

STATUTORY INSTRUMENT NO. 63 OF 2011

The Public Procurement Act, 2008

(Act No. 12 of 2008)

The Public Procurement Regulations, 2011

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SCHEDULES

IN EXERCISE of the powers contained in section *eighty-two* of the Public Procurement Act, 2008, the following Regulations are hereby made:

PART I
PRELIMINARY

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|---|--|
| 1. These Regulations may be cited as the Public Procurement Regulations, 2011. | Title |
| 2. (1) In these Regulations, unless the context otherwise requires—
“applicant” means a person or group submitting an application to prequalify, or for an expression of interest;
“Authority” has the meaning assigned to 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; and
“fundamental principles” means the principles specified under regulation 3. | Interpretation |
| 3. Public procurement shall be governed by the following fundamental principles:
(a) transparency;
(b) competition;
(c) economy;
(d) efficiency;
(e) fairness;
(f) value for money; and
(g) accountability. | Fundamental principles |
| 4. 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. | Exercise of information management and dissemination functions |
| 5. (1) The Authority shall issue public procurement circulars relating to reports required by it, which circulars may, amongst other things, specify the—
(a) types of data and information required;
(b) format for reports; and
(c) frequency and submission deadlines for reports. | Circulars on reports |

(2) The Authority shall ensure that reporting requirements imposed on procuring entities are not overly burdensome.

Reports by
procuring
entities

6. A procuring entity shall submit such procurement reports as the Authority may require to facilitate the establishment and maintenance of data and information bases relating to public procurement and to assist in the monitoring of public procurement and development of public procurement policies.

PART II

PROCURING ENTITIES

Levels of
authority

7. (1) The level of authority for a procurement committee shall be determined by the authority pursuant to paragraph 7 of the Second Schedule to the Act.

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

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

Thresholds

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

(2) The Authority shall, in reviewing and revising the thresholds referred to in sub-regulation (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

9. (1) All procuring entities shall use the standard solicitation documents issued by the Authority for a particular kind of procurement or where no such document has been issued shall seek approval to use a solicitation document developed by that procuring entity until the Authority issues the standard solicitation document.

(2) The Authority shall ensure that the standard solicitation documents are easily available to all procuring entities by posting them on its website or by delivering them to the offices of such entities.

(3) The Authority shall notify all procuring entities of any amendments to, or change of, any standard solicitation document as soon as these are done.

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

10. (1) An approvals authority shall properly and timely review and authorise a procurement requirement of the 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 it based on the information and supporting documents contained in the submission.

(3) An approvals authority shall make its decision regarding a procurement requirement submitted to it, 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) A Procurement Unit may resubmit any submission rejected by an approvals authority after taking into account the reasons given for the rejection.

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

(6) Any 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.

PART III

METHODS OF PROCUREMENT

11. (1) A procuring entity shall use one of the following procurement methods, as specified in the Act and these Regulations, in undertaking the procuring entity's procurement activities:

Procurement methods

- (a) open bidding, which may be national or international;
- (b) open selection, which may be national or international;
- (c) limited bidding;
- (d) limited selection;

- (e) simplified bidding;
- (f) direct bidding;
- (g) force account;
- (h) purchases from other procuring entities; or
- (i) community participation in procurement.

(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 such method has been approved by the Authority prior to its use.

Open
bidding

12. (1) A procuring entity shall use open bidding for all procurement of goods, works and non consulting services, except where—

- (a) the procurement meets the conditions for the use of limited bidding;
- (b) the estimated value of the procurement is less than the applicable thresholds for simplified bidding; or
- (c) the procurement meets the conditions for the use of direct bidding.

(2) A procuring entity shall select open national bidding or open international bidding in accordance with section *twenty-six* of the Act.

Open
selection

13. (1) A procuring entity shall use open selection for the procurement of all consulting services, except where—

- (a) the procurement meets the conditions for the use of limited selection;
- (b) the estimated value of the consulting services is less than the threshold for simplified bidding; or
- (c) the procurement meets the conditions for the use of direct bidding.

(2) A procuring entity shall select open national selection or open international selection in accordance with section *twenty-eight* of the Act.

Limited
bidding

14. A procuring entity may use limited bidding for goods, works or nonconsulting services, where—

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

- (b) there is urgent need for the goods, works or services, and engaging in open bidding would be impractical;
- (c) the requirement is of a specialised nature or relates to public safety or public security which makes open bidding inappropriate; or
- (d) open bidding has failed to secure an award of contract.
15. A procuring entity may use limited selection for consulting services where—
- (a) the consulting services are only available from a limited number of suppliers;
- (b) there is an urgent need for the consulting services and engaging in open selection would be impractical;
- (c) the requirement is of a specialised nature or relates to public safety or public security which makes open bidding inappropriate; or
- (d) open bidding has failed to secure an award of contract.
16. (1) A procuring entity may use simplified bidding where the estimated value of the goods, works or services does not exceed the threshold specified in the Second Schedule.
- (2) A procuring entity may use simplified bidding for—
- (a) readily available offtheshelf goods of low value;
- (b) small value goods whose specifications are standard; or
- (c) low value works or services.
17. A procuring entity may use direct bidding where the estimated value of the goods, works or services does not exceed the threshold specified in the Second Schedule.

PART IV

GENERAL RULES OF PUBLIC PROCUREMENT

18. (1) A procuring entity shall keep the following records relating to the procurement proceedings which records shall be open to inspection by the Authority:
- (a) records arising from the procurement process;
- (b) records relating to contracts management;
- (c) all records of the Procurement Committee;
- (d) any record of the controlling officer or the chief executive officer which relate 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) All procurement records maintained by a procuring entity shall contain, as appropriate, the following documents:

- (a) the request to initiate procurement proceedings;
- (b) a copy of any published notices;
- (c) any shortlist or list of prequalified bidders;
- (d) a copy of the prequalification 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 all bids evaluated and any clarifications requested and responses received;
- (h) the evaluation report;
- (i) minutes of any meetings related to the procurement, including prebid and negotiation meetings;
- (j) the notice of best evaluated bidder;
- (k) the letter of bid acceptance;
- (l) the contract document;
- (m) any contract amendments; and
- (n) all submissions to, and all decisions 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 procurement proceedings.

(3) All contract management records maintained 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) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;

- (f) copies of all 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 all 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, upon the supplier or upon the procuring entity;
- (i) all correspondence between the procuring entity and supplier; and
- (j) all submissions to, and all decisions of, the approvals authority relating to contracts management, including the authorisation of any contract amendment.

(4) Any record maintained in accordance with the Act and these Regulations may be accessible to any person, authorised by the Authority, on payment of a fee to be determined by the Authority.

19. (1) The English language shall be used as a medium of communication in all public procurement matters.

Communi-
cation

(2) The medium of communication shall be specified in the solicitation documents.

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

(4) Any communication between a procuring entity and a bidder or supplier shall be made in writing.

20. (1) A procuring entity shall publish any notice inviting potential bidders to participate in procurement proceedings and any contract award—

Publication
and
distribution
of notices

- (a) in the *Gazette*;
- (b) in a daily newspaper of general circulation in Zambia, to reach a sufficient number of potential bidders and ensure effective competition;
- (c) in any media of wide regional or international circulation, where the method of procurement is open international bidding or open international selection;
- (d) to the extent feasible, on the internet, including any regional website or website established by the Authority; and
- (e) in 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 especially in matters relating to the following:

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

(3) Where open international bidding or open international selection is used, the notice shall also be published in media of wide regional or international circulation or on widely read internet sites.

(4) 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 in 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) any Zambian high commission or embassy in countries which are likely to participate, or foreign embassies of those countries in Zambia where open international bidding or open international selection is used.

(5) 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.

Currency for procurement

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

Cap. 360

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

(3) The solicitation documents shall specify the effective date for the conversion of the foreign exchange to the kwacha, where appropriate.

Consortium

22. (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, one of the bidders shall be considered as the lead bidder and serve as their 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.

23. (1) A procuring entity may package tenders into different lots based on certain economic interests such as the promotion of small sized companies or the attraction of a large number of bidders.

Packaging
tenders

(2) Where a procuring entity decides to package a tender, it shall ensure that the solicitation documents specify the nature of each lot and modalities for awarding the tender.

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

24. (1) A procuring entity shall avoid the cancellation of procurement proceedings whenever possible, but a cancellation may be approved by the approvals authority where—

Cancellation
of
procurement
proceedings

- (a) the procurement need has ceased to exist or changed significantly;
- (b) funding is not sufficient for the procurement;
- (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of procurement proceedings is necessary;
- (d) no responsive bids are received;
- (e) there is evidence of collusion among bidders;
- (f) it is otherwise in the public interest; or
- (g) there is evidence of corrupt practices by a public officer or any other person involved in the procurement.

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

Unsuccessful
procurement
proceedings

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

(2) An investigation undertaken in accordance with subregulation (1) shall consider all relevant issues, including the following:

- (a) whether 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) whether 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) whether any invitation notice was published in an appropriate publication and on the required date;
- (d) whether any shortlist included sufficient bidders and whether the bidders included provide the goods, works or services required;
- (e) whether there was any delay in issuing the solicitation documents;
- (f) whether any amendments or clarifications to the solicitation documents allowed sufficient time for bidders to take them into account in preparing their bids;
- (g) whether there were other extraneous events or circumstances, which may have affected the ability of bidders to respond;
- (h) whether the evaluation process was conducted in accordance with these Regulations and the solicitation document, and whether staff responsible for the evaluation had adequate skills and resources;
- (i) whether there is any suspicion of collusion between potential bidders; and
- (j) whether the original choice of procurement method was appropriate.

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

(4) An approvals authority shall on receipt of the report submitted under subregulation (1), make appropriate recommendations to the procuring entity, which 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 a revised shortlist; or
- (d) the introduction of regional or international competition.

PART V

PROCUREMENT PLANNING

26. (1) A Procurement Unit shall, in consultation with a user department, prepare a procurement plan for the procuring entity, for each financial year, containing the information required under regulation 27.

Annual
procurement
planning and
publication

(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 at least one daily newspaper of general circulation in Zambia or post on the procuring entity's website and on the procuring entity's notice board, certain information relating to the procurement plan, such as the following:

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

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

- (a) a detailed breakdown of the goods, works and services required, the procuring agency's priorities and an indication as to whether it will 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;

Contents of
annual
procurement
plan

- (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 prequalification, 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 will 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 will be local or regional preferences for certain types of tender;
- (j) a specification of whether there is a requirement for nonobjection 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 multiyear contracts.

Aggregation
of
requirements

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

(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 will 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.

29. (1) Notwithstanding the prohibition on disaggregation of procurement requirements, a procuring entity may divide a procurement requirement, which could 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.

Division into
lots

(2) A procurement 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, but not all, types of item; or
- (b) small suppliers who would not be qualified to bid for the complete package as a single contract.

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

- (a) for the sole purpose of avoiding thresholds or levels of authority;
- (b) where the award of several separate contracts would create problems of compatibility or interchangeability between items purchased as separate lots;
- (c) where the award of several separate contracts would invalidate or otherwise restrict any supplier's warranty or liability; or
- (d) where the award of several separate contracts would 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 could 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.

Requisition
and
authorisation

30. (1) A user department shall document all procurement requirements in a procurement requisition in the format set out in the Third Schedule, which shall include—

(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 multiyear contracts.

(2) A user department shall—

(a) in preparing the statement of requirements, ensure that it seeks technical advice, where required; and

(b) in 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 or officers designated by the controlling officer or chief executive officer to perform this function prior to the initiation of procurement proceedings.

(4) Any 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.

(6) Any requisition approved in accordance with subregulation (3) shall be submitted to the Procurement Unit to initiate procurement proceedings.

Confirmation
of funds

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

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

(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, such as 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, such as 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, such as a contract for engineering supervision of a construction contract.

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

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

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

32. (1) Every 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.

Statement of requirements for goods

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

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

(3) The specifications referred to in paragraph (c) of subregulation (2) 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 materials 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.

Use of brand names

33. (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.

(2) Notwithstanding 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.

Statement of requirements for works

34. (1) Every 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.

(2) A statement of requirements 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

35. (1) Every 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 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.

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

Individual
procurement
plans

- (2) An individual procurement plan 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 or postqualification will be required, or whether the procurement requirement will make use of any prequalification 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.

(3) Notwithstanding subregulation (1), where the estimated value of the procurement requirement is permitted for request for sealed quotations, no written procurement plan shall be required.

37. (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—
- (a) the estimated value of the procurement in accordance with the thresholds for that kind of procurement as specified in the Second Schedule;
 - (b) the potential sources for the procurement, in accordance with these Regulations;
 - (c) the nature of the goods, works or services required; and
 - (d) the 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 other than 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; or
- (b) direct bidding, except where the method is used on grounds of low value, in accordance with these Regulations.

Potential
sources

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

- (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 would meet the needs of the procuring entity;
- (f) any applicable Government 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) any 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) Any 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 in subregulation (1);
- (c) a clear statement that no other sources could 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.

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

Emergency
procurement

- (a) the country is threatened by or confronted with a disaster, catastrophe 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 them in their 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 recommendation to use an emergency situation as the criterion for determining the choice of procurement shall include a comprehensive justification for its use, stating the reasons giving rise to the emergency situation.

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

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

Selection of
appropriate
type of
contract

40. (1) A procuring entity shall use the most appropriate type of contract from among the types specified in these Regulations.

(2) A Procurement Unit shall select the type of contract 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 risk 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

41. (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 stagesingle 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) a one stagetwo envelope method, in which a bid is submitted in an outer sealed envelope, containing two separately sealed and labeled technical and financial bids, which are opened on different dates in separate bid openings; or
- (c) a 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 stagesingle 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 such a manner that opening and resealing cannot be achieved undetected.

(5) Bidders may choose their 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 VI

BIDDING PROCESS FOR OPEN AND LIMITED BIDDING

42. A procuring entity shall ensure that it complies with all relevant requirements of these Regulations, prior to initiating open or limited bidding procedures in accordance with this Part.

Use of open and limited bidding procedures

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

Use of one-or-two stage bidding

(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 upon 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 twostage 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.

Use of
prequalification

44. (1) A procuring entity may use prequalification 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.

(2) Prequalification may be used where—

- (a) the goods, works or services are highly complex, specialised or require detailed design or methodology;
- (b) the costs of preparing a detailed bid would discourage competition;
- (c) the evaluation is particularly detailed and the evaluation of a large number of bids would require excessive time and resources from a procuring entity; or
- (d) the bidding is for a group of contracts, in accordance with regulation 48.

Prequalification
notices

45. (1) Where the procuring entity conducts prequalification in accordance with regulation 44, it shall publish a prequalification notice, inviting all potential applicants to submit applications to prequalify.

(2) Prequalification 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 prequalify, 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 will apply to the procurement;
 - (e) instructions on obtaining the prequalification documents, including any price payable; and
 - (f) instructions on the location and deadline for submission of applications to prequalify.
- (3) The prequalification notice shall be published in accordance with these Regulations.

46. (1) A Procurement Unit shall promptly issue prequalification documents to all applicants who request them and shall maintain a record of all applicants to whom documents are issued.

Prequalification documents

(2) A prequalification document shall contain all the information required by applicants to prepare and submit applications to prequalify 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 prequalify, 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 prequalify, including the location and deadline for submission; and
 - (f) information on how applications will be evaluated.
- (3) The procuring entity shall allow a sufficient period of time to enable applicants to prepare and submit their applications to prequalify, which shall be—
- (a) two weeks, where the publication of any notice is national only; or
 - (b) three weeks where the publication of notices is regional or international.
- (4) In determining the prequalification period, a Procurement Unit shall take into account the factors in subregulation (4) of regulation 53.

(5) A solicitation document 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 but such date shall allow adequate time for bidders, including foreign bidders, to receive and study the solicitation document.

Evaluation
of applicants

47. (1) All applications to prequalify received on time shall be evaluated by an evaluation committee appointed in accordance with regulation 64.

(2) Evaluation shall be on a pass or fail basis against the criteria in the prequalification 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 why any applicants were determined not to be qualified.

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

(5) A procuring entity shall invite all prequalified applicants to submit applications to the procuring entity.

Prequalification
for group of
contracts

48. (1) Prequalification may be used to prequalify bidders for a group of similar contracts, where this would avoid the need for repeated prequalification exercises or facilitate the preparation of shortlists.

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

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

(b) a procuring entity shall not be obliged to invite all prequalified applicants to submit bids, where the estimated value of a contract is less than the threshold below which simplified bidding is permitted, but shall ensure a rotation of prequalified 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 prequalified applicants shall be updated periodically; and

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- (e) prequalification information shall be verified prior to contract award.
49. A procuring entity shall invite bids— Inviting bids
- (a) through the publication of a bid notice in accordance with regulation 50 in the case of open bidding, where no prequalification has been conducted;
 - (b) from the list of prequalified applicants in the case of open bidding, where a prequalification has been conducted in accordance with subregulation (2) of regulation 44; and
 - (c) from a shortlist of bidders in accordance with regulation 51, in the case of limited bidding.
50. (1) A bid notice published by a procuring entity in accordance with paragraph (a) of regulation 49, shall invite all potential bidders to submit bids. Bid notices
- (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, such as a requirement for the—
 - (i) provision of local aftersales services;
 - (ii) restriction of eligibility to citizen and local bidders under open national bidding; or
 - (iii) application of a margin of preference or a reservation scheme;
 - (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.
51. (1) Where a procuring entity invites bids from a shortlist of bidders in accordance with paragraph (c) of regulation 49, the shortlist shall include— Shortlists
- (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) In developing a shortlist for the purposes of subregulation (1), a Procurement Unit may use—

- (a) supplier databases or lists maintained in accordance with the Act and these Regulations;
- (b) lists of prequalified 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 their inclusion which shortlist shall be kept as part of the procurement record.

(5) The bidders included on a shortlist shall not all have the same ownership in the sense that one shareholder has a controlling interest in all the bidding companies.

(6) Where there is more than one potential bidder but all potential bidders have the same ownership, the procurement shall be considered direct bidding.

(7) Where the procuring entity uses limited bidding on the grounds of a limited number of sources, it shall also 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.

(8) The approvals authority shall authorise the proposed shortlist prior to issue of the solicitation documents.

Contents of
solicitation
documents

52. (1) A procuring entity shall 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 they require in order to submit bids that are responsive to the needs of the procuring entity, in particular, the solicitation document shall include—

- (a) a clear statement of requirements for the goods, works or services required in accordance with regulations 32, 33, 34 and 35;
- (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, labeling 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 postqualification or verification of prequalification 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; and
- (l) information on the suspension of bidders and the bidder's right to appeal.

(3) 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.

(4) The solicitation document shall state the methodology for calculating and applying any adjustment to the bid price.

53. (1) A bidding period shall start on the date of the first publication of the bid notice or issue of the solicitation document to all prequalified or shortlisted bidders and shall finish on the date of the bid submission deadline.

Minimum
bidding
periods

- (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 nationals; or
- (d) six weeks for limited bidding where shortlisted bidders include foreign bidders.

(3) Notwithstanding 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 their 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 subcontracting; and
- (e) any restrictions relating to the time the goods, works or services are required.

Issue and
sale of
solicitation
documents

54. (1) A solicitation document shall be issued, as appropriate, to—

- (a) all bidders responding to a bid notice; or
- (b) all bidders on the shortlist or list of prequalified bidders.

(2) Where the solicitation document is issued to shortlisted or prequalified bidders, the document shall be issued to all bidders at the same time.

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

(4) A procuring entity may charge a non refundable fee for the solicitation document, but the price shall be calculated to cover the costs related to printing, copying and distribution of the solicitation document only and shall not include any element of profit.

(5) 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 their bid; and
- (b) allow potential bidders to inspect the solicitation document.

55. (1) A procuring entity shall require a bid security for any procurement requirement with an estimated value greater than five hundred million kwacha, in order to deter irresponsible bids and encourage bidders to fulfill the conditions of their bids.

Bid security
and bid
securing
declaration

(2) A solicitation document shall state the requirement for a bid security for any procurement of the value referred to in subregulation (1).

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

(4) 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 their bid, but the amount shall be high enough to deter irresponsible bids, and not so high as to discourage competition.

(5) 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) cash, a manager's or certified cheque or payable order;

(ii) an insurance bond or bank guarantee; or

(iii) an equivalent instrument, such as a standby 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 prescribed in the solicitation document, which shall normally be thirty days beyond the expiry of the bid validity period.

(6) The conditions for forfeiture of a bid security shall be specified in the solicitation document.

(7) A Procurement Unit shall release the bid security promptly to unsuccessful bidders upon expiry of the term of the security or formation of contract with the successful bidder and submission of any required performance security, whichever is earlier.

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

- (9) A procuring entity may accept a bid securing declaration in place of a bid security, providing that this is specified in the solicitation document.
- Clarification and amendment of solicitation documents
56. (1) A Procurement Unit shall, where a request for clarification is received, promptly provide a clarification in writing and such clarification shall be copied to all bidders and shall include a description of the inquiry, but without identifying the source.
- (2) A procuring entity may, at any time prior to the deadline for submission of bids, either at its own initiative or in response to a request for clarification from a bidder, amend the solicitation document by issuing an addendum.
- (3) Any addendum shall be issued in writing and the same information shall be provided to all bidders at the same time.
- (4) All addenda shall be numbered sequentially.
- (5) All clarifications and addenda to the solicitation document shall be binding on all bidders.
- Extension of bidding period
57. A procuring entity may, in order to give bidders reasonable time in which to take a clarification or addendum into account in preparing their proposals, extend the deadline for the submission of proposals, through the issuance of an addendum in accordance with regulation 56.
- Withdrawal, substitution or modification of bids
58. (1) A solicitation document shall state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting any bid security.
- (2) A solicitation document shall state the procedures to be followed for withdrawal, substitution or modification of bids.
- Alternative bids
59. (1) A procuring entity shall not permit alternative bids, except where specifically indicated in the solicitation document.
- (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, but which meet the objectives of the procurement in an alternative manner;
 - (b) in areas of rapidly changing technology; or
 - (c) where a need could be satisfied in a number of different ways and the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.

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

- (a) meet the objectives or performance requirements prescribed 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) An alternative bid shall be evaluated in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the statement of requirements.

60. (1) A procuring entity may organise—

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

Prebid
conferences
and site
visits

(2) A solicitation document and, where possible, the invitation to bid notice, shall state the details of the prebid conference or site visit, including the date, time

and location.

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

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

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

(6) The minutes of a prebid conference shall include—

- (a) all information provided as part of any briefing;
- (b) the details of any clarification requested, but without identifying the source of the inquiry; and
- (c) the details of responses provided to any clarification.

(7) A Procurement Unit shall, after any prebid conference or site visit, where required, issue clarifications or amend the solicitation document, in accordance with regulation 56.

Receipt of bids

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

(2) Where any bid is too large for a bid box, or samples are required to be submitted separately, a Procurement Unit shall receive the bid or samples, 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) Bids shall only be received electronically or by other means which do not permit signed, sealed bids, if authorised by the Authority through public procurement circulars.

(5) A procuring entity shall not be held liable for the loss or delay in delivery of any 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

62. (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, but shall declare the bid late.

(4) A Procurement Unit shall ensure that late bids are labeled as late, stating the date and time of actual receipt and shall return them 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) Notwithstanding 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 but 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.

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

Public
opening of
bids

(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) All bids shall be opened on a day other than a public holiday, or the day following a public holiday.

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

(6) A Procurement Unit shall first open any envelopes marked “withdrawal” and the corresponding bids shall be located and returned unopened to the bidder.

(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, if one was 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) The 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, with the exception of late bids, not accept, reject or evaluate any bid in any manner at the bid opening 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.

(11) A Procurement Unit shall make a record of the bid opening which shall include at least the details read out in accordance with subregulation (7) and the names of all staff and bidders' representatives attending the opening.

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

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

Evaluation
committees
and
functions

64. (1) The Controlling Officer or chief executive officer shall appoint an evaluation committee for each procurement requirement.

(2) The function of an evaluation committee shall be 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, but 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) enduser representation;

(c) procurement and contracting skills;

(d) financial management or analysis skills; and

(e) legal expertise.

(5) A member of a Procurement Committee or any other approvals authority who is a member of an evaluation committee shall not take part in the decision of the Procurement Committee.

(6) Where a person is appointed as a member of an evaluation committee and that person, or that person's is a close relative of any person who, 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 such interest, as soon as possible after notification of the matter being brought to that person's attention to the Controlling Officer, chief executive officer or the evaluation committee, as the case may be; and

(b) not take part in any consideration or discussion of, or vote on, the matter in question.

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

(8) An evaluation committee shall, within twentyone 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.

65. (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; and

(b) the determination of the bid with the lowest evaluated price.

Details of
evaluation
methodology
and criteria

(2) 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.

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

(4) An advantage or disadvantage, under subregulation (3), shall be quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only.

(5) Notwithstanding 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.

66. (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 56.

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) would limit, in any substantial way, the procuring entity's rights or the bidder's obligations under any resulting contract or would be inconsistent with the solicitation document; or

(c) if corrected, would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

(4) An evaluation committee shall reject any bid which contains a material deviation, reservation or

omission, and is therefore not subsequently responsive, and such bid shall not subsequently be made responsive by the bidder or the procuring entity.

(5) The classification of a deviation, reservation or omission as material or nonmaterial 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, such as cost, risk, time and quality.

(6) Material deviations, reservations or omissions 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, such as design, materials, workmanship, specifications, standards or methodologies; and

(c) unacceptable key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, subcontracting or warranty.

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

Correction
of
nonconformities,
errors and
omissions

67. (1) Where a bid is substantially responsive, an evaluation committee may waive, clarify or correct any nonconformity, error or omission, which does not constitute a material deviation.

(2) An evaluation committee shall quantify a nonconformity, 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 purely 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 a total corresponding to the addition or subtraction of subtotals, the totals shall prevail and the total 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.

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

Clarification
of bids

(2) A request for clarification on a bid and a 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 its bid 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) 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.

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

Preliminary
examination

69. (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.

- (2) A preliminary examination shall determine whether—
- (a) the bid has been submitted in the correct format;
 - (b) any required bid security has been submitted in the correct form and amount and valid for at least the period required;
 - (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 correct number of copies of the bid have been submitted;
 - (f) the bid is valid for at least the period required;
 - (g) all key documents and information required have been submitted;
 - (h) any required samples have been submitted; 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 such 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.

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

Technical
evaluation

70. (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) The factors taken into account in a technical evaluation shall be those indicated in the solicitation document and may 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 shall not take into account any requirement which was not included in the solicitation document.

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

(5) Any nonmaterial deviation may be corrected in accordance with regulation 67 or clarified in accordance with regulation 68.

71. (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) The evaluated price for each bid shall be determined 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 nonconditional discounts offered in the bid;
- (d) making adjustments for any nonmaterial, nonconformity 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 them according to their 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.

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

Application
of discounts

(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 nonconditional discount account in the financial evaluation and comparison of bids, in accordance with paragraph (c) of subregulation (2) of regulation 71.

(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, in accordance with subregulation (4) of regulation 71.

(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 such discount is taken into account through the application of any additional evaluation criteria.

Post-
qualification

73. (1) A procuring entity may, where so indicated in the solicitation document, conduct a postqualification 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 postqualification shall be as set out in the solicitation document and shall be drafted in accordance with these Regulations.

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

(4) A procuring entity shall, where a prequalification has been conducted, verify the information submitted by the bidder who submitted the lowest 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.

Evaluation
report and
recommendations

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

(2) An evaluation report shall include—

- (a) a summary of the bids received and opened;
- (b) the results of the preliminary examination;
- (c) the results of the technical evaluation;
- (d) reasons why any bids were declared non-responsive;
- (e) details of any non-material deviations, which were accepted and the way in which they 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 their 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 postqualification; 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.

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

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

Scope of negotiations

- (2) Negotiations 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, where the reduction is in excess of any provided for in the solicitation document;
 - (e) minor amendments to finalise the payment arrangements;
 - or
 - (f) clarifying details that were not apparent or could not be finalised at the time of bidding.
- (3) 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;
 - (c) solely for the purposes of reducing prices or unit rates, except as specified under subsection (2) of section *fifty-one* of the Act or where changes are required to reflect any agreed changes to the technical specification; or

(d) substantially alter anything which was a deciding factor in the evaluation of bids.

Procedure
for
negotiations

76. (1) Negotiations shall not be conducted until after the evaluation report has been approved by the approvals authority.

(2) Negotiations shall only be held with the bidder recommended for contract award, except where negotiations fail, and the Procurement Unit obtains the prior authorisation of the approvals authority to open 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) Any negotiations shall be conducted by not less than two staff of the evaluation committee or a subcommittee of the evaluation committee, who 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.

(5) The members of staff conducting 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 VII

BIDDING PROCESS FOR OPEN AND LIMITED SELECTION FOR CONSULTING SERVICES

Use of open
and limited
selection
procedures

77. A procuring entity shall ensure that it has complied with all relevant requirements of these Regulations prior to initiating the open or limited selection procedures in accordance with this Part.

Selection of
bidders

78. A procuring entity shall select bidders—

(a) through publication of a notice requesting expressions of interest and development of a shortlist in accordance with regulations 79 and 80 respectively, in the case of open selection; and

(b) through the development of a shortlist in accordance with regulation 81, in the case of limited selection.

Notices
inviting
expression
of interest

79. (1) Where a procuring entity publishes a notice requesting expressions of interest, the notice shall invite all potential applicants to submit expressions of interest.

- (2) A notice requesting expressions of interest 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) a requirement, in the case of open international selection, that a bidder should bid with a citizen or local bidder;
 - (e) a statement of the key criteria for shortlisting, which shall relate to the applicant's experience, qualifications, personnel and any other factor related to their 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 expression 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) The notice requesting expression of interest shall be published and distributed in accordance with these Regulations.

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

80. (1) All expressions of interest shall be evaluated by an evaluation committee 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 expressions of interest and development of shortlists

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

(3) 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.

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

(5) Bidders shall not be included on the shortlist unless they are expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.

(6) The bidders included on a shortlist shall not have the same ownership, in the sense that one shareholder has a controlling interest in other bidding companies on the shortlist.

(7) Where there is more than one potential bidder but all potential bidders have the same ownership, the procurement shall be considered as direct bidding.

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

Shortlists
under limited
selection

81. (1) Where a procuring entity develops a shortlist, without seeking expressions of interest, the shortlist shall include—

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

- (2) In developing a shortlist, a Procurement Unit may use—
- (a) supplier databases or lists maintained by the procuring entity 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 sub regulations (3) and (4) of regulation 80.

(4) Where a procuring entity uses limited bidding on the grounds of a limited number of sources, it shall also 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

82. (1) A procuring entity shall use the appropriate standard solicitation document issued by the Authority for drafting individual solicitation documents.

(2) A solicitation document 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 solicitation document shall include—
- (a) a clear statement of requirements for the services required;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) information on the selection method, the evaluation criteria and points to be applied, and any minimum technical score required;
 - (f) any margin of preference or reservation to be applied;
 - (g) information on the procedure for contract award, including the requirement for publication of a notice of best evaluated bidder;
 - (h) the type of contract to be awarded;
 - (i) the terms and conditions of the proposed contract; and
 - (j) information on the suspension of bidders and the bidder's right to appeal under the Act and in accordance with these Regulations.

83. (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 methodology 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; or

(e) selection based on the consultant's qualifications, which establishes a shortlist and selects the firm with the appropriate qualifications and references.

(3) Subject to subregulations (4), (5) and (6), quality and cost-based selection shall be the preferred evaluation methodology.

(4) Quality-based selection may be used 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 will 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) Fixed-budget selection may be used for assignments which are simple and can be precisely defined and where the budget is fixed.

(6) Least-cost selection may be used for assignments of a standard or routine nature, where well-established practices and standards exist.

(7) Selection based on a consultant's qualifications may be used for small assignments for which the need for preparing and evaluating competitive proposals is not justified.

Submission
of proposals

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

(2) Notwithstanding subregulation (1), where the evaluation methodology is 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.

(3) Notwithstanding subregulation (1), where the evaluation methodology is selection based on a consultant's qualifications, the firm with the best qualifications and references shall be selected to submit the technical and financial proposals.

Evaluation
criteria

85. (1) A solicitation document shall state the evaluation criteria to be applied during the technical evaluation.

(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 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 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 subcriteria to provide further guidance on the allocation of points under each main criterion.

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

86. (1) A solicitation document shall be authorised by the approvals authority, before its issue.

Issue of
solicitation
document

(2) A procurement committee shall issue a solicitation document to all shortlisted bidders at the same time and shall maintain a record of the issue of the documents.

87. (1) A solicitation document 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.

Clarification
and
amendment
of
solicitation
document

(2) Where a Procurement Unit receives a request for clarification, the Procurement Unit shall promptly provide a clarification, in writing, 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.

(4) An addendum shall be issued in writing and numbered sequentially and the same information shall be provided to all bidders at the same time.

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

Extension of
bidding
period

88. 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 in which to take a clarification or addendum into account in preparing their proposals.

Receipt of
proposals

89. (1) A Procurement Unit shall make arrangements for the receipt and safekeeping 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) Where any proposal is too large for the bid box, the Procurement Unit shall receive the proposal, 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) Proposals shall only be received electronically, or by other means which do not permit signed and sealed proposals, where authorised by the Authority through public procurement circulars.

(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.

Deadline for
submission
of proposals

90. (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.

(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) Notwithstanding subregulation (2), a Procurement Unit may open the outer envelope only, 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.

91. (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.

(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 included in the solicitation document.

(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 solicitation document shall be read out, 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 opening.

(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 attending 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 in subregulation (11), but 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.

Evaluation
committee
and
responsibilities

92. (1) A controlling officer or chief executive officer shall establish an evaluation committee in the manner specified in regulation 64, for the purposes of an evaluation under this Part.

(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) 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.

Preliminary
examination

93. (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.

(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) the correct number of copies of the proposal have been submitted;
- (e) a separately sealed financial proposal has been submitted, if required;
- (f) the proposal is valid for at least the period required;
- (g) the curriculum vitae have been correctly signed, if required;
- (h) all key documents and information have been submitted;
and
- (i) 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.

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

Scoring of proposals for technical evaluation

(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 evaluators.

(3) An evaluation committee shall ensure that scores from each member of the evaluation committee are compiled and an average score for each proposal shall be 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 evaluators to justify the scores awarded.

(5) Where an evaluator has misunderstood a proposal or the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust the scores, but no evaluator shall be obliged to make adjustments to scores or permitted to adjust scores without justification.

(6) Where an evaluator 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.

95. (1) An evaluation committee shall 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.

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

(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.

Technical
evaluation
for quality-
based
selection

96. (1) An evaluation committee shall compare the total technical scores of all the proposals and shall recommend the proposal with the highest total technical score for financial evaluation.

(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; and
- (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 reject all other technical and financial proposals.

(3) An evaluation committee shall submit the technical evaluation report, prepared 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.

97. (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.

Notification
of results of
technical
evaluation

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

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

Financial
opening

(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 opening to sign the record, but the absence of any signature shall not invalidate the record.

Financial
evaluation
for quality
and cost-
based
selection

99. (1) An evaluation committee shall 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 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) The lowest priced proposal shall be given 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.

(3) The technical and financial scores of each proposal shall be weighted, using the weights stated in the solicitation document.

(4) The weighted technical and financial scores shall be added together to give a total score for each proposal.

(5) The proposal with the highest total score shall be the best evaluated bid and shall be recommended for the award of contract, subject to any negotiations required.

(6) An evaluation committee shall prepare a financial evaluation report, 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.

(7) 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.

100. (1) An evaluation committee shall correct any arithmetic errors and determine whether the financial proposal is complete and has costed all corresponding inputs in the technical proposal and offers value for money.

Financial
evaluation
for quality-
based
selection

(2) The 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, 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 appears to be 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.

101. (1) An evaluation committee shall determine the evaluated price of each financial 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 the 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 fixed-
budget
selection

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

(3) The financial proposal with the highest technical score, which is within the budget, shall be the best evaluated bid and shall be recommended for award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a financial evaluation report, 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 was 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

102. (1) An evaluation committee shall 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) The financial proposal with the lowest evaluated price shall be the best evaluated bid and shall be recommended for award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a financial evaluation report, 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.

103. (1) Negotiations may relate to—

- (a) minor alterations to the terms of reference, methodology and staffing;
- (b) minor amendments to the special conditions of contract;
- (c) mobilisation arrangements, the workplan and completion schedule; or
- (d) inputs required from the procuring entity.

Scope of negotiations

(2) Negotiations shall not be conducted to—

- (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;
- (c) reduce fee rates or reimbursable costs, except where changes are required to reflect any agreed changes to the technical proposal; or
- (d) substantially alter anything which was a deciding factor in the evaluation of proposals.

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

104. (1) Negotiations shall not be conducted until after the financial evaluation report has been approved by the relevant approvals authority.

Procedure for negotiations

(2) Negotiations shall only be held with the bidder recommended for the contract award, except where negotiations fail, and the Procurement Unit obtains the prior authorisation of the approvals authority, to open 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 set maximum and minimum negotiation parameters.

(4) The negotiations shall be conducted by not less than two staff members of the procuring entity, who shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the prior authorisation of the approvals authority, prior to confirming any agreement reached.

(5) The staff of the procuring entities that conducted 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.

Evaluation
for selection
based on
consultant's
qualifications

105. (1) Individual consultants may be employed on assignment 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 requirement.

(2) Permanent staff or associates of a consulting firm may be available as individual consultants.

(3) Individual consultants shall be selected on the basis of—

- (a) their 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;
- (c) meeting the minimum relevant qualification and those selected to be employed by the procuring entity shall be best qualified and shall be fully capable of carrying out the assignment; and
- (d) capacity based on academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and organisation.

(2) Individual consultants may be selected on a solesource basis with due justification in exceptional cases such as—

- (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
- (b) assignments with total expected duration of less than six months;

- (c) emergency situations resulting from natural disasters; and
 - (d) where 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 the award of contract, subject to any negotiations required.
- (2) An evaluation committee shall submit the combined technical and financial evaluation report, referred to in subregulation (1), to the approvals authority for authorisation.

PART VIII

BIDDING PROCESS FOR SIMPLIFIED BIDDING

106. A procuring entity shall ensure that it complies with all relevant requirements of these Regulations, prior to initiating simplified bidding procedures in accordance with this Part.

Use of
simplified
bidding
procedures

107. (1) A Procurement Unit shall prepare a written request for quotations document using the appropriate standard document issued by the Authority.

Contents of
request for
quotations
document

(2) A request for quotations 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, as the case may be;
 - (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 will apply; and
- (g) information on the suspension of bidders and the bidder's right to appeal under the Act and in accordance with these Regulations.

Invitation of quotations and development of shortlist

108. (1) A Procurement Unit shall request for written quotations from a shortlist of bidders.

(2) A Procurement Unit shall include sufficient bidders in a shortlist of bidders to ensure effective competition, but in any case, shall obtain no less than three quotations.

(3) Notwithstanding subregulation (2), a shortlist may consist of only two bidders, where only two suitable sources exist.

(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 prequalified 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.

(6) A Procurement Unit shall record the names of the bidders included on the shortlist, and the reasons for their inclusion, which list shall be kept as part of the procurement record.

Submission and receipt of quotations

109. (1) A procuring entity shall require bidders to submit written quotations.

(2) A request for quotations document made under subregulation (1), shall specify the method or methods of submission permitted, which may include submission by—

- (a) postal or courier service;
- (b) facsimile;

(c) electronic mail, if permitted by the Authority through public procurement circulars; or

(d) any other form which leaves a record of the quotation.

(3) A request for quotations document shall specify the location, date and time for submission of quotations and a Procurement Unit shall reject any quotation received after the deadline for submission.

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

(5) 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 them to any person, other than the officer responsible for receiving the quotation.

110. (1) A Procurement Unit shall evaluate the quotations received, and may seek technical assistance from the user department, if required.

Evaluation
of
quotations

(2) A Procurement Unit shall conduct an evaluation of quotations in accordance with the other provisions of these Regulations and the following:

(a) alternative quotations shall not be permitted; and

(b) the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria.

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

PART IX

BIDDING PROCESS FOR DIRECT BIDDING

111. A procuring entity shall ensure that it complies with all the relevant requirements of these Regulations, in particular Part V, before initiating direct bidding procedures in accordance with this Part.

Use of direct
bidding
procedures

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

Procedure
for low value
procurement

(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 then 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; and

(d) if the Procurement Unit is satisfied that the quotation meets its needs and offers value for money, it shall proceed to award a contract and issue a written purchase order or similar document, provided that funds have been committed for the purchase.

Procedure
for
procurement
from a sole
source

113. Where a procuring entity conducts direct bidding on the grounds that only one supplier is able to meet the procuring entity's needs, the Procurement Unit shall—

- (a) prepare a written invitation, containing a statement of requirements for the goods, works or services, as the case may be, 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 114;
- (d) negotiate with the bidder, if required, in accordance with regulation 115;
- (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.

Evaluation
of sole bid

114. (1) An evaluation committee established in accordance with regulation 64, shall conduct the evaluation of a sole bid to determine whether the bid—

- (a) meets the procuring entity's technical needs, as defined by the statement of requirements;
- (b) accepts 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 committee, prior to any negotiations or contract award.

115. (1) An evaluation committee shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall set maximum and minimum negotiation parameters.

Procedure
for
negotiations

(2) An evaluation committee shall conduct the negotiations but it shall not commit the procuring entity to any proposed arrangement or agreements, and shall seek the prior authorisation of the approvals authority prior to confirming any agreement.

(3) An evaluation committee conducting 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 they are a true and accurate record of the negotiations held.

116. Where a procuring entity conducts direct bidding on the grounds of an emergency need, the Procurement Unit shall—

Procedures
for
emergency
procurement

- (a) initially 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 in accordance with regulation 119;
- (c) proceed to identify a suitable bidder;
- (d) where time permits, prepare a written request for a bid, containing a statement of requirements for the goods, works or services required, as the case may be, and a statement of the proposed contract form and terms 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 117;
- (g) negotiate with the bidder, if required, in accordance with the procedure in regulation 118; 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 the bid; and
 - (iii) a recommendation to award the contract or take other appropriate action.

Evaluation
of bid

117. (1) An evaluation committee shall conduct an evaluation of the bid to determine whether the bid—

- (a) meets the procuring entity's technical needs and, in particular, its required delivery or completion schedule;
- (b) accepts 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 and a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement and any additional costs involved in meeting the procuring entity's delivery or completion schedule.

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

(3) An evaluation committee shall submit the evaluation report and recommendations to the Procurement Committee, before any negotiations or contract award.

Procedure
for
negotiations

118. (1) An evaluation committee shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall set maximum and minimum negotiation parameters.

(2) The negotiations shall be conducted by not less than two staff of the procuring entity, who 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) The staff members of the procuring entity that conducted 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 they are a true and accurate record of the negotiations held.

Approval
arrangement
for
emergency
procurement

119. (1) A Procurement Unit shall notify the approvals authority as soon as it identifies a procurement requirement which shall be subject to direct bidding on the grounds of an emergency need.

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

(3) 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 without the Procurement Committee having met, unless alternative arrangements are agreed by the Procurement Committee.

PART X

CONTRACT AWARD

120. (1) A contract award decision shall be taken by the appropriate approvals authority in accordance with the levels of authority specified in the Act and these Regulations.

Contract
award
decisions

(2) The 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 take 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 the approvals authority shall not constitute a contract, but only a decision as to the winning or recommended bidder.

121. (1) A procuring entity shall, where procurement is conducted using open or limited bidding or selection, following the contract award decision by the approvals authority, publish a notice of best evaluated bidder.

Notice of
best
evaluated
bidder

(2) Notwithstanding subregulation (1), where a procuring entity uses limited bidding or selection on grounds of emergency circumstances, 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 under the Act and in accordance with these Regulations.

(4) A notice issued under subregulation (3) shall clearly state that it does not constitute an award of a contract.

- (5) A notice issued under subregulation (3) shall be —
- (a) sent directly to all bidders;
 - (b) to the extent feasible, published on the internet; and
 - (c) displayed on the notice board or at another prominent place in the procuring entity's offices.

(6) 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

122. (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, in accordance with these Regulations.

Contract
award under
open or
limited
bidding or
selection

123. (1) A procuring entity shall, after the commitment of funds, in accordance with regulation 122, and the publication of the notice of best evaluated bidder in accordance with regulation 121, 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 referred to in 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 constitutes a contract between the procuring entity and the bidder, until such time as 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.

124. (1) A Procurement Unit shall, after the issue of a letter of bid acceptance, in accordance with regulation 123, prepare a written contract using the contract included in the solicitation document.

Contract preparation and signature under open or limited bidding or selection

(2) A Procurement Unit shall obtain prior authorisation of the contract document from the Controlling Officer or chief executive officer, 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 from receipt of the contract draft.

125. (1) Where procurement is conducted using simplified bidding after the contract award decision by the approvals authority and the commitment of funds, the Procurement Unit shall prepare a written purchase order and send it to the successful bidder.

Contract award under simplified bidding

(2) A purchase order shall not contain any terms, conditions or requirements which differ from the bidder's quotation, unless these have been agreed, in writing, with the bidder.

(3) A purchase order shall constitute a contract between the procuring entity and the bidder.

(4) A procuring entity shall require the supplier to provide written confirmation that it has received the purchase order and is proceeding with performance of the contract, but any failure by the supplier to provide such confirmation shall not invalidate the contract.

126. (1) Where a procuring entity conducts direct bidding on the grounds of low value, it shall award the contract in accordance with regulation 125.

Contract award under direct bidding

(2) Where a procuring entity conducts direct bidding procurement on any other grounds, following the contract award decision by the approvals authority and the commitment of funds, the Procurement Unit shall 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, in accordance with regulation 136.

(4) A Procurement Unit shall obtain a signed acknowledgment from the bidder, confirming that it has received the letter of bid acceptance, contract or purchase order and that it is proceeding with performance of the contract, but any failure by the bidder to provide such confirmation shall not invalidate the contract.

Performance securities

127. (1) A procuring entity shall request a performance security for all contracts for goods, works and nonconsulting services with a value greater than five hundred million Kwacha, to secure the supplier's obligation to fulfill the contract.

(2) A solicitation document and contract for goods, works and nonconsulting services with a value greater than five hundred million Kwacha shall state the requirement for a performance security which may cover warranty obligations, if so stated in the contract.

(3) The value of any required performance security may be expressed 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.

(4) 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 fulfill the contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.

(5) 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 services to which the security relates.

(6) 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) cash, a manager's or certified cheque or payable order;

(ii) an insurance bond or a bank guarantee;

(iii) an equivalent instrument, such as a standby 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 one month beyond the anticipated completion date of the contract.

(7) The conditions for forfeiture of the performance security shall be specified in the contract.

(8) A Procurement Unit shall release the performance security promptly to the supplier upon completion of all the supplier's contractual obligations.

(9) A Procurement Unit shall require a successful bidder to provide a performance security within fourteen days of signing a contract or the date of the bid acceptance, whichever is the earlier.

128. (1) A Procurement Unit shall, upon the entry into force of a contract and the provision by the supplier of any required performance security, promptly reject the bids of all unsuccessful bidders.

Rejection of bids and debriefing unsuccessful bidders

(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 as to the reasons for the failure of their bids or applications to prequalify, including—

- (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.

129. (1) A procuring entity shall publish a notice of contract award for all contracts which exceed the threshold specified in the Fourth Schedule.

Public notice of contract awards

(2) A notice of contract award shall indicate the name and address of the supplier, a brief description of the goods, works or services purchased and the contract price.

(3) A notice of contract award shall be published in accordance with these Regulations.

(4) A procuring entity shall display a summary notice, providing details of contract awards for all contracts below the threshold referred to in subregulation (1), on the notice board or another prominent place in the procuring entity's offices and, to the extent feasible, publish the notice on the internet, on a monthly basis.

130. (1) A procuring entity may use any of the contract types and pricing approaches specified in this Part, in accordance with the provisions of this Part, or any other contract types authorised by the Authority.

Types of contract and pricing approaches

(2) A Procuring entity shall use the contract forms included in the standard solicitation document issued by the Authority.

Lump sum contracts

131. (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, irrespective of the actual quantity, time or work required for performance of the contract.

(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.

Time-based or measured-works contracts

132. (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.

(2) Any payments 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) For any contract for services, payment 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) For any contracts for works, payment shall be based on agreed rates for various items of work, as priced by the supplier in the bill of quantities.

(5) Timebased and measuredworks contracts shall include a maximum amount of total payments,

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 Procurement Unit shall monitor timebased and measuredworks contracts closely, to ensure that progress is in accordance with the contract and that payments claimed by the supplier are appropriate and in accordance with the contract.

133. (1) A procuring entity may use a rate contract for goods, works or services—

Rate
contracts

(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 them available on a “call off” basis.

(2) Any payment 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 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 shall specify the arrangements for obtaining specific requirements during the period of the contract, using “calloff” or delivery orders.

134. (1) A procuring entity may use a running contract for goods, works or services which shall run for a maximum period of one year—

Running
contracts

(a) where the items are needed “on call”, but where the precise 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 them available on a “call off” basis.

(2) Any payments 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.

(3) A running contract 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.

(4) A running contract shall specify the arrangements for obtaining specific requirements during the period of the contract, using “calloff” or delivery orders.

Percentage based contracts

135. (1) A procuring entity may use a percentagebased 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 percentbased contract shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.

(3) A percentagebased contract 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.

Cost reimbursable and target price contracts

136. (1) A procuring entity may use a costreimbursable 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 will not accept the risk.

(2) Any payment under a costreimbursable and targetcontract 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) Where a target price can be agreed upon by the procuring entity and the supplier, the procuring entity may make an incentive payment for any cost savings.

Contents of contract

137. (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.

(2) Where procurement is conducted using open or limited bidding or 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 all 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, subcontracting, inspection and acceptance, contract completion, delays in performance or other nonperformance, *force majeure* and 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 in this Part.

138. (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, 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 in sub-regulation (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 labour, 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 a specified percentage or amount of the contract, the procuring entity may—

- (a) terminate the contract; or
- (b) renegotiate the contract, in order to stay within the budget or otherwise minimise costs for the procuring entity.

Payment terms

139. (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 interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest.

(4) A contract shall clearly state the currency or currencies of payment and, where required, the exchange rate or the source of exchange rate applicable.

(5) A contract shall clearly specify the payment schedule, which may include advance payments, progress payments and retained payments.

140. (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. Advance payments

(2) An advance payment may be made for costs such as 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 shall not exceed twentyfive percent of the total contract price.

(4) Any advance payment shall only be made against the provision by the supplier of an advance payment guarantee, covering the full amount of the advance payment and in accordance with regulation 144.

(5) A contract shall state that materials, equipment and personnel for which an advance payment is received, shall be used only for performance of that contract.

(6) A contract for works may require that materials, equipment and personnel for which an advance payment is received, must 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.

141. (1) A contract may provide for progress payments to the supplier. Progress payments

(2) A progress payment shall be—

- (a) a payment of a specified percentage or amount of the contract value following particular events, milestones or submission of deliverables specified in the contract;
or

(b) a payment 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 proving delivery or completion of the goods, works or services subject to the progress payment or submission of the deliverables specified.

Retained payments

142. (1) A contract may provide for a specified percentage or amount of payments to the supplier to be retained.

(2) A contract shall specify—

(a) the percentage or amount to be retained;

(b) the period or event at which the retention is to be released, which may include, but not be limited to installation of goods, completion of the contract or expiry of a warranty period; and

(c) the documents required to prove completion of the event or period in paragraph (b).

(3) Where so specified in the contract, the supplier may substitute a payment security for a retention payment.

Payment document

143. (1) A contract document shall require the supplier to submit an original invoice for each payment requested.

(2) A contract document shall state the documents against which payments shall be made.

(3) The documents required for purposes of the 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 proving the content of any consignments delivered;

(c) inspection certificates or reports, or other documentation proving that goods, works or services have passed inspection;

(d) installation, commissioning, acceptance or handover certificates, or other documentation proving that goods, works or services have been accepted;

- (e) insurance certificates or other documentation proving that 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, such as air tickets or time sheets for personnel.

144. (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. Payment security

(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 prescribed in the contract, which shall normally be at least one month 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 upon completion of all the supplier's contractual obligations which are subject to the security or upon expiry of the security.

PART XI

CONTRACT MANAGEMENT

145. (1) A controlling officer or chief executive officer shall designate 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. Selection of contract manager

(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 and experience for the contract to be managed and have skills appropriate to the contract to be managed and the deliverables required under the contract.

(4) A Procurement Unit shall, in selecting a contract manager, or contracts management team, take into account the need for—

- (a) user department or end-user representation, especially 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 member of the contract management team shall be treated as procurement for consulting services and shall be done in accordance with these Regulations.

Contract
management
responsibilities

146. (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 their 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;
- (i) ensuring that the contract is complete, prior to closing the contract file;
- (j) ensuring that all contract management records are kept and archived as required;
- (k) ensuring that the supplier and the procuring entity act in accordance with the Act, these Regulations and the contract; and
- (l) keeping the Procurement Unit informed of the status and progress of the contract.

(2) A contract manager shall, in managing the contract, use existing systems, procedures and resources within the procuring entity and, in particular, the contract manager shall use existing disbursement systems for making payments to suppliers.

147. (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—

Inspection
of goods,
works and
services

- (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 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 reinspection required.

Acceptance
of goods,
works and
services

148. 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—

- (a) the correct quantity or inputs of goods, works or services have been received;
- (b) the goods, works or services meet the 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.

Contract
amendments

149. (1) A Procurement Unit and contract manager shall, where any change to the terms and conditions of a contract is required, other than contract variations permitted in accordance with regulation 150, prepare a written amendment to the contract.

(2) Any amendment to a contract shall only 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 before the issue of any contract amendment.

Contract
variation

150. (1) A contract may, where appropriate, in order to facilitate adaptations to unanticipated events or changes in requirements, permit—

- (a) the contract manager, supervising engineer or other designated official to order 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) Where a variation results in a change in price, any additional funds shall be committed before issue of the variation, unless such funds are already provided by any committed amount for contingencies or similar matters.

(3) A contract shall include a maximum limit on the variations which may be issued without an amendment to the contract in accordance with regulation 149.

(4) A contract shall state any approval requirements relating to contract variations.

151. (1) A contract shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.

Contract
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 will be liable following the termination of the contract.

PART XII

DEVIATIONS AND ACCREDITATION

152. (1) A procuring entity shall apply, in writing, to the Authority, for a deviation from the use of a public procurement method, rule, process or document.

Procedure
for applying
for deviation

(2) An application for a deviation, under subregulation (1), shall include—

- (a) a statement of the method, rule, process or document from which a deviation is required;
- (b) the 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;
- (c) an explanation of the proposed alternative method, rule, process or document, including a summary of how it differs from the standards;
- (d) a 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; and
- (e) any other relevant information as the Authority may require.

(3) The Authority shall consider each application and issue its decision within ten working days from receipt of the application.

(4) 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.

(5) An approval of an application to deviate from a public procurement method, rule, process or document shall state whether the approval is for a single requirement or for a number of requirements of the same class.

(6) 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.

(7) 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.

(8) 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.

Monitoring
and profile
analysis of
deviations

153. (1) The Authority shall maintain a register of all the deviations issued to procuring entities.

(2) The register, referred to in 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.

(4) Where a procuring entity does not comply with the terms of a deviation granted, the Authority may require a Controlling Officer or chief executive officer to take steps to ensure compliance or revoke the deviation in writing, stating the reasons.

(5) 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.

(6) The Authority shall, on a periodic basis, analyse trends in the profile of a 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.

154. (1) A controlling officer or chief executive officer shall submit to the Authority an application for accreditation of an alternative system, supported by—

- (a) full details of the alternative system;
- (b) an analysis of the ways in which the alternative system differs from the Act and these Regulations; and
- (c) a justification for using an alternative system, including a copy of any relevant agreement or legislation.

Procedure
for
accreditation
of alternative
procurement
system

(2) The Authority shall issue its decision within twenty working days from the date of receipt of the application for accreditation and all other required information.

(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 it may determine.

(4) Where the Authority rejects an application or requires modifications to the alternative system, it shall give its 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 XIII

BIDDERS AND SUPPLIERS

155. (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:

Eligibility

- (a) copies of the bidder's certificate of registration, certificate of incorporation or similar document;
- (b) copies of the bidder's tax registration, value added tax registration, tax clearance certificates or similar document;
- (c) a signed statement that the bidder does not have a conflict of interest in relation to the procurement;
- (d) 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 three years preceding the commencement of the procurement proceedings; and

(e) 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 as evidence of a bidder's eligibility, permit the submission of equivalent documents from the relevant authorities in the bidder's country of origin or the submission of 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.

Verification
of bidder's
qualifications

156. (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.

(2) A procuring entity may verify the qualifications of bidders through either prequalification proceedings or postqualification proceedings in accordance with these Regulations.

(3) A procuring entity shall verify bidders' qualifications for consulting services as part of the shortlisting process provided under these Regulations, based on information provided in the expressions of interest.

Qualification
criteria

157. (1) Qualification criteria shall be designed to ensure that the bidder is capable of effectively performing the proposed contract.

(2) Qualification criteria 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) Qualification criteria shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.

(4) Qualification criteria 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 prequalification or solicitation document, the documentary evidence required from bidders, as evidence of their qualifications.

158. 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 criteria will be applied individually or collectively to each supplier, sub-contractor or partner; and
- (c) any alternative criteria which apply to sub-contractors or partners in a joint venture, consortium or association.

Requirements
for sub-
contractors
and joint
venture
partners

159. (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 provided in 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 Zambia 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 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 will 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 prequalification notice.

(6) The percentages for preference to be applied for purposes of subregulations (2) and (3) shall be set by the Authority in liaison with the Citizens Economic Empowerment Commission, other relevant Government departments and statutory bodies, but shall not be more than twenty percent.

(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 Zambia.

Reservation schemes

160. (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 the Act.

(2) A reservation scheme shall have as its objective the development of businesses owned by citizen or local suppliers, by reserving certain public procurement contracts for citizens or local suppliers.

(3) A procuring entity shall ensure that procurement under a reservation scheme is competitive among eligible bidders and the supplier is qualified to perform the contract.

(4) The application of a reservation scheme and eligibility to participate shall be stated in the solicitation document and any bid or prequalification notice.

(5) The Authority shall, in liaison with the Citizens Economic Empowerment Commission and other relevant Government departments and statutory bodies, set and publish in a daily newspaper of general circulation in Zambia, the estimated costs for procurement of goods, works and services that shall be reserved for citizen bidders or local suppliers.

161. (1) The Authority or any procuring entity may organise and maintain a supplier database or list by registering suppliers of goods, services and works, in accordance with section *sixty-four* of the Act.

Supplier
databases or
lists

(2) A supplier database or list maintained by the Authority may be used to record potential citizen bidders or suppliers who are eligible for any preference or reservation scheme.

(3) The selection of a bidder from a supplier database or list shall not relieve the procuring entity from the need to advertise procurement opportunities or to verify the eligibility and qualifications of a bidder.

162. (1) The Authority may suspend or bar a bidder or supplier in accordance with sections *sixty-five*, *sixty-six* and *sixty-seven* of the Act and in accordance with regulations 163 to 167.

Suspension
or bar of
bidder or
supplier

(2) Any member of a Procurement Committee or Procurement Unit or any contract manager may recommend to the Authority the suspension or permanent bar of a bidder or supplier.

(3) Any recommendation made, in accordance with subregulation (2), shall be submitted to the Authority, 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.

163. (1) The Authority shall, upon receipt of a recommendation to suspend or permanently bar a bidder or supplier, in accordance with regulation 162, immediately—

Investigation
of
suspension
or bar
by
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.

(4) A bidder or supplier who is subject of a recommendation to be barred or suspended shall be permitted to submit information or evidence in their defence in person, through presentation of witnesses or through a representative.

(5) The Authority shall issue its decision within thirty working days of receipt of the recommendation to suspend or bar a bidder, which decision shall state—

- (a) whether the recommendation is upheld or rejected;
- (b) the reasons for the decision; and
- (c) the period of any suspension imposed.

Disclosure of information and special measures for confidentiality during consideration

164. (1) Where the bidder or supplier requests specific documents required for the effective execution of their defence, such documents shall be made available promptly, unless such disclosure would be contrary to the requirement for confidentiality set out in the Act.

(2) The Authority or the procuring entity may request that the bidder or supplier produce relevant documents or information that are not in their possession.

(3) At the request of a party, or on its own initiative, the Authority may apply special measures controlling the treatment of proprietary or confidential information or other information the release of which would be contrary to the requirements for confidentiality set out in the Act.

(4) The Authority shall review in camera all information not released to the parties.

Dismissal of recommendation to suspend

165. The Authority may deny a recommendation to suspend or bar a bidder or supplier for—

- (a) failure to comply with the requirements of regulation 162, except that minor noncompliances shall not be grounds for dismissal;
- (b) setting forth only allegations that do not state a valid basis for a recommendation to suspend or bar a bidder or supplier or that do not set forth a detailed legal and factual statement; or
- (c) not being submitted in a timely manner.

166. (1) The Authority shall, in determining the period of any suspension of a supplier or bidder or in deciding to permanently bar a bidder or supplier, 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.
167. (1) The Authority shall communicate, in writing, to the bidder or supplier, its decision to suspend 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 relates, including any reference number;
 - (c) that the bidder or supplier is excluded from participating in all public procurement for a specified period;
 - (d) the grounds for the suspension;
 - (e) that the suspension 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 entity; and
 - (f) that the suspension does not relieve the bidder or supplier of responsibility for obligations under any existing contracts entered into before the suspension.
- (2) Notwithstanding paragraph (f) of subregulation (1), the Authority may recommend to the procuring entity, the termination of 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
- Determination of period for suspension or decision to bar
- Contents of communication to suspend

(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.

Copy of
decisions of
Authority

168. (1) A copy of the decision of the Authority shall be provided to the Controlling Officer or chief executive officer.

(2) Notwithstanding 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 Zambia and on any regional and Government website.

PART XIV

PROCEDURE FOR INVESTIGATIONS AND REVIEW OR APPEAL

Investigations
for
monitoring
purposes

169. An inspector, appointed under section *nine* of the Act shall, for the purpose of monitoring the performance of procuring entities and investigating any appeal made to the Authority in accordance with these Regulations have power to—

(a) carry out inspections or procurement audits of procurements and procuring systems of any procuring entity and shall, after every inspection or audit make a report to the procuring entity with a copy to the Director-General;

(b) require any controlling officer or chief executive officer, officer or employee of a procuring entity concerned to produce any books, records or other documents in their possession or under their control, relating to the public procurement under inspection or audit, and to furnish to the inspector such information as the inspector may consider necessary to ascertain the true position of the public procurement;

(c) seek any explanation or receive any evidence relating to the public procurement under inspection or audit; and

- (d) if the inspector determines that it is necessary in order to ascertain the nature of any public procurement transaction carried out by the procuring entity or contractual arrangement between the procuring entity and any supplier, inspect the accounts or books of account of the procuring entity.

170. A bidder or supplier who is aggrieved with a decision made by a procuring entity or an approvals authority may apply for review or appeal of the decision, to the Authority, in accordance with regulation 171.

Applications for review or appeal

171. (1) An application for review or appeal, under regulation 170 shall be in writing and signed by the bidder, supplier or their representative to the controlling officer or chief executive officer and be made within ten working days of the decision or stage of the procurement proceedings to which it relates, and shall—

Contents of applications for review or appeal

- (a) state the name and contact details of the bidder or supplier;
- (b) state the name of the procuring entity to which the application relates;
- (c) provide details of the procurement requirement to which the complaint or application relates, including any reference number;
- (d) state the legal and factual grounds of the complaint or application, including documentary or other evidence supporting the application for review or 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 application, including the date that the bidder or supplier became aware of the circumstances giving rise to the complaint or application and the dates of any contract award, complaint to the chief executive officer or decision by the chief executive officer;
- (g) include a copy of any complaint submitted to the procuring entity and any decision issued by the controlling officer or the chief executive officer;
- (h) the remedy sought; and
- (i) request that a review or an appeal be conducted by the Authority.

(2) In addition to the contents specified in subregulation (1), an application for review or appeal, may—

- (a) request special measures for the handling of proprietary commercial or other confidential information;
- (b) request specific documents required by the bidder for the effective prosecution of its complaint or application, explaining the relevance of such documents to the grounds of the complaint or application; or
- (c) request that a hearing be held, explaining the reasons why a hearing is needed to resolve the complaint or application.

(3) A complaint or application for review or appeal shall be copied to the Authority and accompanied by payment of the fee set by the Authority in accordance with regulation 172.

Fee for
review or
appeal

172. (1) The Authority shall set fees for reviews or appeals to the Authority against decisions of procuring entities, through issue of public procurement circulars.

(2) The Authority shall make information on fees publicly accessible through the publication of the fees in a daily newspaper of general circulation in

Zambia.

(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 review or appeal.

(4) In the absence of any circular setting fees, no fee shall be charged.

(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 the Act.

Action by
controlling
officer or
chief
executive
officer

173. (1) A controlling officer or chief executive officer shall immediately, upon receipt of an application for review or appeal suspend the procurement proceedings.

(2) A controlling officer or chief executive officer shall institute an investigation to consider—

- (a) the information and evidence contained in the application;
- (b) the 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) A controlling officer or chief executive officer shall, within five working days after receipt of the complaint, submit a written decision to the Authority indicating—

- (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) A controlling officer or chief executive officer shall submit a copy of the decision to the Procurement Committee and Head of a Procurement Unit.

174. (1) The Authority shall, within five working days of the receipt of the submission of the controlling officer or chief executive officer—

Action and decisions of Authority

- (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 these Regulations.

(2) The Authority shall request the bidder or supplier to submit, if they so wish, a statement of the bidders or suppliers complaint.

175. (1) The Authority shall, after receiving the submission of the Controlling Officer or chief executive officer under regulation 173 fix the date, and place of hearing which date shall not be later than five days after such receipt.

Time and place of hearing

(2) The Authority shall inform all relevant parties and witnesses, if any, of the date and place of the hearing.

176. The Director-General shall appoint five members of staff of the Authority as members of a review or appeals panel to review or hear an appeal submitted by a bidder or supplier under these Regulations.

Appointment of review or appeals panel

177. (1) The review or appeals panel constituted under regulation 176 shall hold its hearings in camera, except that a hearing may, in the public interest, be held in public.

Hearing of application

(2) An applicant may, at a hearing of a review or appeals panel appear in person or be represented by a legal practitioner.

(3) A hearing of the review or appeals panel shall be concluded within ten working days of receipt of an application for review or appeal.

178. (1) The quorum at a hearing of a review or appeals panel shall be three members, including the chairperson, who shall be elected by the members of the review or appeals panel.

Procedure of hearing

(2) Every hearing of the review or appeals panel shall be informal and the law relating to admissibility of evidence in a court of law shall not apply.

(3) An applicant and any respondent shall be entitled to give evidence, call witnesses, cross examine witnesses and address the review or appeals panel 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.

(4) The parties to a review or appeal under these Regulations may conduct discoveries and exchange relevant documents upon which they intend to rely at the hearing.

(5) Any hearings held shall be recorded or transcribed and any party may obtain a copy at that party's own expense.

(6) The chairperson may, where the chairperson considers it necessary, postpone the holding of a hearing to such later date, within the thirty day period, as the chairperson may determine.

(7) Where the holding of a hearing has been postponed under subregulation (6), the Authority shall, 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 of the review or appeals panel.

(8) The review or appeals panel shall ensure, at all times, that an applicant or other party to the cause—

- (a) is present at a hearing; and
- (b) is heard by the review or appeals panel unless such party waives the right to be heard.

(9) An applicant and other party to the cause shall not be limited in the proceedings before the review or appeals panel to the evidence or arguments put before the panel which such person believes relevant or necessary to prove that person's complaint or dispute such complaint, as the case may be.

(10) A decision of the review or appeals panel 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.

(11) Any clerical mistakes or errors arising out of an accidental omission may be corrected and certified by the chairperson.

Investigation
of
complaints
and
applications
for review or
appeal

179. (1) A review or appeals panel shall, in hearing a complaint or application for review or appeal, consider—

- (a) the information contained in the written complaint or application for review or 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 complaint or application;
- (h) confidential information provided by the controlling officer, or chief executive officer; and
- (i) any other relevant information.

180. (1) The decision of the review or appeals panel shall be recorded in a document signed by the chairperson and shall indicate—

Decisions of
review or
appeals
panel

- (a) whether the application is upheld in whole, in part or rejected;
- (b) the reasons for its decision; and
- (c) the corrective measures to be undertaken.

(2) The Director-General shall transmit the decision of the review or appeals panel to all the relevant parties to the application and to the persons and bodies listed in subregulation (3), as the case may be, within two days of the decision being made.

(3) A copy of the decision of the review or appeals panel shall be provided to—

- (a) the applicant;
- (b) any other bidders or parties who participated in the review or appeal proceedings;
- (c) the Authority, for publication; and
- (d) the controlling officer or chief executive officer, for distribution to the Procurement Committee and head of the Procurement Unit.

(4) Notwithstanding the provisions of subregulation (2) 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.

(5) A decision of the review or appeals panel shall be binding on all parties concerned, including the Authority, subject to the parties submitting the matter to arbitration under section *sevent-yone_of* the Act.

(6) Subject to the parties submitting the matter to arbitration under section *seventy-one* of the Act, a decision of the review or appeals panel shall be implemented by the parties on transmission of the decision to the parties concerned.

Remedies

181. (1) A review or appeals panel shall, in determining the appropriate remedy pursuant to the Act, consider all circumstances surrounding the procurement, including—

- (a) the seriousness of the breach by the procuring entity;
- (b) the degree of prejudice to other parties or to the integrity of the procurement system;
- (c) the good faith of the parties;
- (d) the cost to the Government;
- (e) the urgency of the procurement; and
- (f) the impact of the remedies on the fulfillment of the procuring entity's functions.

(2) The review or appeals panel 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 complaint 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 arms of the Government.

(3) Notwithstanding paragraph (c) of subregulation (2), 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.

PART XV

GENERAL PROVISIONS

182. (1) In the exercise of the policy functions of the Authority as specified under the Act, the Authority shall ensure that public procurement policy, systems and procedures are consistent with the fundamental principles provided for in regulation 3 and integrated with other relevant Government policies, systems and procedures, including those for—

Exercise of
policy
functions

- (a) expenditure management;
- (b) private sector development and the development of
Zambian suppliers and other target groups;
- (c) anticorruption 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.

183. (1) In the exercise of the regulatory functions of the Authority as specified under the Act, the Authority shall 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, prequalification 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) In revising public procurement laws, and developing or revising circulars, standard documents or similar documents as specified under sub-regulations (1) and (3), respectively, the Authority shall—

- (a) consult with interested parties in both the public and private sectors; 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.

(9) A procuring entity shall, before terminating any tender proceeding, seek the approval of the approvals authority and where such approval has been given shall—

(a) refund any fee paid on the solicitation documents; and

(b) release any tender security obtained.

Exercise of
monitoring
functions
and appeal

184. (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) In conducting its monitoring functions as specified under the Act and these Regulations, the Authority may—

(a) request any person or body to provide it with such information relating to public procurement as it may require in the performance of its functions;

(b) cooperate and work closely with other bodies responsible for oversight; and

(c) on the recommendation of the inspectorate unit, refer cases to other public bodies for action.

(3) The Authority may participate in any mechanism or programme, as the case may be, establishing—

(a) systems for sharing information with other public oversight bodies, including the Anti-Corruption Commission established under the Anti-Corruption Act, 2010;

(b) common methodologies or standards for investigations and the collection of evidence;

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of 2010

- (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 facilitates the conduct of oversight functions.

(4) The Authority shall, in carrying out its functions as an appeals body under the Act, ensure that investigations are undertaken by the inspectorate unit in accordance with these Regulations.

(5) The Authority shall issue to every inspector, appointed to the inspectorate unit under the Act, a certificate of appointment as an inspector under the unit.

185. (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 public sector training and development.

Exercise of capacity building and professionalisation functions

(2) In developing standards, competence levels and certification requirements, the Authority shall 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 fulltime 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.

FIRST SCHEDULE
(Regulation 7)

LEVELS OF AUTHORITY FOR APPROVALS AUTHORITY

<i>Approvals Authority</i>	TYPES OF PROCUREMENT		
	<i>Goods and Non-Consulting Services</i>	<i>Works</i>	<i>Consulting Services</i>
Procurement Committee	Over K50 million	Over K50 million	Over K50 million
Controlling Officer/Chief Executive Officer	Up to K50 million	Up to K50 million	Up to K50 million

SECOND SCHEDULE*(Regulation 8)*

THRESHOLDS FOR PROCUREMENT METHODS

<i>Procurement Method</i>	TYPE OF PROCUREMENT		
	<i>Goods and Non - Consulting Services</i>	<i>Works</i>	<i>Consulting Services</i>
Open National Bidding	Over K500 million	Over K500 million	<i>Not Applicable</i>
Open International Bidding	Over K5 billion	Over K50 billion	<i>Not Applicable</i>
Limited Bidding	<i>In appropriate circumstances</i>		<i>Not Applicable</i>
Open National Selection	<i>Not Applicable</i>	<i>Not Applicable</i>	Over K300 million
Open International Selection	<i>Not Applicable</i>	<i>Not Applicable</i>	Over K500 million
Limited Selection	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>In appropriate circumstances</i>
Simplified Bidding	Up to K500 million	Up to K500 million	Up to K300 million
Direct Bidding	Up to K10 million <i>or in appropriate circumstances</i>	Up to K10 million <i>or in appropriate circumstances</i>	Up to K10 million <i>or in appropriate circumstances</i>

THIRD SCHEDULE
(Regulation 30)

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 <small>(A detailed list, statement of requirements or stock management information may be attached)</small>	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: <hr/> 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 that (3) funds are available or budgeted for the requirement.

(1) Confirmation of Need (Originating Officer – User Department)

(2) Confirmation of Funding (Controlling Officer, unless delegated)

(3) Approval to procure (Controlling Officer, unless delegated)

Signature: _____
 Name: _____
 Position: _____
 Date: _____

Procurement Reference Number:					
Subject of Procurement:					
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 further continuation sheets for requirements but quote same reference stated above.					
Currency: _____ Estimated total cost:					

FOURTH SCHEDULE
(regulation 129))

PUBLICATION OF CONTRACT AWARDS

<i>Type of Publication</i>	<i>Type of Procurement</i>		
	Goods and Non-Consulting Services	Works	Consulting Services
Mandatory thresholds for publication of contract award details	Over K500 million	Over K500 million	Over K300 million

LUSAKA
1st July, 2011
[MF.105/20/9C]

S. MUSOKOTWANE,
*Minister of Finance and
National Planning*