

S.I. 7 of 2014

PUBLIC PROCUREMENT ACT

(Act No. 33 of 2008)

PUBLIC PROCUREMENT REGULATIONS, 2014

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“electronic form” shall have the meaning as defined in the Electronic Transactions Act (Cap 263);

“Evaluation Committee” means an adhoc committee appointed by a procuring entity under the Act for the evaluation of tenders, proposals or quotations, in accordance with the evaluation criteria stated in the bidding document, and the preparation of evaluation reports for submission to an approvals authority;

(2) Public procurement shall be governed by the following fundamental principles —

- (a) transparency;
- (b) competition;
- (c) economy;
- (d) efficiency;
- (e) fairness; and
- (f) accountability.

PART II - PROCUREMENT OVERSIGHT UNIT

Exercise of
policy
functions

4.(1) In the exercise of the policy functions of the Procurement Oversight Unit as specified under the Act, the Procurement Oversight Unit shall ensure that public procurement policy, systems and procedure are consistent with and integrated with other relevant Government policies, systems and procedures, including those for —

- (a) expenditure management;
- (b) private sector development and the development of Seychelles suppliers and other target groups;

- (c) anti-corruption initiatives;
- (d) decentralisation; and
- (e) the use of information and communications technology.

(2) .

- (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 in standard bidding documents.

(5) The Procurement Oversight Unit may permit the use of alternative documents, where no suitable standard document has been issued by the Procurement Oversight Unit.

(6) The Procurement Oversight Unit shall date all public procurement circulars and sequentially number them.

(7) The Procurement Oversight Unit shall make available, in electronic form, standard documents to all procuring entities.

(8) Every procuring entity or Procurement Committee shall seek the approval of the approvals authority for variations above 7.5% of the original contract price.

(9) The Procurement Oversight Unit shall issue instructions to procuring entities relating to fluctuations of the original contract price for short term contracts.

Exercise of
monitoring
functions

6.(1) The Procurement Oversight Unit shall ensure that public procurement proceedings are subject to regular monitoring for compliance with public procurement laws and guidelines.

(2) In conducting its monitoring functions, the Procurement Oversight Unit 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) co-operate 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 Procurement Oversight Unit may participate in any mechanisms or programmes, as the case may be, establishing—

- (a) systems for sharing information with other public oversight bodies, including the Public Officers Ethics Commission established under the Public Officers Ethics Act; (Act 15 of 2008)
- (b) common methodologies or standards for investigations and the collection of evidence;
- (c) joint teams to conduct oversight functions;
- (d) for 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 Procurement Oversight Unit shall issue to every inspector, appointed to the inspectorate unit under the

Act, a certificate and a badge signifying appointment as an inspector under the unit.

(5) An inspector shall, for the purpose of monitoring the performance of procuring entities, have the power to—

- (a) carry out periodic inspections or procurement audits of the

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.

(2) In developing standards, competence levels and certification requirements, the Procurement Oversight Unit shall take in to account —

- (a) the differing types, volumes and complexity of public procurement managed by **dif**

- (b) ensure that systems are accessible to intended users; and
- (c) consider the ease of maintaining and updating systems.

9.(1)

10.(1) A procuring entity shall submit such procurement reports as the Procurement Oversight Unit may require to facilitate the establishment and maintenance of data and information bases concerning public procurement and to assist in the monitoring of public procurement and development of public procurement policies.

Reports by
procuring
entities

(2) The Procurement Oversight Unit 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.

(3) The Procurement Oversight Unit shall ensure that reporting requirements imposed on procuring entities are not overly burdensome.

PART III - PROCURING ENTITIES

11.(1) The operational threshold for the approval of the Board shall be as specified in the First Schedule.

Levels of
authority,
operational
thresholds and
standard
bidding
documents

(2) The operational threshold and approval levels for Procurement Committee, shall be as specified in the First Schedule.

(3) The operational threshold and approval levels for a Chief Executive Officer shall be as specified in the First Schedule.

(4) The operational threshold and approval level for any designated senior officer or officers shall be as specified by the Chief Executive Officer in writing.

(5) All procuring entities shall use the standard bidding document issued by the Procurement Oversight Unit for a particular kind of procurement or where no such document has been issued, may seek approval to use a bidding document developed by that procuring entity until the Procurement Oversight Unit issues the bidding document.

(6) The Procurement Oversight Unit shall ensure that the standard bidding documents are easily available to all procuring entities by posting them on its website or by delivering them to the offices of such entities.

(7) The Procurement Oversight Unit shall notify all procuring entities of any amendments to, or change of, any standard bidding document as soon as these are made.

(8) An Amendment to, or change of, a bidding document shall take effect only upon notification to the procuring entities.

12.(1) A Procurement Committee shall meet as often as is necessary for the ef

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(11) The chairperson of the Procurement Committee shall ensure that minutes and decisions of the Procurement Committee are available and distributed to the members within two working days of the Procurement Committee meeting.

13.(1) Where a member of a Procurement Committee or a close relative of a member, has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring the Procurement Committee's consideration and decision, that member shall —

- (a) disclose such interest, as soon as possible after receiving the agenda of the meeting, or on notification of a matter being brought to the attention of the Procurement Committee; and
- (b) not be present at or participate in the deliberations or decision-making process of the Procurement Committee in relation to the agenda item or the matter in question.

(2) A disclosure of interest made under this regulation shall be recorded in the minutes of the meeting at which it is made or to which it relates.

14.(1) A Procurement Committee may co-opt advisers ~~and~~ co-opt

(5) The Procurement Committee shall ensure that the attendance of advisers and observers shall be recorded in the minutes of the meeting.

15.(1) Where an approvals authority is an individual, that authority shall consider each submission made, based on the information and supporting documents contained in the submission.

(2) The individual approvals authority shall approve or reject each submission, but shall not vary a recommendation submitted, particularly a contract award recommendation.

(3) Where a submission is rejected, the individual approvals authority shall state the reasons for rejecting the submission, in writing.

(4) A rejected submission may be re-submitted following consideration of the reasons given and correcting the submission taking into account the reasons for the rejection.

(5) The approvals authority may give a conditional approval to a submission where there is a minor issue to be resolved.

(6) All decisions of an individual approvals

that authority for consideration and decision, the approvals authority shall —

- (a) disclose such interest, as soon as possible after notification of a matter being brought to the attention of the approvals authority;
- (b) not act as the approvals authority in relation to the matter in question; and
- (c) refer the matter to the Procurement Committee for consideration and decision.

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

PART IV - GENERAL RULES OF PUBLIC PROCUREMENT

Records of
procurement
process and
contract
management

17.(1) A procuring entity shall keep the following records relating to public procurement proceedings which records shall be open to inspection by the Procurement Oversight Unit —

- (a) records arising from the procurement process;
- (b) records relating to contracts management;
- (c) all records of the Procurement Committee; and
- (d) any record of the Chief Executive Officer which relate to the procurement process, contracts management, investigations of complaints or any other matter related to the Act or these Regulations.

(2) All procurement records maintained by a procuring entity shall contain the following documents, where appropriate —

- (a) the request to initiate procurement proceedings;
- (b) a copy of any published notices;
- (c) any shortlist or list of pre-qualified bidders;
- (d) a copy of the pre-qualification and bidding documents and any amendments or clarifications;
- (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 pre- bid and negotiation meetings;
- (j) the notice of best evaluated bidder;
- (k) the letter of bid acceptance;
- (l) the contract document;
- (m) any contract amendments;
- (n) all submissions to and all decisions of the approval

(o) any decision to suspend or cancel procurement proceedings.

(3) All contract management records maintained shall contain the following documents, including —

(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

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

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

18.(1) The medium of communication shall be specified in all bidding documents.

Language and communication

(2) Any meeting between a procuring entity and a bidder or supplier shall be minuted and any agreements confirmed in writing.

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

19.(1) Notice inviting potential bidders to participate in procurement proceedings and any contract award notice shall be published —

Publication and distribution of notices

- (a) in the printed media, including at least one English language publication in Seychelles, which must be of wide enough circulation to reach sufficient potential bidders to ensure effective competition;
- (b) to the extent feasible, on the internet, including any regional website or website established by the Procurement Oversight Unit; and
- (c) on the notice board or other prominent place in the procuring entity's office.

(2) Information communication technology may be used in the public 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; and
- (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) In addition, where the procuring entity believes it is necessary to ensure wide competition, it may, after the date of publication of the notice, send invitation notices directly to —

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

22.(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 large number of bidders.

(2) Where a procuring entity decides to package a tender, it

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

(3) A Procurement Unit shall prepare a written request for authorisation to cancel a procurement proceeding, which shall state —

(a) detailed r

(4) A procuring entity shall publish, in at least one newspaper of wide readership, post on the procuring entity's website and on the procuring entity's notice board,

- (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking in to account the applicable approval requirements;
- (g) indicating

- (b) small suppliers who would not be qualified to bid for the complete package as a single

combination of contract awards offers the best overall value for the procuring entity.

28.(1) All

(6) Approved requisitions shall be submitted to the Procurement Unit of the procuring entity to initiate procurement proceedings.

29.(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.

Confirmation
of funds

(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 will 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; and
- (d) the cost of any linked 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

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

31.(1) A statement of requirements for goods shall not include any reference to a particular trademark, brand name, patent, design, type,

Statement of
requirements
for works

32.(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;
- (f) specifications and standards;
- (g) bill of quantities or equivalent; and
- (h) inspection and testing requirements.

Statement of
requirements
for services

33.(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.

34.(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 post-qualification is required, or make use of any pre-qualification for a group of contracts;
- (e) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;
- (f) the proposed type of contract in accordance with these Regulations;
- (g) the rules applicable to the procurement, where any procurement is subject to alternative rules in accordance with the Act;
- (h) an indication of the resources required and available for management of the procurement process and contracts management; and
- (i) any other relevant information.

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

Choice of
procurement
method

35.(1) A procuring entity shall select the most appropriate method of procurement for each requirement, as part of the procurement planning process, except that the procurement of motor vehicles shall only be done using the open national bidding method of procurement.

- (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

- (a) a comprehensive analysis of the market for the required goods, works or services;
- (b) full details of the relevant factors in sub-regulation (1);
- (c) a 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 parts of the statement of requirements that restrict the number of potential sources.

37.(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) General maintenance of equipment shall not be regarded as an emergency unless specially justified under these Regulations.

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 contracts management.

39.(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

to be conducted together and a combined technical and financial evaluation report produced;

- (b) one stage-two envelope method may be used where the technical evaluation is to be conducted without reference to financial information; and
- (c) two stage method may be used —
 - (i) where alternative

(6) The bidding documents 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

40.(1) Subject to sub regulation (2), the procedure described in this Part shall apply to the one stage-single envelope bid submission method and

submit final bids with prices following the first stage and the revised bidding documents shall be sent to them.

Use of pre-qualification method

41.(1) A procuring entity may use pre-qualification method for open bidding to obtain a shortlist of bidders who have been assessed to be capable of effectively performing the proposed contract, as per the prescribed qualification criteria under the Act and these Regulations.

(2) Pre-qualification 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 45.

Pre-qualification notices

42.(1) Where the procuring entity conducts pre-qualification assessment in accordance with regulation 41, it shall publish a pre-qualification notice inviting applications to pre-qualify.

(2) The pre-qualification notice shall contain —

- (a) the name, address and contact details of the procuring entity;
- (b) an outline of the procurement requirement, including the nature and quantity of goods,

works or services and the location and timetable for delivery or performance of the contract;

(c) a statement of the key requirements and criteria to pre-qualify, including any restriction of eligibility to citizen or local bidders under open national bidding;

(d) details of any margin of preference or reservation scheme which will apply to the procurement;

(e) instructions on obtaining the pre-qualification documents, including any price payable; and

(f) instructions on the location and deadline for submission of applications to pre-qualify.

- (c) the qualification criteria;
- (d) instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from applicants;
- (e) instructions on the sealing, labeling and submission of applications to pre-qualify, including the location and deadline for submission; and
- (f) information on how applications will be evaluated.

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

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

(4) In determining the pre-qualification period, a Procurement Unit shall take into account the factors in regulation 50(4).

(5) The Procurement Unit shall respond to all requests for clarification, in accordance with the procedure in regulation 53.

44.(1) All applications to pre-qualify received on time shall be evaluated by the evaluation committee.

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

contract awards to an applicant may be made, on the basis of their qualifications;

- (d) the list of pre-qualified applicants shall be updated periodically; and
- (e) pre-qualification information shall be verified prior to contract award.

Inviting bids

46. A procuring entity shall invite bids —

- (a) in the case of open bidding where no pre-qualification has been conducted, through the publication of a bid notice in accordance with regulation 47;
- (b) in the case of open bidding where pre-qualification has been conducted in accordance with regulation 41(2), from the list of pre-qualified applicants; and
- (c) in the case of limited bidding, from a shortlist of bidders in accordance with regulation 48.

Bid Notices

47.(1) A bid notice published by a procuring entity in accordance with regulation 46(a), shall invite all potential bidders to submit bids.

(2) A bid notice shall contain —

- (a) the name, address and contact details of the procuring entity;
- (b) the nature of the procurement requirement, including the quantity of goods, works or services and the location and timetable for delivery or performance of the contract;

- (c) an indication of the procurement method being used;
- (d) a statement of any key technical requirements, eligibility or qualification requirements and evaluation criteria, such as —
 - (i) provision of local after-sales 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 bidding documents, including any price payable; and
- (f) instructions on the location and deadline for submission of bids.

(3) A bid notice shall be published in accordance with regulation 19.

48.(1) Where a procuring entity invites bids from a shortlist of bidders in accordance with regulation 46(c), 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

- (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) Prior to the issue of the bidding documents, the procuring entity shall submit the proposed shortlist to the approvals authority for authorisation.

49.(1) Procuring entities shall use the appropriate standard bidding document issued by the Procurement Oversight Unit for drafting individual bidding documents.

(2) The bidding documents 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 bidding documents shall include —

- (a) a statement of requirements for the goods, works or services required ;
- (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 (evidence of bid) to provide.

- (e) the eligibility criteria and any documentation required as evidence of eligibility;
- (f) any qualification criteria in accordance with these Regulations and the procedure for post-qualification or verification of pre-qualification information;
- (g) information on the methodology for the evaluation of bids, any evaluation criteria to be applied and the manner in which the criteria shall be applied;
- (h) any margin of preference or reservation to be applied;
- (i) information on the procedure for contract award, including the requirements for publication of notice of best evaluated bidder;
- (j) the type of contract to be awarded;
- (k) the terms and conditions of the proposed contract; and
- (l) information on the bidder's right to review the Bid Review Panel and on the Government's policy on fraud and corruption, including the suspension of bidders.

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

- (2) The minimum bidding period shall be —
 - (a) two weeks for open national bidding;
 - (b) eight weeks for open international bidding;
 - (c) two weeks for limited bidding where shortlisted bidders are citizens of Seychelles only; or
 - (d) four weeks for limited bidding where short-listed bidders include foreign bidders.

(3) Notwithstanding the provisions of sub-regulations (2)(c) and (2)(d), where limited bidding is used on grounds bidding

(d) the extent of anticipated sub-cone6.xtent

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

(4) In determining the amount of bid security required, a Procurement Unit shall take into account the cost to bidders for obtaining a bid security, the estimated value of the contract and the risk of bidders failing to fulfill the conditions of their bids.

(5) The bidding documents shall state that a bid security shall be —

- (a) in accordance with the format and wording provided in the bidding document;
- (b) in a form acceptable to the procuring entity, which may be —
 - (i) banker's certified cheque or payable order;
 - (ii) an insurance or bank guarantee; or
 - (iii) an equivalent instrument, such as a stand-by letter of credit;
- (c) from an institution acceptable to the procuring entity in the case of instruments issued by financial institutions; and
- (d) valid for the period specified in the bidding document, which shall normally be thirty days after the expiration of the bid validity period.

(6) The procuring entity shall specify the conditions for forfeiture of a bid security in the bidding document.

(7) A Procurement Unit shall release bid securities 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) The bid security of the successful bidder shall not be released, until any required performance security has been received.

(9) A Procuring entity may accept a Bid Securing Declaration instead of a bid security, provided that this is specified in the bidding document.

Clarification
and amendment
of bidding
documents

53.(1) A bidding document shall state that a bidder may seek clarification of the bidding document and shall include 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 bidding document.

(2) Where a request for clarification is received, a Procurement Unit shall 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.

(3) At any time prior to the deadline for submission of bids, a procuring entity may, either at its own initiative or in response to a request for clarification from a bidder, amend the bidding document by issuing an addendum.

(4) Any addendum shall be issued in writing and shall be communicated to all bidders at the same time.

(5) All addenda shall be numbered sequentially.

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

54.

- (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 bidding documents; and
- (c) 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) Alternative bids shall be evaluated in the same manner as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the statement of requirements.

57.(1) A procuring entity may organise —

- (a) a pre-bid conference in order to brief bidders or to offer them opportunity 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.

(2) The bidding document and, where possible, the invitation to bid notice, shall state the details of pre-bid conferences and site visits, including the date, time and location.

(3) Notwithstanding r

(4) The pre-bid conference or site visit shall be held during the early stage of the bidding period to enable bidders to take into account the information gathered at the pre-bid conference or site visit in preparing their bids.

(5) A Procurement Unit shall prepare minutes of any pre-bid conference and shall send them to all bidders to whom the bidding documents have been issued.

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

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

(7) A Procurement Unit shall, following any pre-bid conference or site visit, where required, issue clarifications or amend the bidding document, in accordance with regulations 53.

58.(1) A Procurement Unit shall make arrangements for the receipt and safe-keeping of bids until the deadline for submission of bids.

Receipt of
bids

(2) A bid box may be used for depositing the bids and the bid box shall remain locked until the time for bid opening.

(3) 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 and issue a signed receipt, showing the date and time of receipt and keep the bid or samples in a secured location until the time for bid opening.

(4) 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.

(5) Bids shall only be received electronically or by other means which do not permit signed sealed bids, if authorised by the Procurement Oversight Unit through public

(6) Notwithstanding sub-regulation (4), where a bid is submitted using a two-envelope system, the Procurement Unit may open the outer envelope for the purpose of identifying the name and address of the bidder on the inner envelope and the inner envelopes shall be returned unopened to the bidder or left unopened and destroyed.

- (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) All bids opened shall be stamped on key pages, which shall include at least priced and signed pages, by the chairperson of the bid opening.

(9) A Procurement Unit shall not, with the exception of late bids, 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 form part of the procurement record.

(11) The record of the bid opening shall include the details read out in accordance with sub-regulation (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 secured location, where they shall be kept until the evaluation begins.

61.(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 57.

(2) A substantially responsive bid shall be one that conforms to all the instructions, requirements, terms and conditions of the bidding documents, 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 bidding documents;
- (b) limits, in any substantial way, the procuring entity's rights or the bidder's obligations under any resulting contract or would be inconsistent with the bidding documents; or
- (c) if corrected, would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

(4) A procuring entity shall reject any bid which contains a material deviation, reservation or omission, and is therefore not substantially responsive, and such bid shall not subsequently be made responsive by the bidder or the procuring entity.

62.(1) The procurement entity shall appoint an evaluation committee for each procurement requirement in accordance section 41 of the Act.

Evaluation
Committee
and functions

(2) An evaluation committee shall be responsible for the evaluation of bids in accordance with the Act, regulations and bidding documents and the preparation of an evaluation report for submission to the approvals authority.

(3) An evaluation committee shall, within 21 days of the tender opening, submit an evaluation report and recommendations to the approvals authority or report to the approvals authority the anticipated completion date of the evaluation report.

63.(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

64.(1) An evaluation committee shall conduct a preliminary examination to determine whether c

the objectives and requirements of the individual procurement requirement, as stated in the bidding document and shall take into account the impact on key factors, such as cost, risk, time and quality.

(4) Material deviations, reservations or omissions may typically include —

- (a) unacceptable time schedules where it is stated in the bidding 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, sub-contracting or warranty.

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

(6) Any deviation, which is considered to be a material deviation, shall result in rejection of the bid and such bid shall not be subject to technical evaluation.

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

Correction of
non-
conformity
errors and
omissions

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

(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 arithmetical 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.

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

Technical
evaluation

67.(1) An evaluation committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the statement of requirements in the bidding 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 bidding 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

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 post-qualification; and
- (k) a recommendation to award the contract or contracts to the best evaluated bid or combination of bids, or other appropriate recommendation, such as any requirement for negotiations or the

- (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 bidding documents;
 - (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 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.

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

Procedure
for
negotiations

(2) Negotiations shall be held with the bidder recommended for contract award, and in cases where negotiation with the bidder recommended for contract award fails, the Procurement Committee may, with the prior authorisation of the approvals authority, open negotiation with the next ranked bidder.

(3) The 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) The negotiations shall be conducted jointly by the evaluation committee and the Procurement Unit, who shall seek the prior authorisation of the approvals authority, prior to confirming any agreement reached with the bidder.

(5) Staff of the Procurement Unit 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.

PART VII - BIDDING PROCESS FOR OPEN AND LIMITED SELECTION FOR CONSULTANCY SERVICES

- 74.** Bidders shall be selected for consultancy services —
- (a) through the publication of a notice requesting expressions of interest and development of a shortlist in accordance with regulations 75 and 76, in the case of open selection; and
 - (b) through the development of a shortlist in accordance with regulation 77, in the case of limited selection.

75.(1) Where a procuring entity publishes a notice requesting expressions of interest pursuant to regulation 74(a), this 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 statement of the key criteria for short-listing, which shall be related to the applicant's personnel and any other factor related to their ability to successfully perform the assignment;
- (e) details of any margin of preference or reservation scheme to be applied;
- (f) details of the information to be included in the expression of interest, including any information or documentation required to verify the applicant's eligibil

(4) Notices seeking expressions of interest shall be published at least 2 weeks prior to the deadline for submission.

76.(1) All expressions of interest shall be evaluated by an evaluation

77.(1) Where the procuring entity develops a shortlist, without seeking expressions of interest, in accordance with regulation 74(b), the shortlist shall include —

Short lists
under limited
selection

- (a) all potential bidders, where limited selection is used on the grounds of a limited number of sources;
- (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 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 regulations 76(3) and (4).

(4) 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 regulation 19, 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

- (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 bidder's right to review to the Review Panel and on the Government's policy on fraud and corruption, including the suspension of bidders.

79.(1) A procuring entity shall select the most appropriate selection method for consultancy services and shall state the evaluation methodology in the bidding 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; or
 - (d) Least Cost Selection, which selects the lowest priced proposal, which meets the procuring entity's technical requirements.
- (3) Subject to sub-regulations (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, 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.

80.(1) A bidding document shall require bidders to submit separately sealed technical and 8i40.8413 0.0000-12.7361 7

(2) Notwithstanding the provisions of sub-regulation (1), where the evaluation methodology is Quality Based Selection, the bidding 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.

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

Evaluation
criteria

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

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

(3) Each criterion shall be allocated a maximum number of points and the total for all criteria shall equal 100, and 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.

(4) A bidding document may also include sub-criteria to provide further guidance on the allocation of points under each main criterion.

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

82.(1) A bidding document shall be authorised by the approvals authority, prior to its issue.

Issue of
bidding
document

(2) The bidding document shall be issued to all shortlisted bidders at the same time and the procurement entity shall keep a record of the issue of the documents.

83.(1) A bidding document shall state that a bidder may seek clarification in writing of the bidding document and shall include 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 bidding document.

(2) Where a request for clarification is received, the Procurement Unit shall provide a clarification in writing, which shall be copied to

and bid box shall remain lock1bid

(3) Notwithstanding the provisions of sub-regulation (2), a Procurement Unit may open the outer envelope, for the purpose of identifying the name and address of the bidder on the inner envelope and the inner envelope shall be returned unopened to the bidder or left unopened and destroyed.

(4) A Procurement Unit shall keep all proposals secured and taken immediately to the location for the proposal opening, following the deadline for submission of proposals.

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

(2) The time

(b) whether or not a separately sealed financial proposal has been submitted, if required.

(8) All technical proposals opened shall be stamped on key pages, which shall include signed pages, by the chairperson of the opening session.

(9) A Procurement Unit shall not accept, reject or evaluate a proposal in any way at the proposal opening, except for late proposals.

(10) At a proposal opening, any discrepancies or missing documents shall be noted 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 the details read out in accordance with sub-regulation (7) and the names of all staff and bidders' representatives attending the opening.

(12) A Procurement Unit shall request all bidders or their representatives, attending the proposal opening, to sign the record, but the absence of any signature shall not invalidate my910000 TD510tDd

Regulations and the bidding documents and shall prepare the technical and financial evaluation reports.

(3) An evaluation committee shall, within 21 days from the proposal opening, submit the 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

89.(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 bidding document.

(2) The preliminary examination shall 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 bidding 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) curriculum vitae have been correctly signed, if required;

(h) all key documents and information have been submitted; and

(i) t

but no evaluator shall be obliged to make adjustments to scores or permitted to adjust scores without justification.

- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (f) the total technical score for each proposal;
- (g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to open the financial proposals of these bidders; and
- (h) a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.

(4) A technical evaluation report shall be submitted to the approvals authority for prior authorisation, before proceeding with the opening and evaluation of financial proposals or the rejection of any proposals.

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

Technical
evaluation for
Quality Based
Selection

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

- (a) 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;

94.(1) A Procurement Unit shall open the recommended financial proposal or proposals at the time, date and location notified to bidders and the bidders or their representatives shall be permitted by the Procurement Unit, to attend and witness the opening.

Financial
opening

(2) A Procurement Unit shall ensure that key pages of the financial proposals are stamped and the following information read out and recorded —

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

(3) The opened financial proposals shall be taken immediately to a secured location, where they shall be kept until the financial evaluation begins.

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

(5) The Procurement Unit shall request all bidders or their representatives attending the financial opening to sign the record, but the absence of any signature shall not invalidate the record.

95.(1) An evaluation committee shall determine the evaluated price of each proposal by —

Financial
evaluation for
Quality and
Cost Based
Selection

- (a) correcting any arithmetic errors;
- (b) determining whether financial proposals are complete and have priced all corresponding inputs in the technical proposal, pricing 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

- (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.

96.(1) An evaluation committee shall correct any arithmetic errors and determine whether the financial proposal is complete, has priced 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, which is within the budget, shall be the best evaluated bid and the evaluation committee shall recommend the bidder for award of contract, subject to any negotiations required.

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

- (a) 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 required or award of contract.

97.(1) An evaluation committee shall determine the highest the with them and of price exceeds and erand score, technical

- (3) (a) ~~A committee shall posan rates evaluated budget~~ correcting any arithmetic errors;
- (b) determining whether the financial proposals are complete and have priced all corresponding inputs in the technical proposal, pricing 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 bidding document.

(2) The evaluated price of the financial proposals shall be compared to the budget indicated in the bidding document and any proposal which exceeds the budget shall be rejected and all proposals which are within the budget shall be ranked according to their technical score.
becordm22isdishall

(3) The financial proposal with the highest technical score,

- (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) The financial evaluation report shall be submitted to the approvals authority for prior authorisation, before proceeding with any negotiations required or award of contract.

98.(1) An evaluation committee shall determine the evaluated price of each proposal by —

- (a) correcting any arithmetic errors;
- (b) determining whether the financial proposals are complete and have priced all corresponding inputs in the technical proposal, pricing 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 bidding document.

Financial
evaluation for
Least Cost
Selection

(2) All proposals shall be ranked 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) 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) The financial evaluation report shall be submitted to the approvals authority for prior authorisation, before proceeding with any negotiations required or award of contract.

Scope of negotiations

99.(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, work-plan and completion schedule; or

- (d) inputs required from the procuring entity.
- (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 the provisions of sub-regulation (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.

100.(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 be held with the bidder recommended for contract award, and in cases where negotiation with the bidder recommended for contract award fails, the Procurement Committee may, with the prior authorisation of the approvals authority, open negotiation 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 jointly by the evaluation

- (d) any other appropriate sources of information.

(2) A Procurement Unit shall, in developing a shortlist, comply with 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
- (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 shall be kept as part of the procurement record.

Submission
and receipt of
quotations

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

(2) A Request for Sealed Quotations under sub-regulation (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 public procurement circulars; or
- (d) any other form which leaves a record of the quotation.

(3) A Request for Sealed Quotations shall specify the location, date and time for submission of quotations and any quotation received after the deadline for submission shall be rejected.

- (a) the Procurement Unit shall first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) the Procurement Unit shall identify a suitable bidder;
- (c) the Procurement Unit shall 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 award a contract and issue a written purchase order or similar document, provided that funds have been committed for the purchase.

Procedure for
procurement

106. Where a procuring entity conducts direct bidding, in accordance with the operating thresholds specified in the First Schedule, 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 107;
- (d) negotiate with the bidder, if required, in accordance with regulation 108; and

- (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.

107.(1) The evaluation of the sole bid shall be conducted by the evaluation committee to determine whether the bid —

Evaluation of
sole bid

- (a) meets the procuring entity's technical needs, as defined by the statement of requirements;
- (b) satisfies 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, determine whether negotiations are required with the bidder.

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

108.(1) An evaluation committee shall prepare a plan for the negotiations, which shall specify the issues to be

- (f) evaluate the bid in accordance with regulation 110;
- (g) negotiate with the bidder, if required, in accordance with the procedure in regulation 111; 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.

110.(1) An evaluation of the bid shall be conducted by an evaluation committee to determine whether the bid —

Evaluation
of bid

- (a) meets the procuring entity's technical needs and in particular, its required delivery or completion schedule;
- (b) satisfies 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

(3) A Procurement Committee shall meet to consider any contract award recommendation and, where the Procurement Committee is unable to meet within a reasonable time, the contract award may be authorised by the written approval of a majority of the members, without the Committee having met, unless alternative arrangements are agreed by the Procurement Committee.

PART X - CONTRACT AWARD

113.(1) All contract award decisions shall be taken by the appropriate approvals authority

(3) A notice shall specify —

- (a) the name and address of the bidder recommended for the award;
- (b) the proposed contract price;
- (c) that bidders have the right to submit an application for review of the decision in accordance with the Act; and
- (d) the procurement reference number and description.

(4) A notice shall state that it does not constitute an award of a contract.

(5) A notice 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 a conspicuous place in the procuring entity's offices.

(6) A procuring entity shall not award the contract until ten working days have elapsed after publication of the notice of best evaluated bidder.

115.(1) A procuring entity shall, following the contract award decision by the approvals authority,

Contract award
under open or
limited bidding
or selection

116.(1) A procuring entity shall, following the commitment of funds in accordance with regulation 115 and the publication of the notice of best evaluated bidder in accordance with regulation 114 and provided no application for review has been received, award the contract by issuing a letter of bid acceptance to the recommended bidder.

(2) The letter of bid acceptance 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) If the recommended bidder fails to conclude a contract, or provide a performance security or any other action required by the bidding document, the procuring entity shall annul the contract and award contract to the next ranked

bidder, subject to the bidder being qualified and the prior authorisation of the approvals authority.

117.(1) A Procurement Unit shall, following the issue of the letter of bid acceptance, in accordance with regulation 116, prepare a written contract, using the contract form included in the bidding document.

(2) A Procurement Un

(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 116.

(4) A Procurement Unit shall obtain a signed acknowledgement 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.

120.(1) A procuring entity shall request a performance security for all contracts for goods, works and non-consultancy services to secure the supplier's obligation to fulfill the contract.

(2) The bidding documents and contract 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.

(4) The amount shall be between five and ten percent of the contract value.

(5) 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 contrasr D(procurement)Tj211-271.5758 -12.7361 TD01tD(contracts)Tj43.,

the procuring entity through alternative means, such as payment retentions.

(6) Where appropriate, the value of the performance security may be progressively reduced, in line with the

(10) The successful bidder shall be required to provide any performance security within 14 days of signing a contract or the date of the bid acceptance, whichever is the earlier.

121.(1) A Procurement Unit shall, upon the entry into force of a contract and, the provision of any required performance security by the supplier, 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.

(3) A Procurement Unit shall, where so requested in writing, provide all unsuccessful bidders with a debrief as to the reasons for the failure of their bids or applications to pre-qualify.

(4) The senior staff of the Procurement Unit shall debrief the unsuccessful bidders within 7 working days from a request for such information, except that where such debrief is provided verbally, it shall be confirmed in writing to the bidder.

(5) A debrief shall state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation of omission leading to rejection of the bid or state that a bid was substantially responsive but failed to offer the lowest evaluated price or highest score, as required.

(6) A debrief shall not provide details on any other bids, other than information that is publicly available from bid openings or published notices.

122.(1) A procuring entity may use any of the contract types and pricing approaches included in this Part, or any other contract types authorised by the Procurement Oversight Unit.

Types of contract and pricing approaches

(2) A Procuring entity shall use the contract forms included in the standard bidding documents issued by the Procurement Oversight Unit.

Lump sum
contracts

123.(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 depend on clearly specified outputs, deliverables or events, which may include, but not limited to—

- (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 bidding documents;
- (g) software programmes; or
- (h) workshops or training programmes.

124.(1) A procuring entity may use a —

Time based
or measured
works contracts

- (a) time based contract for service, 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.

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

(5) Time based and measured works 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 gaining authorisation for a contract amendment.

(6) A Procurement Unit shall monitor time based and measured works contracts closely, to ensure that progress is in accordance with the contract and that payments claimed by the supplier are appropriate and in accordance with the contract.

Rate
contracts

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

- (a) where the items are needed "on call", but where the quantity and timing of the requirements cannot be defined in advance; or
- (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time, by having them available on a "call off" basis.

(2) Payments 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) Rate contracts may include an estimated quantity or value, but shall not commit to purchasing this estimated quantity or value.

(4) Rate contracts shall specify the arrangements for obtaining specific requirements during the period of the contract, using "call off" or delivery orders.

Running
contracts

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

- (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) 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) Running contracts 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.

(4) In addition to what is specified under sub-regulation (3), a running contract may specify a maximum quantity or value to be purchased under the contract.

(5) Running contracts shall specify the arrangements for obtaining specific requirements during the period of the contract, using "call-off" or delivery orders.

127.(1) A procuring entity may use a percentage based contract where it is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.

Percentage
based
contracts

(2) A percentage based contract shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.

(3) A percentage based contract 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.

128.(1) A procuring entity may use a cost reimbursable or target price contract for —

- (a) emergency works, where there is insufficient time to fully calculate the costs involved; or
- (b) high risk works, where it is more economical for the procuring entity to bear the risk of price variations than to pay the supplier to accept the risk, or where a supplier will not accept the risk.

(2) Payment under a cost reimbursable and target contract shall be for —

- (a) the actual cost of the works, as evidenced by receipts and other appropriate documentation; and
- (b) a fee or profit, as specified in the contract.

(3) Where a target price can be agreed, an incentive payment may also be made for any cost savings.

129.(1) A procuring entity shall use the contract form included in the appropriate standard bidding document issued by the Procurement Oversight Unit for drafting individual contract documents.

(2) Where procurement is conducted using open or limited bidding or selection, the draft contract shall be included in the bidding document issued, except that in all o4d556 -12.7361 T

- (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 description of the goods, works or services including the technical requirements, quantity and delivery or completion schedule, based on the statement of requirements included in the bidding 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 re-calculating 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 non-performance,

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.

130.(1) For contracts with a duration of more than twelve months, the procuring entity may 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.

(2) Where a price adjustment provision is included, the contract shall state —

- (a) the formula for calculating adjustments, which shall separate

(3) Where a price adjustment methodology

131.(1) The period for payment shall be stated in a contract.

(2) The contract shall provide for interest to be paid to the supplier, where the procuring entity fails to make payment within the period specified in the contract.

(3) The contract shall state the interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest.

(4) The contract shall state the currency or currencies of payment and, where required, the exchange rates

be used only

- (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 documents

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

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

(3) The documents required 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.

(4) The documents required may include, but not be limited to—

- (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
Hando

- (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) The conditions for forfeiture of the payment security shall be specified in the contract.

(5) A Procurement Unit shall release the payment security 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 - CONTRACTS MANAGEMENT

Selection of
contract
manager

137.(1) A chief executive officer, shall designate a member of staff as the contract manager for every contract awarded, except that where a contract is particularly large or complex, a team of staff may be appointed to manage the contract.

(2) A contract manager, or members of the contract management team, may be 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 the 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, financial or management skills.

138.(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 taken by the procuring entity in the event of obligations not being met;
- (b) ensuring that the

- (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) In managing the contract, the contract manager shall 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.

Inspection of
goods, works
and services

139.(1) A contract shall state that the procuring entity has the right to inspect goods, works and services at any reasonable time or place, including —

- (a) during manufacture or construction;
- (b) prior to shipment;

(c) on delivery or completion; or

(d) prior to final acceptance.

(2) A contract shall require suppliers to ensure that the procuring entity's right of inspection is extended to subcontractors.

(3) A procuring entity may

- (h) that where goods, works or services fail an inspection, the supplier is liable for the correction of any defects at his own expense and the costs of any re-inspection required.

Acceptance
of goods,
works and
services

140. 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

141.(1) Where any change to the terms and conditions of a contract is required, other than contract variations permitted in accordance with regulation 142, the Procurement Unit and contract manager shall prepare a written amendment to the contract.

(2) Any amendment to the contract shall only be valid when signed by authorised representatives of both the procuring entity and the supplier.

(3) The Procurement Unit shall obtain the prior authorisation of the, relevant authority prior to the issue of any contract amendment.

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

Contract variations

- (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; or
- (b) defined compensation events to justify variations in the price or completion date.

(2) Where a variation results in a change in price, any additional funds shall be committed prior to issue of the variation, unless such funds are already provided by any committed amount for contingencies or similar.

(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 141.

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

143.(1) A contract document 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, prior to terminating the contract, and the request for authorisation shall clearly state —

- (a) the reasons for termination;
- (b) actions which have been taken to avoid the need for termination;

(4) The Procurement Oversight Unit may approve an application as submitted, approve an application with modifications or conditions or reject an application, stating 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) Where the approval is for a number of requirements, the Procurement Oversight Unit shall state the duration, maximum value or other limitations, circumstances or conditions of use of the alternative.

(7) A deviation from a public procurement method, rule, process or document for a specified period of time may be resubmitted to the Procurement Oversight Unit for renewal and any application for renewal shall include the information in sub-regulation (2).

(8) Where a deviation is requested from a standard document, the Procurement Oversight Unit may, where it considers appropriate, adopt the proposed alternative document as an additional standard document.

145.(1) The Procurement Oversight Unit shall maintain a register of all deviations issued to procuring entities.

Monitoring
and profile
analysis of
deviations

(2) The register shall contain details necessary for the Procurement Oversight Unit to—

- (a) monitor compliance with the terms of any deviation granted;
- (b) assess the effectiveness of any deviations granted; and
- (c) analyse trends in the profile of deviations granted.

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

(4) The Procurement Oversight Unit shall assess the effectiveness of an individual deviation, to determine whether it provides an effective solution to the problem that led to the need for the deviation.

(5) The Procurement Oversight Unit shall analyse trends in the profile of a deviations granted on a periodic basis, to determine whether —

(a) any changes are required to the Act, Regulations or standard documents;

(b) additional circulars or instructions, providing further rules and ~~gob60849.6094~~ 0.0000

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

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

(3) The Procurement Oversight Unit may accept an application for accreditation, reject an application for accreditation or accept an application for accreditation subject to changes.

(4) Where the Procurement Oversight Unit rejects an application or requires changes to a system, it shall give its reasons in writing.

(5) The Procurement Oversight Unit shall monitor the operation of an accredited procurement system and shall require changes to the system or withdraw the accreditation, where appropriate.

(6) The Procurement Oversight Unit shall report to the Board—

- (a) all applications requesting accreditation;
- (c) all decisions of the Procurement Oversight Unit in respect of those applications received.

147.(1) A public body may, for providing employment to local communities, execute small construction works including maintenance and repair through user participation.

User
participation

(2) Procurement Oversight Unit shall establish the procedures for —

- (a) identifying cases where local participation can be utilized efficiently;
- (b) effective mechanisms for representation of the user;
- (c) effective and accountable use of the funds involved for specified objectives and outputs;
- (d) monitoring the implementation; and
- (e) keeping records.

PART XIII - BIDDERS AND SUPPLIERS

Eligibility

148.(1) A procuring entity shall state in the bidding documents any documentation required as evidence of a bidder's eligibility, which may include the following —

- (a) copies of the bidder's certificate of registration, certificate of incorporation, trading licence 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 criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its

(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 pre-qualification or bidding documents, the documentary evidence required from bidders, as evidence of their qualifications.

151. The bidding documents 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, subcontractor or partner; and
- (c) any alternative criteria which apply to subcontractors or partners in a joint venture, consortium or association.

152.(1) The procurement of goods, works or services may be subject to a preference scheme, consistent with Government's economic and social policies.

(2) A preference scheme shall have as its objective the development of businesses among target groups, through giving such

(4) The details in sub-regulation (3) shall also be stated in the bidding documents, with summary details

- (b) a procuring entity with specialised knowledge or responsibilities in a particular field.

(2) Supplier databases or lists may be used to record potential bidders 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 of the need to advertise procurement opportunities or to verify the eligibility and qualifications of a bidder.

155. Any member of Procurement Committee or Procurement Unit or any contract manager may recommend to the chief executive officer the suspension of a bidder or supplier under section 94 of the Act.

Recommendation
to suspend
a bidder or
supplier

(2) Any recommendation made, in accordance with sub-regulation (1), shall be submitted to the chief executive officer in writing, stating —

- (a) the name of the bidder or supplier;
- (b) the grounds for the recommendation to suspend;
- (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.

156.(1) The chief executive officer shall, upon receipt of a recommendation to suspend, in accordance with regulation 155, immediately —

Investigation of
suspension
by chief
executive
officer

- (a) notify the bidder or supplier, giving full details of the recommendation to suspend and inviting the bidder or supplier to submit information or evidence in defence; and
- (b) institute an investigation.

(2) The chief executive officer shall, in investigating the recommendation to suspend a bidder or supplier, consider —

- (a) the information contained in the written recommendation;
- (b) additional information provided by the procuring entity;
- (c) information submitted by the bidder or supplier; and
- (d) any other relevant information.

(3) The chief executive officer 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 to a recommendation for suspension shall be permitted to submit information or evidence in their defence either in person, through presentation of witnesses, in writing or through a representative.

(5) The chief executive officer shall issue its decision within fifteen working days of receipt of the recommendation, which decision shall state —

- (a) whether the recommendation is upheld and a recommendation to that effect is to be made to the Procurement Oversight Unit, or rejected;

- (b) the reasons for the decision; and
- (c) the period of any suspension it would be recommending to the Procurement Oversight Unit, in accordance with the Act.

157.(1) In determining the period of any suspension for recommendation to the Procurement Oversight Unit, the chief executive officer shall 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.

(2) A decision to recommend the suspension of a bidder or supplier shall be submitted by the chief executive officer, to the Procurement Oversight Unit, within 5 days of the decision being made.

158. A recommendation to suspend a bidder or supplier from a list of suppliers shall be in writing to the Procurement Oversight Unit and signed by the chief executive officer and shall —

- (a) state the name and contact details of the bidder or supplier; and
- (b) provide details of the

(a)

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

Disclosure of information and special measures for confidentiality during consideration

(2) The Procurement Oversight Unit 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 Procurement Oversight Unit 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 Procurement Oversight Unit shall review in camera all information not released to the parties.

161. A recommendation to suspend a bidder or supplier may be denied by the Procurement Oversight Unit for —

Dismissal of recommendation to suspend

- (a) failure to comply with the requirements of regulation 158, except that minor non-compliances shall not be grounds for dismissal;
- (b) setting forth only allegations that do not state a valid basis for a recommendation to suspend or that do not set forth a detailed legal and factual statement; or
- (c) not being submitted in a timely manner.

162.(1) Any suspension imposed by the Procurement Oversight Unit shall be communicated to the bidder or supplier in writing, stating —

Issue of decisions by Oversight Unit

- (a) that the bidder or supplier is excluded from participation in all public procurement for a specified period;
- (b) the grounds for the suspension;
- (c) that the suspension also applies to any "successor in interest", which shall include any entity that is substantially similar to a suspended entity or which employs, or is associated with any partner, director or named officer of a suspended entity; and
- (d) that the suspension does not relieve the supplier of responsibility for obligations under any existing contracts placed prior to the suspension.

(2) Notwithstanding the provisions of sub-regulation (1) (d), the Procurement Oversight Unit may recommend to the procuring entity the termination of a contract with a suspended supplier, in accordance with the conditions of the contract.

(3) Where a bidder or supplier is suspended, the Procurement Oversight Unit shall immediately —

- (a) place the bidder or supplier on its list of suspended organisations, including the names of partners, directors or other officers considered as successors in interest; and
- (b) notify all procuring entities of the suspension.

(4) All procuring entities shall enforce the list of suspended bidders and suppliers by ensuring that they do not —

- (a) award contracts to a suspended bidder or supplier;

- (b) sell or issue bidding documents to a suspended bidder or supplier or in any other way invite bids from the list of suspended bidders or suppliers; and
- (c) enter into any other dealings or communications with a suspended bidder or supplier, except in respect of existing contracts placed prior to the suspension.

(4) A bidder or supplier may appeal against the decision of the Procurement Overseas Unit to the Review Panel.

163.(1) A copy of the decision of the Procurement Oversight Unit shall be provided to —

Copy of
decisions of
Oversight Unit

- (a) the bidder or supplier; and
- (b) the chief executive officer.

(2) Notwithstanding the provisions of sub-regulation (1), where a decision contains information which are 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 the other parties, wherever possible.

(3) The Procurement Oversight Unit shall publicise its decision on the suspension of a supplier or bidder in any media of general circulation in Seychelles and on any regional and Government website.

**PART XIV - PROCEDURE FOR CHALLENGE,
APPEAL AND REVIEW**

164.(1) A challenge of

- (c) provide details of the procurement requirement to which the application relates, including any reference number;
- (d) state the legal and factual grounds of the application, including documentary or other evidence supporting the appeal or review;
- (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 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 chief executive officer;
- (h) include a copy of any suspension notice received from the Procurement Oversight Unit; and
- (i) request that an appeal or a review be conducted by the Review Panel.

(2) In addition to the contents specified in sub-regulation (1), an application for appeal or review, may also

- (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 application, explaining the relevance of such documents to the grounds of the application; or
- (c) request that a hearing be held, explaining the reasons why a hearing is needed to resolve the application.

168. An application for appeal or review shall be accompanied by a deposit of SCR 500.

169.(1) The secretary shall, in consultation with the Chairperson, fix the date and place of hearing as soon as an application is received, but not later than 5 days after such receipt.

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

170.(1) Any hearing of the Review Panel shall be held in camera, except that

(3) An applicant and any respondent shall be entitled to give evidence, call witnesses, cross examine witnesses and address the Review 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 shall conduct discoveries and exchange relevant documents upon which they intend to rely at the hearing.

(5) A decision of the Review 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.

(6) The decision of the Review Panel shall be recorded in a document signed by the Chairperson and the secretary and shall contain the reasons for such decision.

(7) The secretary shall transmit the decision of the Review Panel to all the relevant parties to the application and to the persons and bodies listed in regulation 175 within two days of the decision being made.

(8) Any clerical mistakes or errors arising out of an accidental omission in the decision may be corrected and certified by the Chairperson.

172.(1) Where an application for appeal or review has been received by the secretary, the secretary shall, within two days of receipt of the application, submit the application to the Chairperson for consideration as to compliance with the Act and these Regulations.

(2) The Chairperson may, if he or she considers it necessary, require more information to be furnished to his or her satisfaction in support of the application for the appeal or review.

(3)

- (a) the information contained in the written application for appeal or review;
- (b) the supplementary information requested from or submitted by the applicant, in writing;
- (c) the information obtained through an examination of the relevant procurement records;
- (d) the written comments provided by the procuring entity;
- (e) the information submitted by other bidders;
- (f) the information obtained by examining staff of the procuring entity, the applicant, or any other relevant parties through means of statements or a hearing;
- (g) any additional information or statements from other parties as may be necessary for the fair resolution of the application;
- (h) the confidential information provided by the Board, chief executive officer or Procurement Oversight Unit; and
- (i) any other relevant information.

(2) Any hearings held as part of an investigation shall be recorded or transcribed and any party may obtain a copy at its own expense.

(3) The Chairperson may, where he or she considers it necessary, postpone the holding of a hearing to such later date, within the thirty days period, as the Chairperson may determine.

(4) Where the holding of a hearing has been postponed under sub-regulation (3) the secretary, 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 Panel.

(5) The Review Panel shall ensure, at all times that an applicant or other party to the cause —

- (a) is present at a hearing;
- (b) is represented at a hearing if he or she so wishes; and
- (c) is heard by the Review Panel unless such party waives the right to be heard.

(6) An applicant and other party to the cause shall be limited in the proceedings before the Review Panel to the evidence or arguments put before the Panel which such person believes relevant or necessary to prove his or her application for appeal or review.

174.(1) Where the applicant requests specific documents required for the effective prosecution of the application

(3) At the request of a party, or on its own initiative, the Review Panel 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 under these Regulations and for confidentiality set out in the Act.

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

175.(1) A copy of the decision of the Review Panel shall be provided to —

- (a) the applicant;
- (b) any other bidders or parties who participated in the review proceedings;
- (c) the Procurement Oversight Board.

(4) A decision of the Review Panel shall be binding on all parties concerned, including the Board, subject to judicial review where the parties so appeal.

(5) A decision of the Review Panel that has become binding shall be implemented by the parties forthwith, which shall include any relevant review action by the Tender Board.

Remedies

176. The Review 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.

FIRST SCHEDULE

(Regulation 9 and 11)

OPERATING THRESHOLDS

In Respect of Consultancy Services

Column 1	Column 2	Column 3
Threshold	Approval Procedure	Procurement Method
Less than SCR 50,000	Approved by the Procuring entity	Must obtain at least 3 quotations
Between SCR 50,000 and SR 150,000	Approved by the Procurement Committee	Open bidding
Above SCR 150,000	Approved by the Board	

