt of a copy of your notification of the name of the successful Bidder; or
 - (b) twenty-eight days after the expiration of our Bid.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration shall be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: [insert signature of person whose name and capacity are shown] In the capacity of [insert legal capacity of person signing the Bid Securing Declaration]

Name: [insert complete name of person signing the Bid Securing Declaration]

Duly authorised to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____ [insert date of signing]

Form VI
(Regulation 220(1))



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

APPLICATION FOR DEVIATION FROM THE USE OF A PUBLIC PROCUREMENT METHOD, RULE, PROCESS OR DOCUMENT			
Please complete in BLOCK LETTERS	Shaded fields for official use only	Ref. No.	
		Date of Application	
PART A: DETAILS OF APPLICANT			
1.	Name of Procuring Entity		
2.	Subject of Application		
PART B: DETAILS OF APPLICATION			
3.	Statement of the method, rule, process or document from which a deviation is required.		
4.	Reasons for deviation from a procurement method, rule, process or document, including an explanation of the exceptional requirements, market conditions, international standards or practices which regulate or govern the requirement.		
5.	Explanation of the proposed alternative method, rule, process or document, including a summary of how it differs from the standards		
6.	Statement of whether the deviation is required for a single requirement or for a number of requirements of the same class over a period of time.		
7.	Any other relevant information		
PART C: AUTHENTICATION (To be completed by Controlling Officer of Chief Executive Officer of the procuring entity)			
	Name:	Designation:	Signature:
FOR ZPPA USE ONLY			
Received by: <i>Officer (Name and Signature)</i>			
FOR ZPPA USE ONLY			
Received by: <i>Officer (Name and Signature)</i>			
Date Received:			
Ref. No.:			
			OFFICIAL STAMP

Form VII
(Regulation 222(1))

The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

APPLICATION FOR ACCREDITATION OF AN ALTERNATIVE PROCUREMENT SYSTEM

Please complete in BLOCK LETTERS	Shaded fields for official use only	Ref. No.	
		Date of Application	
PART A: DETAILS OF APPLICANT			
1.	Name of Procuring Entity		
2.	Subject of Application		
PART B: DETAILS OF APPLICATION			
3.	Full details of the alternative system		
4.	An analysis of the ways in which the alternative system differs from the Act and these Regulations		
5.	Justification for using an alternative system, including a copy of any relevant agreement or legislation		
6.	Any other relevant information		
PART C: AUTHENTICATION (To be completed by Controlling Officer of Chief Executive Officer of the procuring entity)			
	Name: _____	Designation: _____	Signature: _____
FOR ZPPA USE ONLY			
Received by: <i>Officer (Name and Signature)</i>			
Date Received:			
Ref. No.:			
			OFFICIAL STAMP

Form VII
(Regulation 241(2))



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

APPEAL SUBMISSION FORM

This form should be duly completed **when lodging an appeal** with the Authority. Please refer to the guidelines for submitting Appeals accessible at www.zppa.org.zm/guidelines.

PART A: TENDER DETAILS

<i>Supplier's Name</i>	
<i>Name of Procuring Entity</i>	
<i>Name of the Tender</i>	
<i>Tender Number</i>	

PART B: CONTACT INFORMATION OF THE REPRESENTATIVE

<i>Name</i>	
<i>Title in the Company</i>	
<i>E-mail</i>	
<i>Phone Number</i>	
<i>Physical Address</i>	
<i>Postal Address</i>	

PART C: DEBRIEFING AND REVIEW BY PROCURING ENTITY

Date of Notice of Best evaluated bidder	
Did you receive a debrief?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please enter the date of debrief Date: (dd/mm/yyyy)	
Did you apply for review of the procuring entity's decision?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please enter the date of the review decision	

PART D: APPEAL GROUNDS***Appeal Ground 1***

(a) Full details of appeal ground	
(b) State Violation (legal provisions/clauses violated)	
(c) Remedy sought	

Appeal Ground 2

(d) Full details of appeal ground	
(e) State Violation (legal provisions/clauses violated)	
(f) Remedy sought	

Note:

Additional factual grounds can be attached as appropriate. All additional grounds attached should be stated in the format as above.

DECLARATION

By submitting this form, I declare that the information contained in this form is correct to the best of my knowledge and belief and that I am a bidder/prospective bidder (Cross which is not applicable) in the said procurement.

Name and Title

Date: _____ Signature: _____

Please submit this form through:

Email: info@zppa.org.zm

Mail: Zambia Public Procurement Authority, Procurement House, Stand No. Sub-J 11790, Off Alick Nkhata Road, Longacres, P.O. Box 31009, Lusaka, ZAMBIA.

FOR OFFICIAL USE ONLY

Lodged at Zambia Public Procurement Authority on day of 20.....

SIGNED:
Director-General

Form IX
(Regulation 254)



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

Certificate of Appointment

This is to certify that

.....

has been appointed as an

Inspector

**of the Zambia Public Procurement Authority in accordance with Section 85
of the Public Procurement Act No. 8 of 2020 and Regulation 260 of the Public Procurement Regulations 2022.**

.....
Date

.....
Director-General
Zambia Public Procurement Authority

SECOND SCHEDULE

(Regulations 20, 26, 29, 38, 39, 40, 70 and 184)



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

THRESHOLDS FOR PROCUREMENT METHODS

Procurement Method	TYPES OF PROCUREMENT		
	Goods and Non-Consulting Services	Works	Consulting Services
Open National Bidding	Over K1,000,000.00	Over K1,000,000.00	Not applicable
Open International Bidding	In appropriate circumstances	In appropriate circumstances	Not applicable
Limited Bidding	Over K1,000,000.00 and in appropriate circumstances		Not applicable
Open National Selection	Not applicable	Not applicable	Over K600,000.00
Open International Selection	Not applicable	Not applicable	In appropriate circumstances
Limited Selection	Not applicable	Not applicable	Above K600,000.00 and in appropriate circumstances
Simplified Selection	Not applicable	Not applicable	Up to K600,000.00
Simplified Bidding	Up to K1,000,000.00	Up to K1,000,000.00	Not applicable
Direct Bidding on account of low value	Up to K20,000.00 or in appropriate circumstances	Up to K20,000.00 or in appropriate circumstances	Not applicable
Direct Selection	Not applicable	Not applicable	in appropriate circumstances

THIRD SCHEDULE*(Regulations 28(1), (2) and 177(1))*

The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

LEVELS OF AUTHORITY FOR APPROVALS AUTHORITY

<i>Approvals Authority</i>	<i>TYPES OF PROCUREMENT</i>		
	<i>Goods and Non-Consulting Services</i>	<i>Works</i>	<i>Consulting Services</i>
Procurement Committee	Over K250,000.00	Over K250,000.00	Over K250,000.00
Controlling Officer/Chief Executive Officer	Up to K250,000.00	Up to K250,000.00	Up to K250,000.00

FOURTH SCHEDULE

(Regulation 186(1))



The Public Procurement Act, 2020
(Act No. 8 of 2020)

The Public Procurement Regulations, 2022

PUBLIC NOTICE OF CONTRACT AWARDS

<i>Types of publication</i>	<i>TYPES OF PROCUREMENT</i>		
	<i>Goods and Non-Consulting Services</i>	<i>Works</i>	<i>Consulting Services</i>
Mandatory thresholds for publication of contract award details	Over K1,000,000.00	Over K1,000,000.00	Over K600,000.00

LUSAKA
[5th April, 2022]
[MF/101/14/1]

DR S. MUSOKOTWANE,
Minister of Finance and National Planning

