

**S.I. 7 of 2014**

**PUBLIC PROCUREMENT ACT**

*(Act No. 33 of 2008)*

**PUBLIC PROCUREMENT REGULATIONS, 2014**

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**S.I. 7 of 2014****PUBLIC PROCUREMENT ACT***(Act No. 33 of 2008)***Public Procurement Regulations, 2013**

In exercise of the powers conferred by section 110 of the Public Procurement Act, 2008, the Minister, on the recommendation of the Procurement Oversight Unit, hereby makes the following Regulations —

**PART I - PRELIMINARY**

1. These Regulations may be cited as the Public Procurement Regulations, 2013 and shall come into operation on the date of their publication in the Gazette.

Citation

2.(1) These regulations shall apply to Ministries, departments, agencies and any other budget-dependent government entities.

Application

(2) These Regulations shall not apply to, —

- (a) contracts concluded on specific rules of international institutions, funding agencies, donors or bilateral agreements; and
- (b) procurement of public entities incorporated under the Companies Act.

3.(1) In these Regulations —

“Act” means the Public Procurement Act, 2008;

“applicant” means a person or group of persons submitting an application to pre-qualify or for an expression of interest;

Interpretation  
and fundamental  
principles

“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) The Procurement Oversight Unit shall establish procedures and mechanisms to ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, systems, procedures and standard documents.

5.(1) In the exercise of the regulatory functions of the Procurement Oversight Unit as specified under the Act, the Procurement Oversight Unit shall keep under review, and propose to the Government, improvements to the public procurement laws, in accordance with international and regional best practices.

Exercise of  
regulatory  
functions

(2) The Procurement Oversight Unit shall provide opinions to procuring entities on the application of laws on public procurement, with a view to fostering harmonized interpretation and application of the Act and regulations issued under the Act.

(3) The Procurement Oversight Unit shall develop standard bidding documents, pre-qualification documents, standard forms of contract and such other standard documents and forms as the Procurement Oversight Unit may deem necessary or useful for the implementation of the Act and these Regulations, for the mandatory use by every procuring entity.

(4) In revising public procurement laws, and developing or revising circulars, standard documents or similar documents as specified under sub-regulations (1) and (3), respectively, the Procurement Oversight Unit shall —

- (a) consult with interested parties in both the public and private sectors; and
- (b) liaise with the Attorney General regarding the introduction or issue of all legal documents, including general conditions of contract and contract forms 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 procurements, procuring systems of any procuring entity and shall after every inspection or audit make a report to the procuring entity with a copy to the Director of the Procurement Oversight Unit;
- (b) require any chief executive officer, officer or employee of a procuring entity concerned to produce any books, records or other documents in their possession or under their control, relating to the public procurement under inspection or audit, and to furnish to the inspector such information as the inspector may consider necessary to ascertain the true position of the public procurement;
- (c) seek any explanation or receive any evidence relating to the public procurement under inspection; or
- (d) inspect the accounts or books of account of the procuring entity to ascertain the nature of any public procurement transaction carried out by the procuring entity or contractual arrangement between the procuring entity and any supplier.

7.(1) The Procurement Oversight Unit shall, in order to improve the functioning of the procurement function as

stipulated under the Act, provide or coordinate capacity building and professional development, and shall develop standards, competence levels and certification requirements for staff involved in public procurement, in consultation with appropriate bodies responsible for public sector training and development.

(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 different procuring entities;
- (b) the needs of small procuring entities, where it may not be necessary to employ a full-time procurement officer;
- (c) the skills needed in public entities;
- (d) the differing skills required by those involved in conducting, managing, authorising and monitoring public procurement; and
- (e) requirements for different levels of public procurement staff and requirements for career progression for procurement officers.

8. The Procurement Oversight Unit shall, with respect to developing and implementing systems for the publication and management of public procurement information —

- (a) take into account the most efficient and economic use of media, including electronic media;

Exercise of  
information  
management  
and  
dissemination  
functions

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

Operational  
thresholds

9.(1) The Procurement Oversight Unit shall recommend to the Minister the levels of authorities and operational thresholds for use of each procurement method.

(2) The Procurement Oversight Unit shall review the operational thresholds set out in the Act and may recommend to the Minister revision of them by statutory instrument.

(3) The operational thresholds set out in the First Schedule shall apply to all procurements under these Regulations.

(4) The Procurement Oversight Unit shall circulate any revised thresholds to all procuring entities and make the revised thresholds publicly available by publication in any media of wide circulation in the Seychelles and by posting on the internet or other appropriate means.

(5) In reviewing and revising the operational thresholds, the Procurement Oversight Unit shall —

- (a) consult with all relevant authorities, including Government budget authorities; and
- (b) take into account all relevant factors, including the need to safeguard public funds, the need for efficiency in the procurement process and the capacity of procuring entities and approvals authorities.



**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.

Procurement  
Committee's  
meetings and  
decision-  
making  
processes

**12.(1)** A Procurement Committee shall meet as often as is necessary for the proper and timely review and authorisation of the procurement requirements of the procuring entity.

(2) The chairperson of the Procurement Committee shall, in consultation with the secretary of the Procurement Committee, determine the time and place for meetings and call meetings.

(3) The quorum for a meeting of the Procurement Committee shall be three of the members holding office at that time, except that when a member has declared an interest in an agenda item or in any matter before the Procurement Committee, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.

(4) The decision of a Procurement Committee shall be by majority and in the event of an equal division, the Chairman shall have in addition to an original vote, a casting vote.

(5) A Procurement Committee shall consider each submission made, based on the information and supporting documents contained in the submission.

(6) A Procurement Committee shall approve or reject each submission, but shall not vary a recommendation submitted, particularly a contract award recommendation.

(7) Where a submission is rejected, the Procurement Committee shall state its reasons in writing for rejecting the submission.

(8) 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.

(9) A Procurement Committee may give a conditional approval to a submission where there is a minor issue to be resolved.

(10) A Procurement Committee shall cause minutes to be kept of the proceedings of the meeting, which shall record —

- (a) the members present at the meeting;
- (b) any advisers or observers attending the meeting;
- (c) any disclosure of interest made at the meeting;
- (d) all submissions considered and whether the submission was approved or rejected;
- (e) the reasons for the rejection of any submission and any conditions to approved submissions; and
- (f) the key issues discussed in relation to each submission, including any advice given or disagreement between the members.

(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.

Disclosure of  
interest by  
members of  
Procurement  
Committee

**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.

Advisers and  
observers

**14.(1)** A Procurement Committee may co-opt advisers to assist it in the discharge of its functions.

(2) An adviser co-opted by a Procurement Committee shall not have voting right in the meeting and shall only attend the part of the meeting on which their advice is required.

(3) The Procurement Committee may invite observers to attend a meeting of the Procurement Committee.

(4) An observer invited to attend the meeting of the Procurement Committee shall not have voting right in the meeting.

(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.

Decisions of  
individuals as  
approvals  
authorities

(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 authority shall be issued in writing, stating —

- (a) whether the submission was approved or rejected; and
- (b) the reasons for rejection of a submission and any conditions to an approved submission.

**16.(1)** Where the individual approvals authority or a close relative of that individual, has, or intends to acquire, a direct or indirect personal interest in any matter submitted to

Disclosure of  
interest of  
individuals as  
approvals  
authorities

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 approvals authority related to the procurement, including —
    - (i) the choice of procurement method;
    - (ii) authorisation of bidding documents;
    - (iii) authorisation of evaluation reports;
    - (iv) authorisation of contract documents, contract award and contract amendments; and

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

(3) All contract management records maintained shall contain the following documents, 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 advance payment guarantees;
- (d) minutes of any meetings related to contracts management, including contract progress or review meetings;
- (e) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;
- (f) copies of all invoices for goods, works and services including work papers verifying the accuracy of payments claimed and details of the actual payment authorised by a contracts manager;
- (g) copies of cumulative payment worksheets evidencing management of all payments made;
- (h) copies of any claims made by a contracts manager on behalf of the procuring entity in respect of any warranty, non warranty, short supply, damage and other claims upon the supplier or upon the procuring entity;



- (i) all correspondence between the procuring entity and supplier; and
- (j) all submissions to and all decisions of the approvals authority 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.

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

**20.(1)** The currency for procurement shall be Seychelles Rupee or any foreign currency specified in the bidding document.

Currency for  
procurement

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

(3) The bidding documents shall specify the effective date for the conversion of the foreign exchange to the Seychelles Rupee.

**21.(1)** Bidders may form a consortium to increase their capacity and competitiveness for tendering purposes.

Consortium

(2) Where bidders form a consortium for purposes of bidding, one of the bidders shall be considered as the lead bidder and serve as their representative in all activities related to the bid.

(3) A bid submitted by a consortium shall be a single document and bear the name of the consortium or the lead bidder.

(4) A bidder shall not participate in two different consortiums in the same tender.

(5) A person shall not submit a bid in that person's own name and as part of a consortium for the same tender.

(6) Persons participating in a consortium shall be individually and collectively liable towards the procuring entity.

Packaging  
tenders

**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 shall ensure that the bidding documents specify the nature of each lot and modalities for awarding the tender.

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

Cancellation  
of  
procurement  
proceedings

**23.(1)** The cancellation of procurement proceedings shall be avoided whenever possible, but may be approved by the Procurement Oversight Unit where —

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

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

(4) Where procurement proceedings are cancelled prior to bid opening, any bids received shall be returned unopened.

## **PART V - PROCUREMENT PLANNING**

**24.(1)** A Procurement Unit, in consultation with a user department, shall prepare a proposed procurement plan for the procuring entity, for each financial year, containing the information required by regulation 25.

Annual  
procurement  
planning and  
publication

(2) A proposed annual procurement planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.

(3) Procuring entities shall revise or update their procurement plans, as appropriate, after the approval of the budget for that financial year or during the course of each financial year.

(4) A procuring entity shall publish, in at least one newspaper of wide readership, post on the procuring entity's website and on the procuring entity's notice board, information relating to the procurement plan, such as the following —

- (a) title and quantity of the tender;
- (b) method of tendering;
- (c) source of the funding; and
- (d) expected publication and execution dates.

Contents of  
annual  
procurement  
plan

**25.** An annual procurement plan for each procuring entity shall include the following —

- (a) a detailed breakdown of the goods, works and services required, their priorities and an indication as to whether it will be necessary to carry out a prior study for tenders of works;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common use items;
- (d) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding;
- (e) an indication of the rules applicable to the procurement, where any procurement is not subject to these Regulations;

- (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking in to account the applicable approval requirements;
- (g) indicating whether the goods, works or services will be procured by the Procurement Unit, any special agency designated to procure common use items or any other body;
- (h) an indication of the resources available for managing the procurement workload;
- (i) indicating local or regional preferences for certain types of tender, if so required;
- (j) specifying whether there is a requirement for non-objection for an award of contract;
- (k) specifying planning schedules under which different processes for tendering shall be undertaken;
- (l) specifying schedules for the execution of contracts; and
- (m) details of any committed or planned procurement expenditure under existing multi-year contracts.

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

Aggregation of requirements

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

- (a) which items are of a similar nature and likely to attract the same bidders;
- (b) which items will be ready for bidding at the same time and when delivery, implementation or completion is required;
- (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;
- (d) the need to apply any applicable measures to promote the participation of national suppliers or other target groups;
- (e) which items will be subject to the same bidding requirements and conditions of contract; and
- (f) the potential to realise savings in time, transaction costs or facilitate contracts management by the procuring entity.

Division into  
lots

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

(2) The division of a requirement into a package of separate lots is permitted where it is likely to increase the number of responsive bids by enabling the participation of —

- (a) bidders who are able to bid for some, but not all, types of item; or



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

(3) A requirement shall not be divided into lots —

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

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

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

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) demonstrate, prior to contract award, that the recommended contract award or

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

Requisition  
and  
authorisation

**28.(1)** All procurement requirements shall be documented by the user department, using a procurement requisition in the format specified by the Procurement Oversight Unit, which shall include —

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

(2) In preparing the statement of requirements, the user department shall ensure that it seeks technical advice, where required.

(3) In estimating the value of the goods, works or services, the user department shall ensure that the estimate is realistic and based on up-to-date information on economic and market conditions.

(4) The requisition shall be approved by the chief executive officer or by an officer or officers designated by the chief executive officer to perform this function prior to the initiation of procurement proceedings.

(5) The approval of requisitions shall include confirmation of the —

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

(6) 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 managing the procurement proceedings, including any funds required for publication of notices.

(4) Where a procuring entity initiates procurement proceedings for a multi-year contract, the procuring entity shall ensure that funds —

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

Statement of  
requirements  
for goods

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

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

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

(3) Specifications shall include, where appropriate —

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

- (c) a generic specification to an appropriate level of detail;
- (d) a functional description of goods, including any environmental or safety features;
- (e) 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, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words "or equivalent" shall be included and the description shall serve only as a benchmark during the evaluation process.

Use of brand  
names

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

Statement of  
requirements  
for works

**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.



(2) In the choice of procurement method, the procuring entity shall take into account —

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

(3) The reasons for the selection of any procurement method other than open bidding or open selection shall be stated in the procurement record.

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

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

**36.(1)** In considering the potential sources for any procurement requirement, a Procurement Unit shall consider all relevant factors, including —

Potential  
sources

- (a) the competitiveness of the national, regional or international market for the goods, works or services to ensure value for money is achieved with public funds;

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

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

- (a) a comprehensive analysis of the market for the required goods, works or services;
- (b) full details of the relevant factors in 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.

(3) Any recommendation to use an emergency situation as the criterion for determining the choice of procurement method shall include a comprehensive justification for its use, stating the reasons giving rise to the emergency situation.

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

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

Selection of  
appropriate  
type of  
contract

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

(2) A Procurement Unit shall select the type of contract as part of the procurement planning process, taking into account—

- (a) the nature, value and complexity of the procurement requirement;
- (b) the need to offer an equitable contract to bidders to ensure effective competition;
- (c) the need to maximise value for money and minimise risk for the procuring entity;
- (d) the likelihood of any delays or unforeseen circumstances requiring contract variations;
- (e) the procuring entity's ability to define its precise requirements, including the

quantities or inputs and delivery or completion dates required;

- (f) the need for effective contracts management and cost control; and
- (g) the resources available for 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.

Selection of  
bid  
submission  
methods

(2) A bid submission method may be either —

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

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

- (a) one stage-single envelope method shall be used where all stages of the evaluation are

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

- (b) 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 technical bids are possible and the procuring entity needs to evaluate the initial technical bids in order to determine a single technical standard with which all bidders are invited to conform by submitting revised technical bids and supplementary financial bids; or
  - (ii) for large and complex contracts, where technically unequal bids are likely and more than one equally acceptable technical solution is available to the procuring entity, which needs to ensure that all technical bids conform to the same technical standard before financial bids are prepared.

(4) The bidding documents shall state that bids shall be submitted in plain outer envelopes securely sealed in such a manner that opening and resealing cannot be achieved undetected.

(5) Bidders shall be at liberty to choose their preferred method of envelope sealing, but a procuring entity may reject at the opening any envelope that is unsealed.

(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 the two stage bid submission method.

Use of one  
or two stage  
bidding

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

- (a) for the first stage of two-stage tendering, the bidding documents shall call upon bidders to submit, initial bids without a bid price;
- (b) the procuring entity shall invite bids relating to the technical, quality or other characteristics of the goods, works or services as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence and qualifications of the bidders;
- (c) the procuring entity shall, at the conclusion of the first stage, finalise technical or contractual terms in a revised bidding document;
- (d) the revised bidding document shall be sent to all bidders whose bids have not been rejected; and
- (e) for the second stage of two-stage tendering, the procuring entity shall invite bidders to

submit final bids with prices following the first stage and 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.

(3) The pre-qualification notice shall be published in accordance with regulation 19.

**43.(1)** A Procurement Unit shall issue pre-qualification documents to all applicants who request them and shall maintain a record of all applicants to whom documents are issued.

Pre-  
qualification  
documents

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

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

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

Evaluation of  
applicants

**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.

(3) The Evaluation Committee shall prepare a record of its evaluation of applications, which shall state which applicants were determined to be qualified and which were not and the reasons therefor.

(4) The results of the pre-qualification, including the record of the evaluation of applications, shall be submitted to the approvals authority for authorisation.

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

**45.(1)** Pre-qualification method may be used to pre-qualify bidders for a group of similar contracts to avoid the repetition of pre-qualification exercises or to facilitate the preparation of shortlists.

Pre-qualification  
for a group of  
contracts

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

- (a) prequalification notice and the pre-qualification document shall state the time period covered by the pre-qualification and details of the estimated number, value and timing of contracts;
- (b) procuring entities shall not be obliged to invite all pre-qualified applicants to submit bids, where the estimated value of a contract is less than the threshold specified in the First Schedule where request for sealed quotation is permitted in accordance with section 64 of the Act, but shall ensure a rotation of pre-qualified applicants on successive shortlists;
- (c) a limit on the number or total value of

contract awards to an applicant may be made, on the basis of 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 shortlist for the purposes of sub-regulation (1), a Procurement Unit may use —

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

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

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

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

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

(7) Where the procuring entity uses limited bidding on the grounds of a limited number of sources, it shall also publish a notice, in accordance with regulation 19 which shall state —

- (a) the nature of the procurement requirement;
- (b) that the procuring entity is using limited bidding on the grounds of a limited number of sources;

- (c) the proposed shortlist of bidders; and
- (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement may contact the Procurement Unit of the procuring entity.

(8) 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.

Contents of  
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 alternatives bids;
- (d) instructions on the sealing, labeling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of bids;

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

(3) Where appropriate, procuring entity may include additional evaluation criteria in the bidding document, which shall be taken into account in determining the evaluated price of each bid.

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



**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.

Minimum  
bidding  
periods

(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 of urgency, the minimum bidding period shall not apply.

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

- (a) the time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
- (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;
- (c) the location of shortlisted or potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the procuring entity;

- (d) the extent of anticipated sub-contracting; and
- (e) any restrictions relating to the time the goods, works or services are required.

Issue and  
sale of  
bidding  
documents

**51.(1)** Bidding documents shall be issued, as appropriate to—

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

(2) Where the bidding document is issued to short-listed or pre-qualified bidders, the document shall be issued to all bidders at the same time.

(3) A Procurement Unit shall keep a record of all bidders to whom the documents are issued.

(4) A procuring entity may charge a non refundable fee for the bidding documents commensurate to the costs related to printing, copying and distribution of the document, subject to a maximum of SCR 2,000.

(5) Where bidding documents are sold, a Procurement Unit shall issue signed receipts and bidders may be required to submit a copy of the receipt with their bid.

(6) Where bidding documents are sold, a Procurement Unit shall allow potential bidders to inspect the documents.

Bid  
securities

**52.(1)** A procuring entity shall require bid securities for all procurement requirements with an estimated value as specified in the Second Schedule.

(2) The bidding documents shall state the requirement for a bid security.

(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 procuring entity may, through the issue of an addendum, extend the deadline for the submission of bids in order to give bidders reasonable time to seek clarification of, or take into account any addenda to the bidding documents, in preparing their bids.

Extension of  
bidding period

**55.(1)** The bidding documents shall state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting any bid security.

Withdrawal,  
substitution  
or  
modification  
of bids

(2) The bidding documents shall state the procedures to be followed for withdrawal, substitution or modification.

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

Alternative  
bids

(2) A procuring entity may permit alternative bids —

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

(3) Where alternative bids are permitted under sub-regulation (2), the bidding documents shall state that the alternative bids need not conform precisely to the statement of requirements, but shall —

- (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.

Pre-bid  
conferences  
and site  
visits

**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 the provisions of sub-regulation (2), the request for the pre-bid conference or site visit may be issued as an addendum.

(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 procurement circulars.

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

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

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

Bid closing

**59.(1)** A Procurement Unit shall ensure that bidding is closed at the date and time fixed in the bidding document for submission of bids and no further bid is placed in the bid box or received after the deadline.

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

(3) Any bid received after the date and time of the deadline for submission of bids shall not be accepted, but shall be declared late.

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

(5) Any late bid which is not labeled with the bidder's name shall be left unopened for seven days after which the unopened envelope shall be destroyed.



(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.

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

(8) A Procurement Unit shall keep a record of envelopes received late.

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

Public opening  
of bids

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

(3) The opening of bids shall be managed by the Procurement Unit.

(4) Bids shall be opened on a day other than a public holiday or the day following a public holiday.

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

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

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

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

(8) 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.

Assessing  
responsiveness  
of bids

**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.

Details of  
evaluation  
methodology  
and criteria

**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 with the lowest evaluated price.

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

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

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

(5) Notwithstanding the provisions of sub-regulation (1), the Procurement Oversight Unit may approve the use of an alternative evaluation methodology for specialised procurement requirements, in which case the methodology for conducting the technical and financial evaluations in regulations 67 and 68 shall be modified as required.

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

Preliminary  
examination

(2) A preliminary examination shall determine whether—

- (a) the bid has been submitted in the correct format;
- (b) any required bid security has been submitted, in the correct form and amount and is valid for the period required;
- (c) the bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- (d) the bid has been correctly signed and authorised;
- (e) the correct number of copies of the bid have been submitted;
- (f) the bid is valid for the period required;
- (g) all key documents and information required have been submitted;
- (h) any required samples have been submitted; and
- (i) the bid meets any other key requirement of the bidding document.

(3) The classification of a deviation, reservation or omission as material or non-material shall be determined by

the objectives and requirements of the individual procurement requirement, as stated in the 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 non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids.

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

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

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

**66.(1)** An evaluation committee may seek clarification from a bidder of its bid.

Clarification  
of bids

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

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

- (a) amend its bid price, except to accept the correction of 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 assignment.

(3) The evaluation shall not take into account any requirement which were not included in the bidding document.

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

(5) Non material deviations may be corrected in accordance with regulation 65 or clarified in accordance with regulation 66.

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

Financial  
evaluation  
and  
comparison

(2) The evaluated price for each bid shall be determined by—

- (a) taking the bid price, as read out at the bid opening;
- (b) correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- (c) applying any non-conditional discounts offered in the bid;
- (d) making adjustments for any non-material non-conformity, error or omission;
- (e) applying any additional evaluation criteria, through an increase or decrease to the bid price, in accordance with regulation 63;

- (f) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- (g) applying any margin of preference indicated in the bidding document.

(3) Bids shall be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price, which shall be the best evaluated bid.

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

Application  
of discounts

**69.(1)** A Procuring Unit may permit bidders to offer discounts to their bids only if included in the bid and read out at the bid opening.

(2) Any discount offered by a bidder after the deadline for submission of bids shall not be taken into account.

(3) Bidders may be permitted to offer discounts, which are conditional on the award of one or more lots.

(4) Conditional discounts shall be taken into account in a further financial evaluation, in accordance with regulation 68(4).

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

**70.(1)** Where so indicated in the bidding documents, the procuring entity may conduct a post-qualification of the bidder, who submitted the best evaluated bid, to determine whether the bidder is qualified to perform the contract effectively.

Post-  
qualification

(2) The criteria for qualification shall be as set out in the bidding document and shall be drafted in accordance with these Regulations.

(3) Where a bidder is determined not to be qualified, the bid shall be rejected and a post-qualification conducted on the bidder who submitted the next lowest evaluated responsive bid.

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

**71.(1)** The evaluation committee shall prepare and submit an evaluation report to the approvals authority.

Evaluation  
report and  
recommendations

(2) An evaluation report shall include —

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

they were quantified and taken into account in the financial evaluation;

- (f) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- (g) the ranking of the bids, according to their total evaluated price;
- (h) a statement of the best evaluated bid, for each lot where applicable;
- (i) a summary of the application of any conditional discounts and the best evaluated combination of bids, where applicable;
- (j) the results of any post-qualification; and
- (k) a recommendation to award the contract or contracts to the best evaluated bid or combination of bids, or other appropriate recommendation, such as any requirement for negotiations or the cancellation of the procurement process.

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

Scope of  
negotiations

**72.(1)** A procuring entity may, after obtaining the approval of the approvals authority, hold negotiations with the best evaluated bidder.

(2) Negotiations may relate to —

- (a) minor amendments to the special conditions of contract;

- (b) minor changes to the delivery, completion or installation schedule to accommodate any changes required by the procuring entity;
  - (c) minor alterations to the technical details of the statement of requirements;
  - (d) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the 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**

Selection of  
Bidders

- 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.

Notices  
inviting  
expression 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 eligibility or qualifications; and
- (g) the date, time and address for submission and any special instructions on sealing, marking or submission of expressions of interest.

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

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

Evaluation of  
expressions of  
interest and  
development  
of short-lists

**76.(1)** All expressions of interest shall be evaluated by an evaluation committee against the criteria stated in the notice requesting expressions of interest, in order to develop a shortlist of bidders who are expected to be able to meet the procuring entity's requirements.

(2) A record of the evaluation of expressions of interest shall be maintained by the procuring entity.

(3) Where the number of suitable bidders is greater than the number of bidders to be included on the shortlist, the applicants who best meet the procuring entity's requirements shall be included on the shortlist.

(4) The shortlist shall not comprise more than ten bidders.

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

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

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

(8) The results of the evaluation of the expressions of interest and the proposed shortlist shall be authorised by the approvals authority, prior to issue of the bidding document.



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 may contact the Procurement Unit of the procuring entity.

(5) The proposed shortlist shall be authorised by the approvals authority, prior to issue of the bidding documents.

Contents of  
bidding  
documents

**78.(1)** A procuring entity shall use the appropriate standard bidding documents issued by the Procurement Oversight Unit for drafting individual bidding documents.

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

(3) A bidding document shall include, in particular —

- (a) a statement of requirements for the services required;
- (b) instructions on the preparation of technical and financial proposals, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- (c) instructions on the sealing, labeling and submission of proposals, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of proposals;
- (d) information relating to eligibility to bid, including restrictions relating to conflict of interest and any restriction of eligibility to citizen or local bidders under open national selection;

- (e) information on the selection method, the evaluation criteria and points to be applied and any minimum technical score required;
- (f) any margin of preference or reservation to be applied;
- (g) information on the procedure for contract award, including the requirement for publication of a notice of best evaluated bidder;
- (h) the type of contract to be awarded;
- (i) the terms and conditions of the proposed contract; and
- (j) information on the 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 financial proposals, both sealed in an outer envelope.

(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.

Clarification  
and  
amendment  
of bidding  
document

**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 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 proposals, the 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) An addendum shall be issued in writing and numbered sequentially with the same information being provided to all bidders at the same time.

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

Extension of  
bidding  
period

**84.** A procuring entity may extend the deadline for the submission of proposals, through the issue of an addendum, in order to give bidders reasonable time to take into account the clarification or addendum in preparing their proposals.

Receipt of  
proposals

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

(2) A bid box may be used for depositing the proposals

and bid box shall remain locked until the time for opening the proposal.

(3) Where any proposal is too large for the bid box, the Procurement Unit shall receive the proposal, issue a signed receipt, showing the date and time of receipt and keep the proposal in a secured location until the time for proposal opening.

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

(5) Proposals shall only be received electronically, or by other means which do not permit signed and sealed proposals, if authorised by the Procurement Oversight Unit through public procurement circulars.

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

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

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

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

Deadline for  
submission  
of proposals

(2) Any proposal received after the deadline shall not be accepted, but shall be declared late, labeled as such and returned to the bidder.

(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.

Opening of  
technical  
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 for proposal opening shall be the same as, or immediately after, the time of the deadline for submission of proposals.

(3) The opening of proposals shall be managed by the Procurement Unit on a day other than a public holiday or the day following a public holiday.

(4) A Procurement Unit shall permit all bidders, or their representatives, to attend and witness the opening of proposals.

(5) A Procurement Unit shall first open any envelope marked "withdrawal" and the corresponding proposals shall be located and returned unopened to the bidder.

(6) A Procurement Unit shall open the outer envelopes of all other envelopes, including substitutions and modifications, and open the technical proposal within.

(7) The details indicated in the bidding document shall be read out, which shall include—

(a) the name of the bidder; and



- (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 the record.

(13) The technical proposals shall be taken immediately to a secured location, where they shall be kept until the evaluation begins but any financial proposals shall be kept unopened in a secured location, until the time for opening of financial proposals.

**88.(1)** The procurement entity shall appoint an evaluation committee in accordance section 41 of the Act for the evaluation of the proposals.

Responsibility  
of evaluation  
committee

(2) An evaluation committee shall be responsible for the evaluation of proposals in accordance with the Act, these

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) the proposal meets any other key requirements of the bidding document.

(3) Any material deviations shall result in rejection of the proposal and such proposals shall not be subject to technical evaluation.

(4) The preliminary examination shall also determine whether bidders are eligible, where this has not been determined prior to inviting proposals.

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

Scoring of  
proposals for  
technical  
evaluation

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

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

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

(5) Where an evaluator has misunderstood a proposal or the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust those scores,

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

(6) Where any score has been adjusted under sub-regulation (5), the original score sheet shall be kept as part of the record of the evaluation, the adjusted scores recorded on a new score sheet and the reasons for making adjustments shall be recorded.

(7) The average score for each proposal shall be its total technical score for evaluation purposes.

Technical  
evaluation for  
Quality and  
Cost Based  
Selection,  
Fixed Budget  
Selection and  
Least Cost  
Selection

**91.(1)** An evaluation committee shall compare the total technical score of each proposal to the minimum technical qualifying mark stated in the bidding document and any proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.

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

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

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

- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (f) the total technical score for each proposal;
- (g) a 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;

- (d) a summary of the relative strengths and weaknesses of each proposal;
- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (f) the total technical score for each proposal; and
- (g) a recommendation to open the financial proposal of the bidder with the highest total technical score and to reject all other proposals.

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

Notification of  
results of  
technical  
evaluation

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

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

(3) Notwithstanding the provisions of sub-regulation (1), in the case of Quality Based Selection where only technical proposals have been submitted, the Procurement Unit shall notify the bidder who achieved the highest technical score, requesting the submission of a financial 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 the bidding document.

(2) The lowest priced proposal shall be given a financial score as stated in the bidding document and other proposals shall be given a financial score which is inversely proportional to the lowest evaluated price, using the methodology stated in the bidding document.

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

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

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

(6) 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) the financial score of each proposal and the methodology used for allocating financial scores;
- (d) the weighting of the technical and financial scores;



- (e) the total score for each proposal;
- (f) a recommendation to award the contract to the bidder obtaining the highest total score, subject to any negotiations required; and
- (g) the currency and price of the proposed contract, subject to any changes following negotiations.

**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.

Financial  
evaluation for  
Fixed Budget  
Selection

**97.(1)** An evaluation committee shall determine the evaluated price of each financial 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.

(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.

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

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

- (a) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;

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

(5) 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 —

Financial  
evaluation for  
Least Cost  
Selection

- (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.

(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 committee and the Procurement Unit who shall seek the authorisation of the approvals authority, prior to confirming any agreement reached with the bidder.

(5) The staff of the Procuring 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 VIII - BIDDING PROCESS FOR REQUEST FOR SEALED QUOTATION**

Contents of  
request for  
sealed  
quotations

**101.(1)** A Procurement Unit shall prepare a written Request for Sealed Quotations using the appropriate standard document issued by the Procurement Oversight Unit.

(2) The Request for Sealed Quotations shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit quotations that are responsive to the needs of the procuring entity.

(3) A Request for Sealed Quotations shall, in particular, include—

- (a) instructions on the conduct of the procurement process, including the preparation and submission of quotations and information on the evaluation of quotations and award of contract;
- (b) instructions on any documents required with the quotation;

- (c) a statement of requirements for the goods, works or services required, as the case may be;
- (d) information on the methodology and criteria for the evaluation of quotations;
- (e) a statement on the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
- (f) the terms and conditions of contract which will apply; and
- (g) information on the bidder's right to review before the Review Panel and on the Government's policy on fraud and corruption, including the suspension of bidders.

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

Invitation of quotations and development of shortlist

(2) A shortlist shall include sufficient bidders to ensure effective competition, but in any case, no less than three quotations shall be obtained.

(3) Notwithstanding the provisions of sub-regulation (2), a shortlist may consist of only two bidders, where only two suitable sources exist.

(4) A Procurement Unit may use —

- (a) supplier databases or lists maintained in accordance with these regulations;
- (b) lists of pre-qualified applicants;
- (c) its own knowledge of the market; or

- (d) any other appropriate sources of information.

(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.

(4) All quotations shall be kept secured until after the deadline for submission of quotations.

(5) Where quotations are received in an unsealed form, prior to the submission deadline, the contents of the quotation shall be kept confidential and shall not be revealed to any person, other than the officer responsible for receiving the quotation.

**104.(1)** A Procurement Unit shall evaluate the quotations received, seeking technical assistance from the user department, if required.

Evaluation of  
quotations

(2) The following shall, in addition to the other provisions of these Regulations, specifically apply to an evaluation of quotations —

- (a) alternative quotations shall not be permitted; and
- (b) the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria.

(3) The quotation with the lowest evaluated price, which is substantially responsive to the requirements of the procuring entity, shall be recommended for award of contract.

## **PART IX - BIDDING PROCESS FOR DIRECT BIDDING**

**105.** Where a procuring entity conducts direct bidding, on the grounds of low value in accordance with the operating threshold specified in the First Schedule, the procedure shall be as follows —

Procedure for  
low value  
procurement

- (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  
from a sole  
source

**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.

Procedure for  
negotiations

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

(2) 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.

(3) 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.

Procedure for  
emergency  
procurement

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

- (a) first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) notify the approvals authority in accordance with regulation 112;
- (c) identify a suitable bidder;
- (d) where time permits, prepare a written request for a bid, containing a statement of requirements for the goods, works or services required, as the case may be, and a statement of the proposed contract form and terms and conditions of contract;
- (e) issue a written request to the sole supplier and obtain a written bid;

- (f) 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 involved in meeting the procuring entity's delivery or completion schedule.

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

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

Procedure for negotiations

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

(2) The negotiations shall be conducted 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.

(3) Staff of the Procuring 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.

Approval arrangement for emergency procurement

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

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

(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, in accordance with the levels of authority specified in the Act and these Regulations.

Contract award  
decisions

(2) The appropriate approvals authority shall be determined by the actual value of the recommended contract and not the estimated value prepared during the procurement planning process.

(3) All contract award decisions shall be taken in response to a recommendation for contract award, contained in an evaluation report, unless otherwise permitted by these Regulations.

(4) A contract award decision by the approvals authority shall not constitute a contract, but only a decision as to the winning or recommended bidder.

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

Notice of best  
evaluation  
bidder

(2) Notwithstanding the provisions of sub-regulation (1), where the procuring entity uses limited bidding or selection on grounds of emergency circumstances, the requirement for publication of a notice of best evaluated bidder may be waived.

(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.

Commitment  
of funds

**115.**(1) A procuring entity shall, following the contract award decision by the approvals authority, commit the required funds, before proceeding to award the contract.

(2) Where required, a procuring entity shall also commit the funds for other costs linked to the contract.



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.

Contract  
preparation  
and signature  
under open  
or limited  
bidding or  
selection

**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 Unit shall obtain prior authorisation of the contract document from the chief executive officer, before sending it to the supplier for signature.

(3) A Procurement Unit shall ensure that the supplier signs and returns a copy of the contract within 14 days from receipt of the contract draft.

Contract  
award under  
request for  
sealed  
quotations

**118.(1)** Where procurement is conducted using request for sealed quotation, following the contract award decision by the approvals authority and the commitment of funds, the Procurement Unit shall prepare a written purchase order and send it to the successful bidder.

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

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

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

Contract  
award under  
direct  
bidding

**119.(1)** Where a procuring entity conducts direct bidding on the grounds of low value, it shall award the contract in accordance with regulation 118.

(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.

Performance  
securities

(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 of the contract, the risk of a supplier failing to fulfill the contractual obligations and the extent of protection offered to

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

(6) Where appropriate, the value of the performance security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or services to which the security relates.

(7) The bidding documents and contract shall state that the performance security shall be —

- (a) in accordance with the format and wording provided in the contract;
- (b) in a form acceptable to the procuring entity, which may be —
  - (i) banker's certified cheque or payable order;
  - (ii) an insurance or a bank guarantee; or
  - (iii) an equivalent instrument, such as a stand-by letter of credit;
- (c) from an institution acceptable to the procuring entity, where the security is issued by the financial institution; and
- (d) valid for the period prescribed in the contract, which shall normally be one month beyond the anticipated completion date of the contract.

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

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

(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.

Cost  
reimbursable  
and target  
price contracts

**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.

Contents of  
contract

**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 other cases, where the draft contract is not included, any bidding document shall state the type of contract and key contract terms which shall apply.

(3) The contract document shall include all contract terms and conditions and in particular, the following —

- (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.

Price  
adjustment

**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 the total price into components, such as labour, equipment, materials and fuel;
- (b) price indices for each component specified in the formula;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the formula;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(3) Where a price adjustment methodology cannot be based on the provisions detailed in sub regulation (2), alternative provisions may be included which base adjustment on the submission by the supplier of documentary evidence which shall include actual invoices provided by the supplier evidencing increases in costs and where this is permitted the contract shall state —

- (a) the actual costs that are subject to price adjustment, such as labour, equipment, materials and fuel;
- (b) the method for calculating adjustments;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the methodology;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(4) The contract may, in addition, provide that, when the price adjustment provisions result in an increase exceeding a specified percentage or amount of the contract, the procuring entity may either —

- (a) terminate the contract; or
- (b) re-negotiate the contract in order to stay within the budget or otherwise minimize costs for the procuring entity.

Payment  
terms

**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 or the source of exchange rates applicable.

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

Advance  
payments

**132.**(1) A contract may provide for advance payments to the supplier, where this is necessary to ensure effective implementation of the contract or to obtain competitive prices.

(2) Advance payments may be made for costs such as mobilisation, start up, the purchase of materials or costs related to goods which are specially or custom manufactured for the procuring entity.

(3) The total amount of an advance payment shall not exceed twenty-five percent of the total contract price.

(4) Any advance payment shall only be made against the provision by the supplier of an advance payment guarantee, covering the full amount of the advance payment and in accordance with regulation 136.

(5) The contract shall state that materials, equipment and personnel for which an advance payment is received, shall

be used only for performance of that contract and a works contract may require that materials, equipment and personnel for which an advance payment is received, must be committed to the site or sites of the works.

(6) Where so specified in the contract, advance payments may be recovered from subsequent payments to the supplier, which shall be subject to a percentage deduction equal to the percentage paid as the advance payment.

**133.(1)** A contract may provide for progress payments to the supplier.

Progress  
payments

(2) Progress payments shall be either —

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

(b) payment for the actual quantities of goods, works or services delivered or completed.

(3) Progress payments shall not exceed the cost or value of the goods, works or services delivered or completed.

(4) Progress payments shall only be made against interim certificates or other documentation proving delivery or completion of the goods, works or services subject to the progress payment or submission of the deliverables specified.

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

Retained  
payments

(2) The contract shall specify —

(a) the percentage or amount to be retained;

- (b) the period or event at which the retention is to be released, which may include, but not be limited to installation of goods, completion of the contract or expiry of a warranty period; and
- (c) the documents required to prove completion of the event or period in paragraph (b).

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

Payment  
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 Handover Certificates, or other documentation proving that goods, works or services have been accepted;
- (e) Insurance Certificates or other documentation proving that the supplier has taken out the required insurance for the goods, works or services;
- (f) Certificates of Origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
- (g) Interim Certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments; or
- (h) receipts or other documentation, proving that specified costs have been incurred, such as air tickets or time sheets for personnel.

**136.(1)** A procuring entity shall require a payment security from the supplier, where the contract permits payments to a supplier prior to the delivery or completion of the goods, works or services to which the payment relates.

Payment  
securities

(2) The value of any payment security shall be equal to the payment to which it relates and, where appropriate, the value of a security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or services to which the payment relates.

(3) The contract shall state that the payment security shall be —

- (a) in accordance with the format and wording provided in the contract;
- (b) in a form acceptable to the procuring entity;
- (c) from an institution acceptable to the procuring entity; and
- (d) valid for the period prescribed in the contract, which shall normally be at least one month beyond the anticipated due date of the payment.

(4) 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 —

Contract  
management  
responsibilities

- (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 supplier submits all required documentation;
- (c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
- (d) ensuring that there is adequate cost, quality and time control, where required;

- (e) preparing any required contract variations or change orders and obtaining all required approvals before their issue;
- (f) referring any required contract amendments to the Procurement Unit for preparation;
- (g) managing any handover or acceptance procedures;
- (h) referring any recommendations for contract termination to the Procurement Unit;
- (i) ensuring that the contract is complete, prior to closing the contract file;
- (j) ensuring that all contract management records are kept and archived as required;
- (k) ensuring that the supplier and the procuring entity act in accordance with the Act, these Regulations and the contract; and
- (l) keeping the Procurement Unit informed of the status and progress of the contract.

(2) 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 —

- (a) observe tests conducted by the supplier, or any subcontractor, under their own quality control procedures;
- (b) conduct its own inspection; or
- (c) employ an independent third party to undertake technical inspection.

(4) The contract shall state all requirements relating to inspections, including —

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location for inspection;
- (c) the person to carry out the inspection or tests;
- (d) when inspection is to be conducted;
- (e) who is responsible for payment of the various costs of inspection;
- (f) any notification or documentation required from suppliers relating to inspection or testing;
- (g) that samples provided for testing shall be provided free of charge by the supplier; and

- (h) that where goods, works or services fail an inspection, the supplier is liable for the correction of any defects at 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;

- (c) the contractual grounds for termination; and
- (d) the costs, if any, for which the procuring entity will be liable following termination.

## PART XII - DEVIATIONS AND ACCREDITATION

Procedure for  
applying for a  
deviation

**144.**(1) An application for a deviation from the use of a public procurement method, rule, process or document shall be submitted to the Procurement Oversight Unit in writing.

(2) An application for a deviation shall include —

- (a) a statement of the method, rule, process or document from which a deviation is required;
- (b) the reasons for deviation from a procurement method, rule, process or document, including an explanation of the exceptional requirements, market conditions, international standards or practices which regulate or govern the requirement;
- (c) an explanation of the proposed alternative method, rule, process or document;
- (d) statement of whether the deviation is required for a single requirement or for a number of requirements of the same class over a period of time; and
- (e) any other relevant information.

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



(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 guidance on a particular issue should be issued; or
- (c) additional standard documents are required to meet a particular need.

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

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

Procedure for  
accreditation  
of alternative  
procurement  
system

**146.(1)** A chief executive officer shall submit an application for accreditation of an alternative system, supported by—

- (a) full details of the alternative system;

- (b) an analysis of the ways in which the alternative system differs from the Act and these Regulations;
- (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

qualifications to enter into a contract within a period of three years preceding the commencement of the procurement proceedings; and

- (e) a signed statement that the bidder is not subject to suspension pursuant to the Act, or that any of its directors or officers have not been involved in a bidder or supplier currently subject to suspension.

(2) In determining the documentation required as evidence of a bidder's eligibility, the procuring entity shall permit the submission of equivalent documents from the relevant authorities in the bidder's country of origin or the submission of statements certifying that equivalent documentation is not issued in the bidder's country of origin.

(3) The Procurement Oversight Unit may issue public procurement circulars providing guidance on documentation required for the verification of bidders' eligibility.

**149.(1)** A procuring entity shall verify the qualifications of bidders where the successful implementation of the contract is, to a significant extent, dependent on the supplier's qualifications.

Qualification

(2) A procuring entity may verify the qualifications of bidders through either pre-qualification proceedings or post-qualification proceedings in accordance with these Regulations.

(3) A bidders' qualifications for consulting services shall be verified as part of the short-listing process, based on information provided in the expressions of interest.

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

Qualification  
criteria

(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 —

Requirements  
for  
subcontractors  
and joint  
venture partners

- (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.

Preference  
schemes

(2) A preference scheme shall have as its objective the development of businesses among target groups, through giving such businesses a competitive advantage by adding a specified margin to the evaluated price of bidders who are not eligible for the preference during the financial evaluation of bids.

(3) Any instrument or document issuing a preference scheme shall state —

- (a) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of subcontracting or association with local partners or any other relevant factor;
- (b) the documentation required as evidence of eligibility for the margin of preference; and
- (c) the percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(4) The details in sub-regulation (3) shall also be stated in the bidding documents, with summary details provided in any bid or pre-qualification notice.

(5) The percentage of preference in schemes issued by the Procurement Oversight Unit shall be no more than 20 percent but the Procurement Oversight Unit may review these percentages annually.

(6) The level of preference accorded to a bidder shall be proportional to the percentage of the contract to be actually executed by the target group.

Reservation  
schemes

**153.**(1) The procurement of goods, works or services may be subject to a reservation scheme, consistent with Government's economic and social policy.

(2) A reservation scheme shall have as its objective the development of businesses among target groups, by reserving certain public procurement contracts for such target groups.

(3) Procurement under a reservation scheme shall require competition among eligible bidders and shall require the supplier to be qualified to perform the contract.

(4) The application of a reservation scheme and eligibility to participate shall be stated in bidding documents and any bid or pre-qualification notice.

Supplier  
databases  
of lists

**154.**(1) The Procurement Oversight Unit may, where it considers it would be efficient or effective, designate a body or bodies responsible for organising and maintaining a supplier database or list on a central basis or in a particular field, and the designated body or bodies may include the following —

- (a) a central agency or unit with responsibility for the procurement of common use items in accordance with the Act;



- (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 —

Determination  
of period for  
suspension

- (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 —

Contents of  
recommendation  
to suspend

- (a) state the name and contact details of the bidder or supplier; and
- (b) provide details of the procurement requirement to which the recommendation for suspension relate, including any reference number.

**159.(1)** The Procurement Oversight Unit shall, in investigating a recommendation to suspend a supplier or bidder from the list of suppliers, consider —

Investigation of  
recommendation  
to suspend by  
Procurement  
Oversight Unit

- (a) the information contained in the written recommendation by the chief executive officer;
- (b) supplementary information requested by the Procurement Oversight Unit from, or submitted in writing by, the chief executive officer, the bidder, supplier or the procuring entity where appropriate;
- (c) information obtained through an examination of the relevant procurement records;
- (d) information obtained by examining staff of the procuring entity, bidder, supplier or the chief executive officer, other bidders or any other relevant parties through means of statements or a hearing;
- (e) additional information or statements from other parties as may be necessary for the fair resolution of the recommendation to suspend; and
- (f) any other relevant information.

(2) The Procurement Oversight Unit may, at the request of a party or their own initiative, conduct a hearing in connection with a recommendation to suspend and in such a case, all parties participating and having a direct interest in the matter shall be invited, by the Procurement Oversight Unit, to attend the hearing.

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

**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**

Challenge of  
procurement  
proceedings

**164.(1)** A challenge of procurement proceedings under section 98 (1) of the Act by a bidder or supplier shall be made in the form specified in the Third Schedule.

(2) An application for challenge shall be accompanied by a fee of SCR300.

Secretary  
to Review  
Panel

**165.(1)** For the effective performance of the functions of the Review Panel, the Ministry responsible for finance shall appoint a public officer, on secondment, as secretary to the Review Panel.

(2) The secretary shall, in addition to the other functions specified in this Part, set up and organise hearings and meetings of the Review Panel, receive applications for appeal or review, record the minutes and transcripts of meetings and hearings of the Panel and keep records of such meetings and hearings and communicate the decisions of the Review Panel to the relevant parties.

Applications  
for review

**166.** The Review Panel may, at the request of a party or on its own initiative, conduct a hearing in connection with appeal or review and in such a case all parties participating in the appeal or review shall be invited, by the secretary, to attend the hearing.

Contents of  
applications  
for appeal or  
review

**167.(1)** An application for appeal or review by the Review Panel, shall be in writing and signed by the bidder, supplier or their representative, be made within 10 days of the decision or stage of the procurement proceedings to which it relates, and shall —

- (a) state the name and contact details of the bidder or supplier;
- (b) state the name of the procuring entity to which the application relates;



- (c) provide details of the procurement requirement to which the 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.

Deposit for  
appeal for  
review

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

Time and  
place of  
hearing

**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.

Hearing of  
application

**170.(1)** Any hearing of the Review Panel shall be held in camera, except that a hearing may, in the public interest, be held in public.

(2) At a hearing, the applicant may appear in person or be represented by a legal practitioner.

Procedure  
of hearing

**171.(1)** The quorum at a hearing of the Review Panel shall be 3 including the Chairperson.

(2) Every hearing of the Review Panel shall be informal and the law relating to admissibility of evidence in a court of law shall not apply.

(3) An applicant and any respondent shall be entitled to give evidence, call witnesses, cross examine witnesses and address the Review 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 day of receipt of the application, submit the application to the Chairperson for consideration as to compliance with the Act and these Regulations.

Function of the  
Chairperson and  
dismissal of  
applications for  
appeal or  
review

(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) The secretary shall, on request of any party to an application for appeal or review, after approval of the Chairperson, send to that party copies of any explanations, answers, admissions or other statement or communication sent to the Review Panel by any party to the application:

Provided that nothing in this sub-regulation shall compel the secretary or Chairperson to produce copies of any written advice or communication sent to the Review Panel which would be privileged from discovery in any legal proceedings or which will be detrimental to the procurement proceedings in question and not directly related to the applicant's complaint.

(4) An application for appeal or review may be dismissed by the Chairperson for —

- (a) failure to comply with the requirements of regulation 167, except that minor non-compliances shall not be grounds for dismissal;
- (b) setting forth only allegations that do not state a valid basis for an application for appeal or review or that do not set forth a detailed legal and factual statement;
- (c) not being submitted in a timely manner; or
- (d) concerning contract management, rather than contract award.

(5) Where the Chairperson dismisses any application under this regulation, the secretary shall inform the applicant to this effect, giving the reasons why the application was dismissed.

**173.(1)** The Review Panel shall, in investigating an application for appeal or review, consider —

- (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.

Disclosure of information and special measures for confidentiality during review

**174.**(1) Where the applicant requests specific documents required for the effective prosecution of the application for appeal or review in accordance with regulations 167(2)(b) and 172(3), the procuring entity or the Board shall make such documents available, unless such disclosure would be contrary to the requirement under these Regulations and for confidentiality set out in the Act.

(2) The procuring entity may request that the applicant produce relevant documents or information that are not in the procuring entity's possession.

(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 —

Decisions  
of Review  
Panel

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

(3) Notwithstanding the provisions of sub-regulations (1) or any other regulation, where a decision contains information subject to special measures for confidentiality —

- (a) a copy of the decision shall be provided only to individuals granted access to the information pursuant to the special measures; and
- (b) a public version of the decision omitting the confidential information shall be issued to other parties, wherever possible.

(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**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Threshold</b>	<b>Approval Procedure</b>	<b>Procurement Method</b>
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	Open bidding

**In Respect of goods and services**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Threshold</b>	<b>Approval Procedure</b>	<b>Procurement Method</b>
Less than SCR 15,0000	Approved by the Procuring entity	Must obtain at least 3 quotations
Between SCR150,000 and SCR 750,000	Approved by the Procurement Committee	Open bidding
Above SCR 750,000	Approved by the Board	Open bidding

**In Respect of Works**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Threshold</b>	<b>Approval Procedure</b>	<b>Procurement Method</b>
Less than SCR150,000	Approved by the Procuring entity	Must obtain at least 3 quotations
Between SCR 150,000 and SCR 750,000	Approved by the Procurement Committee	Open bidding
Above SCR 750,000	Approved by the Board	Open bidding

**SECOND SCHEDULE***(Regulation 52)***Bid security required in respect of works, goods and services:**

<b>Column 1</b>	<b>Column 2</b>
<b>Threshold</b>	<b>Bid Security</b>
Less than SCR 150,000	Not needed as condition to contract
Between SCR 150,000 and SCR 750,000	Not needed as condition to contract
Above SCR 750,000	Bid security needed

**THIRD SCHEDULE***(Regulation 164)***Challenge under section 98(1) of the Public Procurement Act**

1. Name of the Bidder .....
2. Address of Bidder.....
3. Name of the representative of the Bidder(if applicable) .....
4. Tel. No./E-mail .....
5. Name of public body .....
6. Procurement reference.....
7. Specific act or omission in relation to the procurement.....
8. Grounds for challenge .....

Date:

Signature

**MADE this 15th day of January, 2014.**

**PIERRE LAPORTE**  
**MINISTER OF FINANCE, TRADE**  
**AND INVESTMENT**