

LEGAL NOTICE NO. 1 OF 2007

PUBLIC PROCUREMENT REGULATIONS 2007

In the exercise of the powers conferred on me by section 37 of the Finance Order 1988¹,
I,

TIMOTHY THAHANE THAHANE

Minister of Finance and Development Planning make the following regulations:

PART I - PRELIMINARY

Citation and commencement

1. These regulations may be cited as the Public Procurement Regulations 2007 and shall come into operation on the date to be published in the Gazette.

Interpretation

2. In these regulations, unless the context otherwise requires,

“a foreign body” means a juristic person not registered in Lesotho, and in the case of a natural person, an individual who is not a Lesotho citizen;

“Appeals Panel” means the Tender Panel established under regulation 50(2);

“Basotho business” means a business where the majority of directors are Lesotho nationals, and the majority of shares or ownership is held by Lesotho nationals;

“Certificate of Bona Fide Tender” means the provision by the supplier documentary proof that effective and realistic tendering will be taken by the supplier;

“chief accounting officer” means an officer who is a final decision maker in the respective bodies under regulation 3(2);

“Contracts Bulletin” means the Contracts Bulletins of the Government;

“Government” means the Government of Lesotho;

“Government Standard Conditions of Contract” means contractual items laid down as suitable for general application for contracts undertaken for and by the Government;

“Ministry” means the Ministry of Finance and Development Planning;

“PPAD” means the regulatory body in charge of the public procurement policy in Lesotho;

“Regulations” means the Public Procurement Regulations 2007;

“Tender” means a proposal of an interested person or entity to supply goods, works or services, prepared in accordance with the terms and conditions set out by the Unit;

“Unit” means the Procurement Unit authorized under these Regulations to carry out public procurement

PART II- ESTABLISHMENT OF BODIES

Procurement Unit

3. (1) There is established a Procurement Unit to be known as the Unit which shall be an individual or a group of individuals authorized to carry out public procurement.

(2) The following bodies shall constitute the Unit when carrying out public procurement:

- (a) ministries;
- (b) districts councils;
- (c) state owned legal entities;
- (d) any other bodies covered by public Law; or
- (e) any project implementing authority authorized to carry out public procurement and funded by foreign loans, grants and assistance.

Functions of the Unit

4. (1) The Unit shall apply Government Standard Conditions of Contract appropriate to the nature of the purchase.

(2) The Unit shall maintain, update and disseminate Government Standard Conditions of Contract.

(3) The Unit shall place advertisements for procurements and awards of contracts in the Contracts Bulletin of the Government.

Procurement Policy and Advice Division

5. (1) There is established a body to be known as Procurement Policy and Advice Division which shall be referred to as PPAD.

(2) PPAD shall be a department in the Ministry headed by the director.

Functions of the PPAD

6. (1) PPAD shall be a Division within the Ministry responsible for the development of the public procurement system by securing legality, accountability, efficiency, transparency and overall value for money in the implementation of public procurement and by stimulating a competitive environment with equality of treatment among bidders in the public procurement process, whilst taking due regard of the Government's policy and aims in respect of local preference schemes.

(2) The PPAD shall:

- (a) develop public procurement legislation and initiate proposals for the adoption of further acts and best practice;
- (b) provide advice and support to the Ministry on all aspects of procurement legislation, policy and implementation;
- (c) monitor compliance with procurement policies and these Regulations;
- (d) provide the Principal Secretary of the Ministry with an annual report for the detailing performance of the public procurement system with recommendations;
- (e) participate in national and international meetings as instructed by the Ministry;
- (f) provide instructions and guidance on the inclusion of standard and quality assurance systems in specifications and contract material and their implementation in consultation with the Director of Standards and Quality Assurance, Ministry of Trade and Industry, Cooperatives and Marketing;

- (g) establish a Help Desk to deal with enquiries from the Unit, the business community and other individuals;
- (h) plan and coordinate the requirement for foreign technical assistance in respect of procurement;
- (i) determine and monitor professional standards and qualifications for those responsible for carrying out public procurement;
- (j) set a sustainable public procurement training policy, develop and operate relevant training programmes;
- (k) establish the criteria and process for the assessment of suppliers to become eligible to compete for the Government business;
- (l) compile, produce and publish a Contracts Bulletin giving details of current and forthcoming procurement opportunities and of contracts placed;
- (m) set up an Appeals Panel to deal with complaints and appeals from suppliers and companies, and PPAD shall provide the Secretariat service to the Appeals Panel; and
- (n) compile an inventory of public assets, and provide advice and guidance on asset management and disposals.

PART III - PROCUREMENT PROCEDURE

Procurement procedure

7. The Unit shall select a contractor and enter into a contract guided by the following:

- (a) comparing price quotations obtained from a minimum of three suppliers or contractors;
- (b) the evaluation of quotations shall follow the same principles as of open bidding;
- (c) contracts shall not be divided into smaller units in order to make them less attractive, any proposal to divide a contract into smaller packages shall require the prior approval of

the chief accounting officer;

- (d) open procedures of procurement may be used where the advantages of securing competition outweighed the need for expediency;
- (e) advertising of tenders shall be made in the mass media or to the Contracts Bulletin of the Government in either one or both official languages;
- (f) tender documents shall be written in either of the official languages providing clear instructions on how bids should be submitted, how prices should be offered, the time and place for submission of bids; and
- (g) methods used in the evaluation of bids and the awards of contracts shall be objective and made known to all bidders in the bidding documents, and the results shall be published.

Exceptional procurement procedure

8. (1) Exceptional procurement procedure may be used when there is concern as to the degree of competition that can be secured or there is genuine emergency which is not brought about by the Unit or its clients. In these cases PPAD shall be approached by the relevant Unit for a waiver, PPAD shall then seek approval from the Minister.

(2) Exceptional procurement procedure shall apply where-

- (a) the requirement concerns a new contract that is directly relevant to a completed contract, and the added value of the additional work being given to the same contractor outweighs any potential reduction in costs that may be derived through a competitive tender;
- (b) the requirement can only be secured from the single source, this may be due to ownership of exclusive design rights or patents; and
- (c) there must be convincing and accurate reasons in (a) and (b) for competition to be avoided.

Selection of Consultants procedure

9. (1) Time-based contracts applicable when the scope of the service cannot be established with sufficient precision, or the duration and quality of services depends on

variables that are beyond the control of the Consultant. Consultants provide services on a timed basis according to quality specifications, and remuneration is based on,

- (a) agreed unit rates for Consultant staff multiplied by the actual time spent by the staff in executing the assignment, and
- (b) reimbursable expenses using actual expenses or agreed unit prices.

(2) Lump-sum contracts applicable when the definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Consultant are relatively low, and the Consultant is prepared to perform the assignment for an agreed predetermined lump-sum price.

Thresholds

10. (1) PPAD shall determine the following threshold values, distinguishing between goods, works, services and consulting services:

- (a) the upper threshold for the cost estimate of goods, works and services using the comparison method;
- (b) the upper threshold for the cost estimate of goods, works or services using direct procurement;
- (c) the upper threshold for the cost estimate of consulting service using least cost consultant selection procedure;
- (d) the threshold at which the estimate for goods, works or services requires authorization from PPAD; and
- (e) the lower threshold for cost estimate for goods, works or services whose invitation to tender is posted onto a website.

(2) The selection of the procurement procedure shall be based on the total cost estimate of the goods, works or services involved in a contract.

(3) PPAD shall not split the total cost estimate to avoid the aggregation of total spend value in regulation 12(1) for the purpose of refraining from the use of the open procurement procedure.

(4) The Unit shall decide on the appropriate contract duration dependent on the nature of purchase and the market the purchaser faces.

(5) The Unit may decide within a single contract the goods, works or services into a series of packages or lots and conduct a tender such lots according to type, similarity of purpose and geographical locations.

(6) The Unit shall meet the following requirements in the case of conducting tenders in packages or lots:

- (a) the total whole life cost of the combination of packages or lots shall be used in determining the procurement procedure to apply;
- (b) indicate the existence of packages or lots in the invitation to tender and tender documents and the right of tenderers to submit their proposals on one, some, or all of tender packages or lots; and
- (c) evaluate each package or lot to determine the best overall long term value for money.

(7) Contracts may be placed for each package or lot, a number of packages or lots, or all packages or lots.

(8) Where one tenderer is invited to enter into a contract for more than one lot of goods, works or services, the reasons for doing so shall be recorded in the procurement file.

Foreign tenderers

11. A foreign body or entity is entitled to participate in the tender process.

Granting of a margin

12. (1) The Unit shall grant a 15 percent margin of preference in evaluating tender proposals to a Basotho business who can demonstrate a majority shareholding of 51 percent and above;

(2) The Unit shall grant a 10 percent margin of preference to the following bodies in evaluating tender proposals:

- (a) a business that can demonstrate a shareholding of between 30 percent and 50 percent by Lesotho nationals;
- (b) a tenderer tendering to supply goods of Lesotho origin;

- (c) a tenderer proposing to perform at least 50 percent of the contract in Lesotho by setting up the necessary business and by using and developing the capacity of Basotho staff in the process;
- (d) a tenderer proposing to sub-contract at least 50 percent of the contract to one or more Basotho businesses;
- (e) a tenderer who has the largest use of locally produced goods, materials and services; or
- (f) a tenderer who employs the largest share of local labour.

(3) The Unit shall grant a 5 percent margin of preference in evaluating tender proposals to a business who can demonstrate a shareholding of between 10 percent and 30 percent by Lesotho nationals;

Technical specifications

13. (1) The Unit shall satisfy the following requirements in sitting out technical specifications:

- (a) define given goods, works or services not in terms of their design or descriptive characteristics but especially in terms of their purpose, application, use, quality, and technical merits;
- (b) define the requirement in terms of international standards accepted in Lesotho; and
- (c) not specify particular requirements and conditions indicating a trademark, name, design, type, origin, manufacturing method, and manufacturer or supplier.

(2) The Unit shall not receive, obtain or use advice that may restrict the competition among bodies interested in tender process.

Capacity of qualifying tenders

14. (1) The Unit shall examine and evaluate the financial resources, technical qualifications and the expertise of the tenderers according to the criteria set out in these Regulations, for the purpose of securing equal opportunities and fair competition to tenderers.

(2) The Unit shall set out and issue as part of the tender documents the mandatory criteria and requirements consistent with these Regulations and without which businesses will not qualify.

(3) Tenders that do not satisfy the Unit's criteria and requirements shall be rejected, and the rejection shall be notified to the tenderer in writing.

(4) The Unit shall respect and maintain the confidentiality of technical and business information of tenderers obtained during the assessment of their qualification.

Pre-qualification

15. (1) The Unit may conduct a pre-qualification review process prior to submission of tenders for the purpose of assessing the capacity of businesses that will be permitted to tender.

(2) PPAD shall issue procedures, instructions and guidance for conducting pre-qualification.

(3) The Unit take the following procedures and measures in the process of pre-qualification:

- (a) prepare a pre-qualification document to indicate the criteria for pre-qualification of businesses that will be permitted to tender;
- (b) make an announcement of pre-qualification as specified in these Regulations;
- (c) invite the businesses that satisfied the criteria for pre-qualification specified in the pre-qualification document to submit a tender; and
- (d) inform in writing within 10 days of the decision those businesses that did not satisfy the criteria for pre-qualification that they are not eligible to tender.

Assessing eligibility to tender

16. (1) A business shall be regarded as not satisfying the general conditions for pre-qualification if the following circumstances are proven:

- (a) the business has become insolvent, is in receivership, has entered into an arrangement with creditors to escape bankruptcy, the business operations were suspended or it is a similar situation pursuant to the legislation of the country of establishment of the tenderer's business operations;
- (c) the business has not fulfilled its tax, levy, fee and other payment liabilities pursuant to the legislation of Lesotho or the country of establishment of the tenderer's business operations;
- (c) the operations of the legal entity with whole or partial state ownership are dependent on any other state body to ensure competitive neutrality, the pre-qualifications of such entities shall take into account full-cost pricing, taxes, depreciation on plant and machinery and the return on capital employed;
- (d) whilst engaging in procurement in the most recent 3 years, has critically violated and did not fulfill contractual obligations, or the court and legally constituted authorities have proven an oversight in professional operations;
- (e) the business has common interests with a body who prepared the design, technical specifications and other documents of goods, works or services, or who was nominated to supervise the contract execution and provide consulting services;
- (f) the business has submitted to the Unit a tender that contained false information or omitted relevant information;
- (g) a court of law or a legally constituted authority proved that the business committed a corruption crime in the 3 years prior to the date of the tenderer's tender; or
- (h) the business does not have the right to use any licences, intellectual property, copyright and similar in

pursuance of the contract, and has not paid any fees that are due in respect of such licences.

(2) Businesses shall provide documentary evidence in support of their request to pre-qualify, this may include, but not limited to the following documents appropriate for Lesotho and the country of establishment of the tenderer's business operations:

- (a) a court ruling or official document issued by the competent public administrative authority; or
- (b) a certificate or other equivalent document issued by a competent authority of the country of establishment of the tenderer's business operations.

(3) The Unit shall be the sole judge of the materiality of the information provided, including any omissions and false statements.

(4) PPAD shall keep the register of bodies whose rights to tender were restricted.

(5) A tenderer shall in writing deliver information on how he proposes to perform the contract within the specification.

(6) The Unit shall take into account information specified in evaluating the financial and technical qualifications of the tenderer in performing a given contract.

Evaluating technical qualification and expertise

17. (1) The tenderer's technical capacity and expertise shall be determined subject to any of the following indicators depending on the nature, specifics, quality and quantity of the works, goods or services:

- (a) education and professional qualifications of management, supervision, and operational staff of the tenderer;
- (b) details of contracts of a similar nature carried out over the last 5 years with their cost, timeframe, location and the purchaser with a reference or references of satisfactory completion;
- (c) details including specifications of the tenderer's technical facilities, plant and equipment;
- (d) quality control measures to be carried out directly or under sub-contracting;
- (e) samples descriptions or photographs of the goods to be

supplied, a certificate or certificates of authenticity;

(f) in the case of goods, quality certificates issued by the competent authorities; or

(g) details of the tenderer's proposed arrangements for sub-contracting and for managing those sub-contractors.

(2) Those documents to be submitted amongst the documents specified in regulation 16(1) shall be indicated in the tender documents.

Evaluating financial qualification

18. (1) The Unit shall require tenderers to furnish evidence of their financial capability to fulfil contractual obligations.

(2) The Unit shall indicate the requirements for financial qualification in the tender or pre-qualification documents.

(3) Evidence of financial qualification may be established by the following documents:

(a) statements by a bank;

(b) tenderer's own financial statements, together with an audit opinion from a qualified independent auditor;

(c) table of consulting staff, remuneration, and other cost estimates; or

(d) reports on tenderer's annual sales of works, goods or services, similar to a given contract performed in the last 5 years.

(5) Those documents to be submitted amongst the documents specified in 17(3) shall be indicated in the tender documents.

PART VI- OPEN PROCUREMENT PROCEDURES

Open tendering

19. (1) Invitation for open tendering shall be announced, and all interested tenderers shall be given an equal opportunity to participate.

(2) Interested tenderers shall submit their technical and financial proposals concurrently the deadline fixed by the Unit.

(3) Open tendering shall be carried out at one stage except where pre-qualification applies.

Conducting two-stage open tendering

20. (1) The two-stage open tender process may be adopted by the Unit in the following circumstances:

- (a) the Unit considers that the scope of works is large;
- (b) cost estimates are high;
- (c) there is a need to conclude a contract to supply a number of goods, works or services interrelated with each other;
- (d) technically unequal proposals are likely to be submitted;
- (e) services are required that can be delivered by alternative methodologies;
- (f) two or more technical solutions will satisfy the requirements and are equally acceptable; or
- (g) the Unit and relevant technical experts from within the public service are unable to establish technical specifications in advance and need specialist assistance from experienced suppliers in order to finalise the scope of work and establish technical specifications.

(2) Two-stage open tendering shall be conducted by-

- (a) inviting tenderers to submit their technical proposals, which are then assessed by the evaluation team, and revisions and clarifications to which are agreed with individual tenderers, and
- (b) inviting tenderers to submit their financial proposals based on clarified and revised technical proposals, and the evaluation team shall undertake the evaluation.

(3) The Unit shall indicate two-stage open tendering in the invitation to tender and tender documents.

(4) The Unit shall prepare tender documents, including contract documents, based on national templates and other procedure and methodology related to the tender process as stipulated in instructions and guidance issued by PPAD.

(5) Tender documents shall include all information required for tenderers to submit a satisfactory tender including, but not limited to:

- (a) requirements for tenderers;
- (b) instructions to tender;
- (c) criteria and methods for selecting qualified tenders;
- (d) contract terms and conditions offered by the Unit;
- (e) technical specifications;
- (f) designs;
- (g) national templates of tender documents; and
- (h) terms of reference in case of consulting service.

Tender security

21. (1) The Unit shall require tenderers participating in tenders for goods, works or services to be procured at the cost above the threshold value specified in Schedule 1 to submit a tender security.

(2) A legal entity of Lesotho may submit a bank guarantee and Government Treasury Bonds, while a foreign legal entity may submit a guarantee from a Lesotho or a foreign bank, Government Treasury Bonds, or securities authorized by the Government.

(3) Where the Unit requires a tender security, this shall be specified in the tender documents.

(4) The tenderer shall be required to submit a guarantee of between 1 to 2 per cent of its tender price.

(5) tenders shall not be considered if required guarantees are not submitted or if the submitted guarantee does not satisfy the requirements under these Regulations.

(6) The tender security shall cease to have effect after the Unit signs a contract with the winning tenderer.

(7) The tender security shall be redeemable by the Unit where-

(a) a tenderer withdraws its tender after the tender opening,
or

(b) the winning tenderer fails to provide the bank guarantee for performing the contract within the time specified to accept the contract or the tenderer refuses to sign the contract.

Public announcement of invitations to tender

22. (1) The Unit shall make the invitation to tender available publicly through the mass media and on the web-page. The date of dispatch for publication shall be the issue date.

(2) The Unit shall announce detailed information concerning the tender openly and transparently and provide this to any interested body without delay.

(3) The invitation to tender shall be published through the mass media in either of the official languages, for works, goods or services with a cost estimate exceeding the figure stipulated in Schedule 1.

(4) The Unit shall post invitations to tender whose value exceeds the threshold value set out in Schedule 1 in the national press or mass media and on the web-based Tender Notice Board maintained by the Ministry and other bodies as set out in regulation 3(2).

(5) The invitation to tender shall provide the following information:

(a) the identity of the Unit;

(b) a brief summary of the works, goods or services to be procured;

(c) the address at which tender documents and other information are available and to which tenders are to be submitted;

(d) the cost of the tender document;

(e) special requirements of the tender;

(f) the deadline for tender submission and the place, date and time of tender opening;

- (g) the required validity period of the tenders;
- (h) a statement that foreign tenderers and licencees are invited to compete;
- (i) the procedure for granting a margin of preference;
and
- (j) the anticipated date by which bids will be evaluated and the contract awarded.

Tender documents and provision of related information

23. (1) The Unit shall make hard copies of the tender available to the public and tenderers at a price for the cost of producing the documents.

(2) Tenderers and members of the public may download tender documents free of charge from the internet.

(3) Additional information or clarifications of the tender documents may be requested from the Unit in writing by tenderers at least 6 working days prior to the tender submission deadline.

(4) The Unit shall provide in writing to all interested parties who have bought or secured the tender documents, the additional information or clarification together with a copy of a request of the additional information or clarification.

(5) The additional information or clarification shall be considered as delivered 4 working days after its submission to the post office.

Language of tender documents

24. (1) The tender documents and invitation to tender shall be prepared in either of the official languages, in cases where Sesotho does not have technical terms to convey the requirement accurately, then English can be used in place of a Sesotho text.

(2) Tenderers shall be invited to complete their tenders in either of the official languages, in cases where Sesotho language does not have sufficient technical terms, tenderers may use English phrases or words.

Deadline for submission and validity period of tenders

25. (1) The Unit shall provide all tenderers with sufficient and equal time to prepare and submit their tenders.

(2) The Unit shall determine the submission deadline of tenders starting from the day tenders are issued, the deadline shall be a minimum of 30 working days from the date of initial announcement.

(3) The Unit shall set the period of validity of tenders and ensure that the tender remain valid for the period of 30 working days after the set date for completion of evaluation and announcement of contract award.

(4) The Unit shall, if it is required to make a site visit for tender preparation, the time necessary for the visit be included in the deadline timeframe.

(5) The Unit shall set the timeframe for evaluating tenders after the tender opening, the time shall be specified in the invitation to tender and tender documents.

Submission of tenders

26. (1) Tenderers shall submit their tenders or revisions to tenders within the fixed deadline, at the stated address, and in the form specified in the tender documents.

(2) Tenderers may withdraw or modify their bids within the fixed deadline.

(3) Any tender received after the deadline or not submitted in the format specified in the tender documents shall be rejected and returned to the tenderer at the address stated on the tender documents.

(4) Information related to the technical, price and other content of tenders, the evaluation of tenders and the qualification of tenderers' capacity shall remain confidential until a contract is signed.

Opening tenders

27. (1) The Tender Panel shall publicly open all tenders received, immediately after the fixed deadline for submission of tenders.

(2) Tenderers or their representatives, or others interested bodies are entitled to attend the tender opening.

(3) At the opening of tenders, the Tender Panel shall announce and make a relevant record of the procurement in respect of -

(a) tenderers' names;

- (b) the tendered prices;
- (c) the alternative tender prices if alternatives have been permitted;
- (d) the overall price;
- (e) price discounts offered;
- (f) whether the tender security and other mandatory documents required by the invitation to tender were submitted or not; and
- (g) any changes to the tender or revised tender.

(4) the Unit shall sign the notes in 26(3) make it available to any interested party.

(5) Any tendered prices, price discount, alternative tendered prices or price structure offered and not announced at the opening of tenders shall not be considered in tender evaluation.

(6) Following the opening of tenders, the Unit shall not enter into negotiations with tenderers on the content of the tender and the tendered price.

(7) The Unit may request a tenderer to provide explanatory notes in writing on issues relating to the tender but is prohibited from requesting or accepting changes to the content or tendered price.

(8) The Unit shall make and keep safe a written record of the explanatory notes provided from tenderers.

Review of tenders

28. (1) Following the opening of tenders, individual tenders shall be reviewed by the Unit, to check whether they satisfy the following requirements:

- (a) capacity qualifications set by the Unit;
- (b) technical specifications; and
- (c) other terms, conditions and requirements set out in the tender documents including the provision of mandatory documents such as tender security, tax certificates and the completed Certificate of Bona Fide Tendering.

(2) A tender shall be considered as apparently compliant tender when it appears at tender review to satisfy the specified conditions.

(3) Tenders which do not meet the requirements set out in the invitation tender shall be rejected by the Unit.

(4) The Unit shall inform tenderers whose tenders have been rejected, by writing within 10 working days of the date of rejection.

Evaluation of tenders

29. (1) The Unit shall ensure that the evaluation of tenders is completed within the specified date.

(2) Where the Unit is unable to meet the set date, all apparently compliant tenderers shall be informed in writing by the Unit of the revised projected date and be asked to confirm that their tender, and where appropriate their tender security, is still valid.

(3) Where the revised projected date is outside the validity period of the tender, the tenderer shall extend the validity date accordingly.

(4) The key criterion in evaluating apparently compliant tenders shall be the tendered price.

(5) The Unit shall select appropriate factors to be taken into account in evaluating the whole life costs of the overall tender as opposed to the initial cost of purchase.

(6) The factors which affect the overall economy, efficiency and effectiveness of the goods, works or services being procured and are expressed in monetary terms shall be the following:

- (a) the time of completion of works and services or delivery of goods;
- (b) current expenses or cost and efficiency estimations;
- (c) after-sales service and technical assistance;
- (d) commitments to supply spare parts and their price;
- (e) quality and technical merits of works, goods and services;
- (f) the risk involved and the costs of managing them; or
- (g) other criteria consistent with these Regulations.

(7) The additional evaluation is undertaken only for the purpose of comparing tenders and shall not be a justification for changing the tendered prices.

(8) The tendered price shall include taxes, insurance, transportation and all other expenses, including tolls and border levies, associated with the execution of the contract unless the tender documents provide otherwise.

(9) The Unit shall consider the costs in 28(8) to be included in the tendered price if they are not especially identified and costed in the tender.

(10) Apparently compliant tenders shall be evaluated by-

- (a) adjusting an arithmetical error or small amount of discrepancy in the tendered in the tendered price, or reducing the tendered price subject to the price discount, the corresponding estimations shall be shown in monetary terms, and the tender evaluation price shall be determined by adding them to the tendered price;
- (b) tender document providing for a margin of preference, the comparison price of a tenderer eligible to a margin of preference shall be adjusted to include the percentage in the Granting of a Margin of Preference to Tenderers; or
- (c) all tenders ordered from the lowest to the highest taking into account whole life costs and the best long term value for money.

(11) The tender evaluation shall consider the impacts of the use of foreign currency, where this is quoted by the tenderer. And where the tenderer quotes a foreign currency not specified in the tender document for payments and settlements, the currency shall be converted at the Central Bank of Lesotho rate effective on the date tenders are due for return.

(12) In two-stage open tendering, evaluation of tenders shall be carried out in the following manner:

- (a) technical proposals shall be reviewed to check their responsiveness to the requirements;
- (b) for each technical proposal that satisfies the requirements specified, discussions shall be held with a given tenderer in order to prepare a standard technical specification that better satisfies the

requirements;

- (c) after the discussions, the Unit shall issue a standard technical specification;
- (d) the tenderer may conduct an additional review of its technical proposal to comply with the standard technical specification and submit the updated version along with a financial proposal; and
- (e) the Unit shall evaluate and open publicly on the fixed date, financial proposals, and the tenderer with the most favourable tender shall be invited to sign a contract.

(13) Where the tenderer considers that it is impossible to revise its tender in accordance with the standard technical proposal, the Unit has the right to reject the tender.

Awarding of contract

30. (1) The Unit shall invite the tenderer who has satisfied the requirements specified and submitted the most favourable tender to enter into a contract.

(2) The remaining tenderers shall be advised in writing by the Unit that the tenderer who submitted the most favourable tender has been invited to enter into a contract.

(3) The Unit and the tenderer with the most favourable tender shall sign the contract within 15 working days following the notification of the invitation to contract and within the tender validity period, operation of the contract shall not come into force until 15 working days after the notice of contract award has been made.

(4) Where the tenderer who has submitted the most favourable tender does not wish to enter into a contract, the tenderer's tender security shall be forfeited and the Unit shall annul the invitation to contract and invite the second most favourable tenderer, in the absence of such a tenderer, the Unit shall make any of the decisions specified in writing as part of the evaluation report. In the event that there is no second most favourable tender, the Unit shall seek permission from PPAD to adopt the direct contracting method of procurement.

(5) Where the Unit decides to go for the lowest quotation under Schedule I item 1(b), the chief accounting officer shall approve the decision taken by the Unit.

(6) Where the Unit decides not to accept the lowest quotation under Schedule I item 1(b), the Tender Panel shall take a decision.

Rejection of tenders

31. (1) The Unit shall reject all tenders where-

- (a) all tenders that were submitted are non-compliant;
- (b) tendered prices of all responsive tenders exceeded the Unit's cost estimate by more than 15 percent; or
- (c) the procurement process has failed.

(2) The Unit shall, where it has rejected all tenders, make the following decisions:

- (a) examine the reasons that resulted in the failure of the tender process, and the conduct an open tender after making relevant amendments to the content of the tender document;
- (b) where the tender process failed only as a result of the quantity and the scope of goods, works or services to be procured, a limited tender shall be carried out after making relevant modifications to the tender document; or
- (c) non-competitive contracting shall take place where all tenders have been rejected.

De-briefing tenderers

32. (1) The Unit shall offer unsuccessful tenderers and the winning tenderer the opportunity of a debriefing, this offer shall be made when the contract is placed with the successful tenderer and unsuccessful tenderers are advised of their lack of success.

(2) The debriefing shall be carried out at by a team headed by a representative from the Unit, with specialist staff as necessary.

(3) The debriefing team shall advise successful tenderers of any areas where their tender was not as strong as it might have been and where they can improve for the future.

(4) The debriefing team shall advise unsuccessful tenderers of the reasons for their lack of success in broad and constructive terms, whilst maintaining the commercial confidentiality of other tenderers.

PART V – EXCEPTIONAL PROCUREMENT PROCEDURES

Application of the exceptional procurement procedure

33. (1) Exceptional procurement procedures shall be carried out in the following ways:

- (a) limited tendering;
- (b) comparison; or
- (c) non-competitive procurement.

(2) Matters pertaining to the exceptional procurement procedure but not regulated under this part shall be governed by the appropriate articles and provisions set out in Part III of these Regulations

Limited tendering

34. (1) Limited tendering shall be applied in the following cases:

- (a) the number of bodies capable of executing complicated goods, works or services requiring high qualification, expertise, equipment and technology is limited;
- (b) the requirement can only be secured from the single source, this may be due to ownership of exclusive design rights or patents;
- (c) there must be convincing and accurate reasons in (a) and (b) for competition to be avoided.

(2) In carrying out a limited tender, the Unit shall simultaneously send an invitation to tender to all firms with capacity to form the contract and thereby providing an equal opportunity to submit a tender.

(3) The tender document shall be provided to interested tenderers without unreasonable delay.

(4) The tender submission deadline shall be set to a minimum of 30 working days following the 4 days after the invitation to tender has been posted.

Limited method

35. (1) The comparison method shall select a contractor by comparing known prices for low value products and services and directly places such a contract with the contractor offering the most economic advantages to the Unit.

(2) The Unit shall document prices from different contractors to show that a true and honest comparison and reason for placement of the contract has been made.

(3) The comparison procedure may be used where the cost estimate of the goods, works or services does not exceed the threshold values specified in Schedule 1.

(4) The Unit shall apply the comparison procedure by inviting-

(a) 3 or more businesses that satisfy the technical specification and other conditions and requirements to submit their price proposals, or

(b) the tenderer who satisfied the technical and other conditions and requirements and quoted the lowest price to sign the contract.

(5) The time-frame for submission of the price proposal shall be no less than 10 working days from the date of dispatch of the tender.

(6) Where insufficient tenders were received to allow comparison, the Unit shall repeat the competitive process, inviting a further 3 or more businesses to compete.

(7) Where the re-tendering does not result in the receipt of an adequate number of tenders to make comparison, the non-competitive procurement procedure may be applied.

Non-competitive contracting method

36. (1) Non-competitive contracting may only be used in the following cases irrespective of the estimated value of goods, works or services:

(a) patents and intellectual property rights where a contract can only be signed with one body;

(b) additional supplies do not exceed 20 percent of the value of the initial contract, and there is a justified

and genuine need to replace, repair and make additional supplies of some parts of the goods and equipment provided under the initial contract, and should the Unit change the supplier such a change leads to procurement of supplies with different technical specifications, which cause undue technical difficulty in the application and maintenance or incur cost-inefficiency;

(c) the cost of additional works does not exceed 15 percent of the value of the initial contract and the comparison threshold price, and it was considered by the Unit that repeating the competitive tender process would not result in better proposals for the additional or similar works procured through the tender process; or

(d) it is impossible to adhere to the tender submission deadline pursuant to the open and limited procurement procedure as a result of unforeseeable circumstances such as a national emergency.

(2) When using non-competitive procurement in accordance with the specified conditions, and when the non-competitive tender is in part unacceptable, the Unit may enter into negotiations with the tenderer in order to agree on a contract that is acceptable, and the agreement reached during negotiations shall be included in the formal contract.

(3) Where non-competitive procurement has been used, a copy of the contract and a statement justifying the application of the procedure shall be sent by the Unit to PPAD.

PART IV-PROCUREMENT OF GOODS, WORKS AND SERVICES

Procurement contract for goods, works or services

37. (1) The technical and commercial requirements of the Invitation to Tender and the winning tender shall form the basis of the procurement contract.

(2) The procurement contract shall contain the following items:

(a) contract price;

(b) payment terms and conditions;

(c) amount and terms of performance guarantee;

- (d) arrangements for contract administration and project management;
- (e) terms and conditions of contract;
- (f) schedule of execution of works and services or supply of goods; or
- (g) conditions and methodology of price adjustment.

(3) Standard terms and Conditions for Government Contracts shall apply to all procurement contracts.

Prohibiting amendments in the procurements contract

38. (1) The amendments to the procurement contract are prohibited where-

- (a) changing contractual conditions relating to the content of the tender except when it is necessary due to unforeseeable circumstances; or
- (b) increasing the contract price except where this has been allowed for in the contract terms and conditions.

(2) Amendments to the procurement contract may be made by the Unit only, with prior agreement of the contractor.

(3) The contractor is prohibited from transferring their contractual obligations to a third party except when provided for in the contract.

Invalid and voidable contracts

39. (1) The procurement process shall be regarded invalid and the subsequent contract void or voidable in the following cases:

- (a) the contract shall have been entered into breaching the elements of the law of contracts;
- (b) The Unit entered into the contract without the approval of the chief accounting officer; or
- (c) The Unit entered into the contract breaching the procedures set out under these Regulations.

Contract termination

40. (1) The Unit may cancel a procurement contract under the following circumstances:

- (a) the contractor has failed to deliver the goods, works or services in accordance with the contract terms;
- (b) the contractor is bankrupt or liquidated; or
- (c) the Government exercises its right under the contract's 'Break' Clause or there is a change in the Government policy.

(2) A breach of an essential condition of contract will allow the party not in breach to terminate the contract.

(3) Contract termination may result in the Government requiring payment of pre-agreed amount of liquidated damages that directly relate to the actual dysfunctional effect of the termination of the contract, but the Government shall not impose penalty payments upon suppliers that are punitive.

Performance guarantee

41. (1) The Unit may require the winning tenderer to furnish a performance guarantee prior to entering into a contract.

(2) The Unit shall state in the tender documents the requirement for a performance guarantee and shall set the amount required.

(3) Tenderers shall be required to provide evidence in their tender that such a guarantee will be provided.

(4) The performance guarantee remains valid until the completion of the works or services or the delivery of goods in accordance with the contract requirements and until the completion or delivery has been signed off by the appropriate signatory.

(5) The contractor may guarantee its specified obligations with a guarantee from a bank or a financial institution acceptable to the Unit.

Milestone payments

42. (1) Payments may be made under the contract on the achievement of certain pre-agreed stages or milestones, during the life of the proposed contract, such milestones may be based on-

- (a) the attainment of specifically nominated satisfactory completions within the contracts' programme; or
- (b) time lapsed in phases nominated within the contract.

PART IIV – PROCUREMENT OF CONSULTING SERVICES

Selecting consultants

43. (1) Consultants whether individuals or corporate bodies may contract with the Government.

(2) Contracts entered into between the Government and consultants shall be governed by these Regulations and the common law governing the law of contract.

General procedure of selecting consultants

44. (1) Candidates for a tender list may be drawn from-

- (a) the Units' experience in a particular market;
- (b) experience of previous procurements;
- (c) the Governments' supplier database; or
- (d) replies from contract notices that have been placed in the Governments' Contract Bulletin, where the procurement is above the Governments' threshold for advertising in the Contract Bulletin, then only consultants replying to an advertised procurement can be considered.

Evaluation methods for selecting consultants

45. (1) Evaluation of consultants shall be entirely consistent with pre-selected award criteria that are targeted on selection by judgement based on-

- (a) the lowest price where the specification not capable of being varied in any form;
- (b) Most economically advantageous bid or most favourable tenderer, in this case a technical, a financial, a commercial

assessment and a consideration of longer term implications shall be carried out by the evaluation panel. For most favourable tenderer tenders, a scoring or a marking schedule shall be prepared before tender opening and this shall not be varied in any way including in scope or in application between the consultants under consideration; or

- (c) The most favourable tenderer tenders the process of making assessments may be split between evaluation of qualitative, commercial and financial, and then combined to give an overall level of acceptability.

Quality evaluation method for selecting consultants

46. (1) The method for evaluation of quality shall be consistent with pre-selected award targeted on a scored selection based on-

- (a) technical understanding of the Governments' requirement;
- (b) the expertise required to complete the requirement of the Government;
- (c) the relevant experience of the proposal offered to meet the requirement of the Government;
- (d) the offered solutions practicability and deliverability to meet the requirement of the Government;
- (e) the ability and acceptability of the individuals nominated to carry out the requirement of the Government; or
- (f) the absence of any qualification in the tender or to the standard terms and conditions of Government.

Combined evaluation method

47. (1) The method for evaluating the quality shall be entirely consistent with pre-selected award criteria targeted on a scored selection based on combining scores secured in respect of independently marked financial and quality scores.

(2) Tenders shall be marked separately by distinct panels marking quality and financial aspects of the consultants, scores for the two aspects shall be predetermined and not varied and only the qualitative will be marked.

(3) Consultants that do not meet the qualitative requirements shall not be selected for a contract, the financial score shall not be considered or marked. Tenderers passing the qualitative score requirement will then financially score and will be selected when the combined score for qualitative and financial aspects offers the most attractive tender.

PART IIIV – MANAGING PROCUREMENT

Organizing procurement

48. (1) The functions of the Unit with respect to the procurement of goods, works and services are to:

- (a) set up an Evaluation Team;
- (b) set up a Tender Panel;
- (c) oversee the respective compliance of the Evaluation Teams' and Tender Panels' operations and evaluation reports and take measure to nullify violations;
- (d) finalise the issue and signing of a contract subject to the decision of the Tender Panel;
- (e) effectively plan and organize the procurement of goods, works or services within the estimated budget;
- (f) initiate the procurement process once funds for financing goods, works and services are allocated;
- (g) review the performance of contractual obligations; or
- (h) not to make amendments to the contract except in specified cases.

(2) The Unit shall make all communications related to the procurement only in writing and shall make and maintain a record of those communications.

Evaluation Team

49. (1) The Evaluation Team shall be a non-standing committee whose members shall be drawn from the Unit, finance unit and relevant technical and specialist users.

(2) The functions of the Evaluation Team shall be to examine and evaluate tenders, prepare an evaluation report and make recommendations to the Tender Panel on award of contract.

(3) Officials appointed to the Evaluation Team shall not have-

- (a) a business relationship with tenderers and their representatives;
- (b) family relations with tenderers and their representatives;
- (c) been employed by, or have been an employee of the tenderer in the last 3 years; or
- (d) been in breach of the Code of Conduct as set out in the Public Service Act 2005² and other relevant codes of conduct.

(4) Where there is a conflict of interest after an Evaluation Team member has been nominated, it is a requirement and responsibility of that member to withdraw from the Evaluation Team and give reasons in writing to the Unit.

(5) In cases of open tendering where the identity of tenderers will not be known until tenders have been received and opened, membership of the Evaluation Team shall not be terminated until tenderers are identified and conflict of interests is resolved.

(6) An evaluation report from the Evaluation Team to the Tender Panel shall be made in the form of the minutes of the evaluation meeting and include full details of the evaluation against the criteria published with the invitation to tender, reasons for rejecting any or all tenders, recommendations approved by the majority of the members of the Evaluation Team, their rationale and all relevant and supporting information.

(7) All Evaluation Team members shall sign the evaluation report, majority views shall be similarly evidenced and attached to the majority evaluation report.

Tender Panel

50. (1) A chief accounting officer shall establish a Tender Panel.

(2) The Tender Panel shall consist of-

- (a) a chairperson;
- (b) a secretary; and
- (c) members

(3) The functions of the Tender Panel shall be to-

- (a) open publicly tenders received;
- (b) submit tenders to the Evaluation Team for evaluation; and
- (c) consider the report and recommendations made by the Evaluation Team and to decide which tenderer shall be awarded the procurement contract.

(4) The Panel shall convene on the due date and time and in a place set out in the Invitation to Tender.

(5) The proceedings of the Tender Panel are open to public and are a matter of public record, and shall be made available upon request to any interested party.

(6) The Tender Panel shall make a record of proceedings of each public opening which shows-

- (a) the number of tenders received against each Invitation to Tender;
- (b) details of all late tenders received; and
- (c) tenders considered apparently non-compliant.

(7) The Tender Panel shall maintain an Irregularity Book that records all price alterations on tenders dealt with or unusual incidents that arise whilst the Tender Panel is in session.

(8) On the date for the return of tenders, the Tender Panel shall open the Tender Box in which tenders have been stored securely and shall open each tender due on that date and time, for each tender received the Tender Panel shall announce-

- (a) the name of the tenderer;
- (b) the tender price;
- (c) the alternative tender price where alternatives are permitted;
- (d) price discounts offered;
- (e) modifications;
- (f) withdrawal from the tender;

- (g) any changes to the tender or revised tender; or
- (h) the presence or absence of the mandatory documents required by the Invitation to Tender, these documents shall include but not limited to tender security, tax certificates and the completed Certificate of Bona Fide Tendering.

(9) The Tender Panel shall not comment on or pass opinion on the acceptability of the mandatory documents.

(10) The Tender Panel shall open the outer envelope of tenders due on the previous day in order to establish the identity of the tenderer which shall be announced, details of the late tenders shall be inserted in the record of proceedings as 'Rejected-Late Tender'.

(11) The Tender Panel shall pass all tenders opened on that day to the Unit for the appropriate action.

(12) The Tender Panel shall convene to consider the report and recommendation as to the award of the procurement contract as made by the Evaluation Team.

(13) The Tender Panel shall ensure that-

- (a) the competitive process has been followed in accordance with these Regulations;
- (b) the award of the procurement contract is strictly in accordance with objective evaluation criteria as set out in the Invitation to Tender;
- (c) no subjective judgement or conflict of interest are brought to bear on the decision;
- (d) the decision is able to stand scrutiny by the audit authorities, the business community and the public in general;
- (e) the decision can withstand any challenge of anti-competitive behaviour or misuse of public funds; and
- (f) the Government is achieving value for money.

(14) Whenever requested by the business community, a representative shall be invited to attend as an independent observer when the Tender Panel is sitting in respect of the contract award.

(15) The procedure for selecting an independent observer shall be agreed between PPAD and the business community and shall be promulgated.

(16) The independent observer shall be present to assure the business community that the decision of the Tender Panel is made according to these Regulations and to the Standing Instructions.

(17) The independent observer shall take no part in the proceedings and have no voting rights.

(18) At the start of the Tender Panel proceedings to decide a contract award, members of the Tender Panel shall be required to complete and sign a Conflict of Interest Declaration stating that they do not have any interest in the Tender Panels' decision on the contract award.

(19) The Tender Panel shall make full account of its proceedings and the account be a matter of public record.

Annual procurement planning

51. (1) The Unit shall formulate the procurement plan for goods, works, services and consulting services for a given financial year and submit it to the Minister to be part of the Ministry's budget approval process.

(2) Once the Ministry receives budgetary approval, the Principal Secretary shall finalise the procurement plan of goods, works or services in line with budget allocation.

(3) The Principal Secretary has the ultimate responsibility to approve the Units' procurement plan and oversee the execution.

(4) The Unit shall disclose the procurement plan publicly through the mass media within a month after receiving budgetary approval for carrying out the plan.

Maintaining procurement records

52. (1) The Unit shall compile and maintain a file for each procurement tender and ensure its safe keeping in a registry or archive unit.

(2) The tender file shall consist of the following documents and materials:

- (a) the rationale and approval for the chosen method of procurement;
- (b) the rationale for applying a given method other than the open procurement procedure;
- (c) a brief description of goods, works or services to be procured and a copy of all the tender documents including technical specification;
- (d) all correspondence between the Unit and tenderer;
- (e) tenders submitted;
- (f) minutes of the tender opening, the evaluation report including the outcome of discussion with tenderers and recommendations to enter into a contract.
- (g) Tenders rejected as being non-compliant and the reasons for such rejection;
- (h) The reason for the failure of the tender process or where all tenders have been rejected;
- (i) The decision to enter into a contract including the application of any preferences and the complete contract document;
- (j) All other documents related to a given tender; and
- (k) All documents related to contract and project management and handover of goods, works and services.

(3) Documents and material in 51(2) shall be made available on justifiable request to PPAD and legal and supervision authorities including audit.

(4) The Unit shall submit annually to the Principal Secretary a report on procurement of goods, works and services in a given year, this information shall be forwarded to PPAD at the time and in the format required by the PPAD.

(5) PPAD shall consolidate procurement report submitted by the Principal Secretary and this information shall be reported to cabinet by the Minister in the first quarter of the following year.

(6) When Cabinet has seen and discussed the consolidated report, it shall be made available publicly through the mass media and on the procurement web-page.

Registration of suppliers

53. (1) For the purpose of expanding the scope of tenderers, facilitating competition and providing information to the Unit, PPAD shall liaise with the Unit and maintain a register and establish a database of legal entities and individuals interested in participating in Government procurement which shall be referred to as 'approved suppliers list'.

(2) PPAD shall provide a standard national application form for registration on the approved suppliers list, applications for registration shall not be considered unless they are submitted using the standard form available from PPAD, the Unit and on the procurement web-page. Applications for registration may be submitted in writing or by electronic means.

(3) A legal entity or an individual may apply for registration, either through the Unit or directly to PPAD by submitting the request, personally or through a representative along with information on the type of operations, capability and expertise, at any time.

(4) The registration status of bodies interested in tendering shall not prevent their rights to participate in the tender process.

(5) The Unit may obtain information about firms and individuals on the approved suppliers register.

(6) PPAD shall maintain the register in accordance with the following:

- (a) suppliers who meet the qualification criteria;
- (b) equal conditions for bodies who apply for registration;
- (c) making the approved suppliers list available publicly and accessible to all;
- (d) updating the approved suppliers list with amendments upon request from registered bodies; or
- (e) processing applications for registration within one calendar month of receipt by the authority.

(7) PPAD may require clarifications and additional information from the applicant.

(8) PPAD shall-

(a) define the qualification criteria for registration of the approved suppliers list, and

(b) announce the criteria through mass media and on the procurement web-page.

(9) Where PPAD rejects a request for registration or amendment for registration on the approved suppliers list, PPAD shall inform the applicant in writing within 10 working days of its decision and provide justification for the decision.

PART XI - SETTLEMENT OF DISPUTES

Submitting complaints to the Unit

54. (1) A tenderer, a trade association, an auditor of the Government or any group with a legitimate interest in the object of the contract may submit a written complaint to the Unit not beyond 3 calendar months following the date of contract award, any supporting evidence shall be enclosed with the complaint.

(2) The Unit shall notify all tenderers about the nature of the complaint and invite tenderers whose interest might be affected by a respective decision, to the complaint proceedings.

(3) Failure of the notified tenderers to participate in the complaint proceedings will prevent the tenderers from bringing further complaints concerning the same subject matter.

(4) The Unit shall review and make a decision on the complaint in 10 working days after the submission of the complaint, where the complaint is not accepted as valid, the decision shall state the justification for non-acceptance, but, where the complaint is accepted as valid, the decision shall state how the complaint will be rectified.

(5) The Unit shall not enter into a contract in respect of the tender in question after receiving a complaint and until such time as the complaint is resolved, either through a decision by the Unit or where such a decision is unacceptable to the complainant through a decision by the Appeals Panel, except where suspension of the tender process would be against the public interest, the Minister shall be the arbiter of whether the tender process is in the public interest.

(6) Where it is decided to continue the tender process, the justification and the decision to continue to place the contract shall be provided in writing to the complainant at least 5 working days prior to the time the decision comes into force, the decision shall be made available publicly through the mass media and on the procurement web-page.

(7) Any further redress shall be pursued through the Appeals Panel or through the Courts of Law.

Complaints regarding the Units' decision

55. (1) The complainant may appeal to the PPAD within 5 working days where-

- (a) the complainant does not agree with the decision of the Unit,
- (b) the Unit did not issue a decision within the specified time, or
- (c) the Unit entered into a contract before its decision on the complainant, unless not entering into the contract is against the public interest.

(2) PPAD shall consider a complaint and issue the following decisions where it considers that the Unit breached these Regulations:

- (a) nullify or modify illicit actions or decisions of the Unit wholly or partially;
- (b) declare which provision of these Regulations should apply in a given case; or
- (c) instruct the Unit to carry out the tender process after the breaches are rectified.

(3) Until a ruling is issued for the complainant, PPAD may issue a decision to temporarily suspend the implementation of the Units' decision or action in the following cases:

- (a) a ruling in favour of the complainants' interest is more justifiable;
- (b) the decisions are to be suspended, tenderers may incur significant losses; or
- (c) the suspension would cause significant loss to the Government or other tenderers.

(4) PPAD shall seek an opinion from the independent Appeals Panel for reviewing the complaint related to the tender process authorized for contracting, the decision of PPAD shall be based on the Appeals Panel opinion.

(5) The Appeals Panel shall comprise 3 independent experts who shall be selected according to the following procedures within 5 working days following the submission of the complaint:

- (a) the complainant and the Unit shall each select an expert; and
- (b) both experts shall select a third expert, where the two experts do not agree on the choice of the third expert, the Minister shall nominate the third expert; or
- (c) the three experts shall nominate one of them to the chairperson.

(6) The operational procedures of the Appeals Panel shall be produced by PPAD and be promulgated through the mass media and on the web-page of the Ministry.

Lodging a complaint to the courts

56. (1) The complainant may lodge a complaint to the Courts of Law where-

- (a) Appeals Panel did not make a ruling within the specified time; and
- (b) The complainant is not satisfied with the ruling of the Appeals Panel.

(2) Complaints related to the tender shall only be lodged with the Courts of Law after a contract has been signed.

PART XI- DISPOSAL PROCEDURES

Review of assets held

57. (1) Ministries and all public accountable bodies shall keep under review holdings of fixed assets including:

- (a) plant and machinery;
- (b) vehicles;
- (c) office furniture and equipment; or

(d) consumable stores.

Surplus items

58. (1) Surpluses may be disposed off promptly and within the law and ensuring taxpayers best interests are protected.

(2) Consideration shall be given to the nature of the items to be disposed off, any substance which is classified as environmentally damaging or hazardous may not be disposed off other than through the mechanisms prescribed by law.

(3) assets that are regarded as waste shall be sold on the open market either by competitive tender or by public auction.

Quality

59. (1) Ministries and all public accountable bodies shall install appropriate systems of control over the disposal of assets.

(2) Public servants involved in estimating a disposal value or a reserve price in an auction, may not be involved in subsequent stages of the disposal in any way.

(3) Ministries and all public accountable bodies in making a disposal, shall make it clear that goods to be sold are as they are without any implied warranties as to quality or fitness for the purpose.

Establishing interest and market interest

60. (1) Ministries and all public accountable bodies shall establish where interest exists in the following order:

(a) within the Ministry or the public accountable body itself;

(b) within other Ministries and public accountable bodies; and

(c) within commercial firms.

Researching the market

61. (1) Ministries and public accountable bodies will consider a potential tenderers with particular abilities on area of expertise in handling the disposed off item.

(2) Tenderers shall be required to offer true market value for the asset being disposed off and the use of known and recognized dealers.

Financial assessment

62. (1) Ministries and all public accountable bodies shall establish the financial viability of tenderers to ensure that no failure to pay is encountered.

(2) A banker's reference confirming the tenderers financial liquidity is required.

Estimated value

63. (1) Ministries and all public accountable bodies shall estimate or set a reserve price on any asset to be disposed off.

(2) Specialist items shall be considered in full knowledge of their potentially retained higher value than more general items.

Financial and contractual authority

64. (1) Ministries and all public accountable bodies shall be carried out when approved by an officer authorized to approve disposals and to account for the assets disposal and the income received from the sale.

(2) The approval may not be given by the operator or keeper of the item to be disposed off.

Conditions in an auction of sale

65. (1) Members of the public bidding for Government assets in a public auction shall be responsible for the purchases made and the bids offered.

(2) Acceptance of the highest bid by the auctioneer shall form a legally binding contract between the Government and the bidder, subject only to any fees levied by the auctioneer.

(3) Acceptance of the contract shall be deemed to be effective on the pronouncement of sale by the auctioneer or when items are 'knocked down' to a bidder in the auction.

(4) All bidders in the public auction shall be required to register to participate in the public auction and registration shall be consequent upon payment of a registration fee and be deemed to be a deposit.

(5) Where a bidder fails to secure an item in the public auction, the deposit shall be refundable to the bidder in full.

(6) Successful bidder securing one or more items in the public auction shall have the deposit set off against the bid value accepted by the auctioneer.

(7) Where the bid value accepted by the auctioneer does not exceed the registration deposit the balance of the deposit shall be repaid to the bidder.

(8) Successful bidders shall be required to pay for all items secured, in totality, within 5 working days.

(9) Failure to pay for the goods secured in the auction within the required time shall render bidders title to ownership of the items for bid invalid.

(10) Payment for items secured in a public auction shall be –

(a) on cash basis;

(b) through a letter of credit from a bank recognized in Lesotho; or

(c) through bank guaranteed cheques.

(11) Items sold through a public auction shall be removed from Government sites immediately after payment has been made.

(12) Ministries and all public accountable bodies shall ensure that at the commencement of any public auction the conditions of sales are announced by the auctioneer, and all bidders who participated are deemed to have consented to the announced conditions of sale.

Release of goods

66. In disposal cases, by tender or by public auction, Ministries and all public accountable bodies shall not release the items purchased until payment has been received by the appropriate Ministry or public accountable body.

Repeals and savings

67. Chapter 21 of the Financial Regulations 1973 is repealed.

TIMOTHY THAHANE THAHANE
MINISTER OF FINANCE AND DEVELOPMENT PLANNING

¹ Act No 6 of 1988

² Act No1 of 2005

Schedule 1

Thresholds

1. The following threshold shall apply:
 - (a) for goods and services procured between the value of M0.00 to M30,000.00 direct contracting shall be applied;
 - (b) for goods and services procured between the value of M30,000 to M100,000 three (3) quotations shall be obtained from three (3) different service providers
 - (c) for goods and services above M100,000.00 the open tender method of procurement shall be applied

2. The Unit is required to secure from tenderers for goods, works or services to be procured at the cost above M100,000.00 to submit a tender security.

3. The registration fee for participation for procurement above the value of M100,000.00 shall be between M2000.00 and M5000.00 at the discretion of the Unit depending on the complexity of the tender documentation and the cost of producing them.
