

CHAPTER 22:14 PROCUREMENT ACT

Act 2/1999, 22/2001 (s. 4), 5/2011 (s. 13).

[Date of commencement: 1st August, 2001.]

ARRANGEMENT OF SECTIONS

PART I

Preliminary

- [1.](#) Short title and date of commencement.
- [2.](#) Interpretation.
- [3.](#) Application of Act.

PART II

State Procurement Board

- [4.](#) Establishment of State Procurement Board.
- [5.](#) Functions of State Procurement Board.
- [6.](#) Composition of State Procurement Board.
- [7.](#) Disqualifications for membership of State Procurement Board.
- [8.](#) Terms of office and conditions of service of members.
- [9.](#) Limitation on right of chairman to engage in other occupations or business; disclosure of business interests and assets by other members.
- [10.](#) Vacation of office by members.
- [11.](#) Suspension of members.
- [12.](#) Filling of vacancies on State Procurement Board.
- [13.](#) Vice-chairman of State Procurement Board.
- [14.](#) Meetings and procedure of State Procurement Board.
- [15.](#) Principal officer and staff of State Procurement Board.
- [16.](#) Committees of State Procurement Board.
- [17.](#) Members of State Procurement Board and committees to disclose certain connections and interests.
- [18.](#) Minutes of proceedings of State Procurement Board and of committees.
- [19.](#) Remuneration and allowances of members of State Procurement Board and of committees.
- [20.](#) Directions to State Procurement Board.
- [21.](#) Reports of State Procurement Board.
- [22.](#) Delegation of functions by State Procurement Board.
- [23.](#) Validity of decisions and acts of State Procurement Board.

PART III

Financial Provisions

- [24.](#) Funds of State Procurement Board.
- [25.](#) Investment of moneys not immediately required by State Procurement Board.
- [26.](#) Financial year of State Procurement Board.
- [27.](#) Accounts of State Procurement Board.
- [28.](#) Audit of State Procurement Board's accounts.
- [29.](#) Internal auditor.

PART IV

Procurement Proceedings

- [30.](#) Form of procurement proceedings.
- [31.](#) Tendering proceedings.
- [32.](#) Procedure for procurement of services.
- [33.](#) Procurement regulations.
- [34.](#) Eligibility of suppliers.
- [35.](#) Record of procurement proceedings.
- [36.](#) Public access to regulations, etc.

- [37.](#) Suppliers to permit access to their books and accounts.
- [38.](#) Non-liability of procuring entity where all tenders are rejected.
- [39.](#) Effect of bribery, fraud or collusion by supplier.
- [40.](#) Effect of failure to disclose interest by member of State Procurement Board or committee thereof.
- [41.](#) State Procurement Board may declare supplier ineligible to be awarded State contract.
- [42.](#) Directions to procuring entities by State Procurement Board.

PART V

Appeals

- [43.](#) Appeal to Administrative Court.
- [44.](#) Suspension of procurement proceedings pending appeal.

PART VI

General

- [45.](#) State Procurement Board may require information.
- [46.](#) Investigations by State Procurement Board.
- [47.](#) Procedure on completion of investigation.
- [48.](#) Offences relating to procurement.
- [49.](#) Application of Act to BOOT or BOT contracts.
- [50.](#) Savings.

AN ACT to establish a State Procurement Board and to provide for its functions; to make provision for the procurement of goods, construction work and services by the State, statutory bodies and other persons; and to provide for matters connected with or incidental to the foregoing.

PART I

Preliminary

1. Short title and date of commencement

This Act may be cited as the Procurement Act [*Chapter 22:14*].

2. Interpretation

(1) In this Act -

"building" includes any man-made structure whatsoever or any part thereof, whether above or below the ground;

"chairman", in relation to the State Procurement Board, means the chairman of the Board appointed in terms of [section 6 \(1\)](#);

"conduct" includes any act or omission;

"construction work" means all work associated with the construction, reconstruction, demolition, repair or renovation of any building or infrastructure, and includes -

- (a) site preparation, excavation work, the installation of equipment or materials, decoration and finishing; and
- (b) incidental services such as drilling, mapping, photography and environmental and seismic investigation, where -
 - (i) the services are provided pursuant to the procurement contract; and
 - (ii) the value of the services does not exceed that of the construction work itself;

"goods" means things of every kind and description, including -

- (a) raw materials, products and equipment; and
- (b) things in solid, liquid or gaseous form; and
- (c) electricity; and

(d) immovable property; and

(e) services incidental to the supply of goods, where the value of the services does not exceed that of the goods themselves;

"member" means the chairman or any other member of the State Procurement Board;

"Minister" means the Vice-President or Minister to whom the President may, from time to time, assign the administration of this Act;

"procurement" means the acquisition by any means of goods, construction work or services;

"procurement contract" means a contract between a procuring entity and a supplier which results from procurement proceedings;

"procurement regulations" means regulations made in terms of [section 33 \(1\)](#);

"procuring entity" means -

(a) the State Procurement Board, to the extent that it conducts procurement proceedings on behalf of any person referred to in [paragraph \(b\)](#) or [\(c\)](#) of this definition; or

(b) any -

(i) Ministry, department or other division of the Government; or

(ii) statutory body;

that engages in procurement; or

(c) any local authority or other person declared in terms of [subsection \(2\)](#) to be a procuring entity;

"services" means any object of procurement other than goods or construction work;

"State Procurement Board" means the State Procurement Board established by [section 4](#);

"statutory body" means a body corporate established directly by or under any enactment for special purposes specified in that enactment, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister, any other statutory body or by a Commission established by the Constitution;

"supplier" means an actual or potential party to a procurement contract with a procuring entity;

"vice-chairman", in relation to the State Procurement Board, means the person designated as vice-chairman in terms of [section 13 \(1\)](#).

(2) The Minister may, by statutory instrument, declare any local authority or other person to be a procuring entity for the purposes of this Act:

Provided that the Minister shall not make any such declaration in relation to a person, other than a body corporate wholly owned or controlled by the State, without that person's consent.

[Subsection substituted by section 13 of 5 of 2011.]

3. Application of Act

(1) This Act shall apply to procurement by all procuring entities except -

(a) such classes of procurement; or

(b) such procuring entities or classes of procuring entities;

as may be specified by the President by statutory instrument.

(2) Nothing in [subsection \(1\)](#) shall be construed as preventing a person who engages in procurement to which this Act does not apply from requiring suppliers to conform with all or any of the provisions of this Act in the course of the procurement proceedings.

PART II

State Procurement Board

4. Establishment of State Procurement Board

There is hereby established a board to be known as the State Procurement Board, which shall be a body

corporate capable of suing and being sued in its own name and, subject to this Act, of doing all things that bodies corporate may do by law.

5. Functions of State Procurement Board

- (1) Subject to this Act, the functions of the State Procurement Board shall be -
- (a) to conduct procurement on behalf of procuring entities, where the procurement is of a class prescribed in procurement regulations; and
 - (b) to supervise procurement proceedings conducted by procuring entities, in order to ensure proper compliance with this Act; and
 - (c) to initiate investigations in terms of [section 46](#) and take action pursuant thereon in terms of [section 47](#); and
 - (d) to perform any other function that is conferred or imposed on the State Procurement Board by or in terms of this Act or any other law.

(2) Except as otherwise provided in this Act, the State Procurement Board shall not be subject to the direction or control of any person or authority in the exercise of its functions under this Act.

6. Composition of State Procurement Board

(1) The State Procurement Board shall consist of a chairman and not fewer than seven nor more than ten other members appointed, subject to this section and [section 7](#), by the President.

(2) Members shall be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment:

Provided that at least one of the members shall be a person who has held a post or posts of a senior grade in the Public Service for periods which in the aggregate amount to at least three years, and at least three members shall be appointed from a list submitted by recognised chambers of business, industry, commerce and other professional bodies.

- (3) Members shall be appointed after consultation with the Public Service Commission.
- (4) The Minister shall ensure that the appointment of every member is notified in the *Gazette*.

7. Disqualifications for membership of State Procurement Board

(1) A person shall not be appointed as a member, and no person shall be qualified to hold office as a member, if -

- (a) he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (c) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (d) he has been sentenced -
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or

- (e) he has been convicted -
 - (i) in Zimbabwe, of an offence under this Act or of an offence involving dishonesty; or
 - (ii) outside Zimbabwe, in respect of any conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;

and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended, and has not received a free pardon.

(2) A person who is -

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

shall not be appointed as a member of the State Procurement Board nor shall he be qualified to hold office as a member.

(3) For the purposes of [subsection \(2\) \(b\)](#), a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

(4) Any person who, knowing that he is disqualified in terms of this section to hold office as a member -

- (a) attends any meeting of the State Procurement Board as a member; or
- (b) performs any other act as a member;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of No. 22 of 2001.]

8. Terms of office and conditions of service of members

(1) A member shall hold office for such period, not exceeding three years, as the President may fix at the time of his appointment.

(2) On the expiry of the period for which a member has been appointed he shall continue to hold office until he has been re-appointed or his successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

- (3) A person who ceases to be a member shall be eligible for re-appointment.
- (4) Members shall hold office on such conditions as the President may fix.

9. Limitation on right of chairman to engage in other occupations or business; disclosure of business interests and assets by other members

(1) During his term of office, the chairman shall not engage in any other occupation, service or employment for remuneration, unless the President has consented to his engaging in it:

Provided that the chairman shall be entitled to engage in an occupation, service or employment for which he is entitled only to payment by way of travelling and subsistence allowances and out-of-pocket expenses.

(2) Before any member, including the chairman, performs any function as a member, he shall disclose in writing to the President the full extent of -

- (a) every occupation, service or employment which he or his spouse engages in for remuneration; and
- (b) all assets held by him or his spouse, in excess of such value as the President may specify.

(3) As soon as possible after he or his spouse -

- (a) commences any occupation, service or employment for remuneration; or
- (b) acquires any asset in excess of such value as the President may have specified in terms of [subsection \(2\) \(b\)](#);

a member shall disclose that fact in writing to the President.

10. Vacation of office by members

(1) A member shall vacate his office and his office shall become vacant -

- (a) one month after the date he gives notice in writing to the President, through the Minister, of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or
- (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine -
 - (i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

or

(c) if he becomes disqualified in terms of [section 7](#) to hold office as a member; or

(d) if he is required in terms of [subsection \(2\)](#) or [\(3\)](#) to vacate his office as a member.

(2) The President may require a member to vacate his office if -

(a) the member has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) the member has failed to comply with any condition of his office fixed in terms of [section 8](#); or

(c) the member is mentally or physically incapable of efficiently performing his duties as a member; or

(d) the member contravenes [section 9](#) or [17](#); or

(e) the member or his spouse engages in any occupation, service or employment, or holds any asset, which in the President's opinion is inconsistent with his duties as a member.

(3) The President, on the recommendation of the State Procurement Board, may require a member to vacate his office if the President is satisfied that the member has been absent without the consent of the chairman of the Board from three consecutive meetings of the Board, of which he has been given at least seven days' notice, and that there was no just cause for the member's absence.

11. Suspension of members

(1) The President may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

(2) The President may suspend a member from office if the President has reasonable grounds to believe that the member's office has become vacant in terms of [section 10 \(1\)](#) but the member has not relinquished his office.

12. Filling of vacancies on State Procurement Board

On the death of, or the vacation of office by, a member, the President may appoint a person to fill the vacancy:

Provided that, if the number of members is fewer than the minimum number of members specified in [section 6](#), the President shall appoint a person to fill the vacancy within three months after being notified of the vacancy.

13. Vice-chairman of State Procurement Board

(1) The President shall designate one of the members, other than the chairman, to be the vice-chairman of the State Procurement Board.

(2) The vice-chairman may at any time, by written notice to the President, resign his office as vice-chairman.

(3) Within three months after being notified of a vacancy in the office of vice-chairman, the President shall designate a member to fill the vacancy.

(4) The vice-chairman shall perform the functions of the chairman whenever the chairman is unable to perform them.

14. Meetings and procedure of State Procurement Board

(1) Subject to this Act, the State Procurement Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

(2) The chairman may himself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the State Procurement Board, which meeting shall be convened for a date not sooner than seven days or later than thirty days after receipt of such request.

(3) The chairman or, in his absence, the vice-chairman shall preside at meetings of the State Procurement Board.

(4) A majority of members shall form a quorum at any meeting of the State Procurement Board.

(5) All acts, matters or things authorized or required to be done by the State Procurement Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) Subject to [section 17](#), at all meetings of the State Procurement Board each member present shall have one vote on each question before the Board:

Provided that -

- (i) in the event of an equality of votes, the chairman or person presiding shall have a casting vote in addition to his deliberative vote;
- (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his vacation of office as a member.

(7) Any proposal circulated among all members of the State Procurement Board and agreed to by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that any such proposal be placed before the State Procurement Board, this subsection shall not apply to the proposal.

(8) With the approval of the Minister, the State Procurement Board may co-opt any person to the Board, but a co-opted person shall have no vote in any decision by the Board.

15. Principal officer and staff of State Procurement Board

(1) The State Procurement Board may employ, on such terms and conditions as it may fix with the approval of the Minister -

- (a) a principal officer; and
- (b) such other members of staff as may be necessary for the proper exercise of the Board's functions.

(2) Subject to any directions given to him by the State Procurement Board, the principal officer of the Board shall be responsible for controlling and supervising the Board's staff.

(3) The State Procurement Board may engage persons otherwise than as employees, to perform services of a specialised, technical or professional nature for the Board.

(4) Any remuneration, allowances, pensions and other benefits to which the persons referred to in [subsection \(1\)](#) or [\(2\)](#) are entitled shall be chargeable to the funds of the State Procurement Board.

(5) Notwithstanding [subsection \(1\)](#), if the State Procurement Board so requests and the Public Service Commission so permits, the Minister may assign members of the Public Service employed in his Ministry to perform all or any of the functions of the principal officer and members of staff referred to in that subsection.

16. Committees of State Procurement Board

(1) For the better exercise of its functions, the State Procurement Board may establish one or more committees in which, with the consent of the Minister, it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the State Procurement Board from itself exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee the State Procurement Board may appoint to the committee persons who are not members of the Board.

(3) The chairman of the State Procurement Board or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the State Procurement Board.

(5) Subject to this section, [section 14 \(2\)](#) to [\(7\)](#) shall apply, *mutatis mutandis*, to committees and their members as they apply to the Board and its members.

17. Members of State Procurement Board and committees to disclose certain connections and interests

(1) In this section -

"relative", in relation to a member of the State Procurement Board or a committee of the Board, means the member's spouse, child, parent, brother or sister.

(2) If a member of the State Procurement Board or of a committee of the Board, or a relative of such a member -

- (a) is a supplier who is participating or has participated in any procurement proceedings that are being considered by the State Procurement Board or by any committee of the Board, whether on appeal or otherwise; or
- (b) knowingly acquires or holds a direct or indirect pecuniary interest in a supplier that is participating or has participated in any procurement proceedings referred to in [paragraph \(a\)](#); or
- (c) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his functions as a member;

the member shall forthwith disclose the fact to the State Procurement Board or the committee, as the case may be.

(3) A member referred to in [subsection \(2\)](#) shall take no part in the consideration or discussion of, or vote on, any question before the State Procurement Board or the committee, as the case may be, which relates to any procurement proceedings, property, right or interest referred to in that subsection.

(4) Any person who contravenes [subsection \(2\)](#) or [\(3\)](#) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of No. 22 of 2001.]

18. Minutes of proceedings of State Procurement Board and of committees

(1) The State Procurement Board shall cause minutes of all proceedings of and decisions taken at any meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) The State Procurement Board shall without delay send the Comptroller and Auditor-General a copy of all minutes referred to in [subsection \(1\)](#).

(3) Any minutes referred to in [subsection \(1\)](#) which purport to be signed, with the authority of the State Procurement Board or the committee concerned, as the case may be, by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

19. Remuneration and allowances of members of State Procurement Board and of committees

(1) Members of the State Procurement Board and of committees of the Board shall be paid from the Board's funds -

- (a) such remuneration, if any, as the President may fix for members of the Board or members of committees, as the case may be, generally; and
- (b) such allowances, if any, as the President may fix to meet any reasonable expenses incurred by the member in connection with the business of the State Procurement Board or the committee, as the case may be.

(2) The remuneration payable to a member of the State Procurement Board shall not be reduced during his tenure of office.

20. Directions to State Procurement Board

(1) The President may give general written directions of policy to the State Procurement Board and the Board shall take all necessary steps to comply with them.

(2) If the State Procurement Board has failed to carry out any duty imposed upon it by or under this Act or any other law, the Minister may, in writing, direct the Board to take such action as he considers necessary to rectify the matter within such time as he may specify:

Provided that before doing so, the Minister shall give the Board an opportunity to make any representations it may wish to make in the matter.

(3) If the State Procurement Board fails to take action in accordance with a direction in terms of [subsection \(2\)](#) within the time specified by the Minister, the Minister may take appropriate action on behalf of the Board to rectify the matter.

(4) The State Procurement Board shall report to Parliament the nature and substance of every direction given to it, together with any comments the Board may wish to make thereon, either by means of a special report submitted in terms of [section 21](#) or in its annual report submitted in terms of that section.

(5) The President or the Minister, as the case may be, shall ensure that the substance of any direction given to the State Procurement Board in terms of [subsection \(1\)](#) or [\(2\)](#) is published in the *Gazette* within thirty days after the direction was given.

21. Reports of State Procurement Board

(1) The State Procurement Board -

- (a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report upon matters the Board has dealt with during the previous year; and
- (b) shall submit to the Minister a special report where the procurement cost exceeds one *per centum* of the current year's national budget;
- (c) may at any time submit to the Minister a special report on any matter upon which the Board considers it desirable to report;
- (d) shall submit to the Minister a monthly report specifying the instances in which tenders have been invited and those in which a procurement contract has been concluded.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him -

- (a) the annual report submitted to him in terms of [subsection \(1\) \(a\)](#); and
- (b) any special report submitted to him in terms of [subsection \(1\) \(b\)](#) or [\(c\)](#) which the State Procurement Board has requested be laid before Parliament.

22. Delegation of functions by State Procurement Board

(1) Without derogation from any other law, with the consent of the Minister the State Procurement Board may delegate any of its functions to -

- (a) any of its members; or
- (b) any member of its staff referred to in [section 15](#).

(2) A delegation in terms of [subsection \(1\)](#) -

- (a) may be absolute or conditional and may be withdrawn or amended at any time; and
- (b) shall not prevent the State Procurement Board from itself exercising the function concerned or from amending or rescinding any decision of the delegate in the exercise of that function.

23. Validity of decisions and acts of State Procurement Board

No decision made or act done by or under the authority of the State Procurement Board shall be invalid solely because there were one or more vacancies on the Board when the decision was taken or the act was done or authorized, as the case may be.

PART III

Financial Provisions

24. Funds of State Procurement Board

The funds of the State Procurement Board shall consist of -

- (a) moneys payable to the Board from moneys appropriated for the purpose by Act of Parliament; and
- (b) any other moneys that may vest in or accrue to Board, whether in terms of this Act or otherwise.

25. Investment of moneys not immediately required by State Procurement Board

Moneys not immediately required by the State Procurement Board may be invested in such manner as the Minister, acting on the advice of the Minister responsible for finance, may approve.

26. Financial year of State Procurement Board

The financial year of the State Procurement Board shall be the period of twelve months ending on the 31st December in each year.

27. Accounts of State Procurement Board

(1) The State Procurement Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all its activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the State Procurement Board shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

28. Audit of State Procurement Board's accounts

(1) The accounts of the State Procurement Board shall be audited by the Comptroller and Auditor-General, who for the purpose shall have all the functions conferred on him by [sections 8](#) and [9](#) of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Board were public moneys and the members, employees and agents of the Board were officers as defined in that Act.

(2) Any member, employee or agent of the State Procurement Board who -

- (a) fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him for the purpose of an audit in terms of [subsection \(1\)](#); or
- (b) hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit in terms of [subsection \(1\)](#);

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of No. 22 of 2001.]

(3) Notwithstanding [subsection \(1\)](#), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the State Procurement Board and, if he does so -

- (a) [subsections \(1\)](#) and [\(2\)](#) shall apply in respect of the person so appointed as if he were the Comptroller and Auditor-General; and
- (b) any expenses incurred by the person so appointed in carrying out his audit shall be met from the funds of the State Procurement Board.

29. Internal auditor

[Section 19](#) of the Audit and Exchequer Act [*Chapter 22:03*] shall apply, *mutatis mutandis*, to the appointment of an internal auditor to the State Procurement Board in all respects as if the Board were a department of the Ministry for which the Minister is responsible.

PART IV

Procurement Proceedings

30. Form of procurement proceedings

(1) Except as otherwise provided in this Act, the procurement of -

- (a) goods or construction work by a procuring entity shall be done by means of tendering proceedings in accordance with [section 31](#);
- (b) services by a procuring entity shall be done by a method which complies with [section 32](#).

(2) Where in accordance with this Act a procuring entity adopts a method of procurement other than one specified in [subsection \(1\)](#), the procuring entity shall include in the record of its proceedings a statement of the grounds and circumstances on which it relied to justify the adoption of that method.

31. Tendering proceedings

- (1) Subject to this Act, in any tendering proceedings conducted by a procuring entity -
- (a) the invitation to suppliers to tender shall be published -
 - (i) in the *Gazette*, where the procuring entity is the State; and
 - (ii) in a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the State; and
 - (iii) in a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation, where tenders are invited from suppliers who are not nationals or residents of Zimbabwe;
 - (b) the invitation to suppliers to tender shall contain the following information -
 - (i) the procuring entity's name and address; and
 - (ii) a comprehensive description of the goods to be supplied or, as the case may be, of the construction work to be effected; and
 - (iii) the time within which the goods are to be supplied or, as the case may be, the construction work is to be completed; and
 - (iv) the criteria by which, subject to [section 34](#), suppliers will be evaluated; and
 - (v) the manner in which solicitation documents may be obtained and their price; and
 - (vi) the deadline for the submission of tenders and the place where they are to be submitted; and
 - (vii) such other information as may be prescribed in procurement regulations;
 - (c) an invitation to prequalify shall be published in the manner prescribed in [paragraph \(a\)](#) and shall contain the information referred to in [paragraph \(b\) \(i\) to \(iv\)](#), together with the following information -
 - (i) the manner in which prequalification documents may be obtained and their price; and
 - (ii) the deadline for the submission of prequalification documents and the place where they are to be submitted; and
 - (iii) such other information as may be prescribed in procurement regulations;
 - (d) the price charged for solicitation documents and any prequalification documents shall not exceed the cost of printing them and providing them to suppliers;
 - (e) solicitation documents shall contain comprehensive information as to -
 - (i) the nature, quantity and quality of the goods or construction work required; and
 - (ii) the manner and time in which tenders are to be prepared and submitted; and
 - (iii) the criteria and procedures by which the successful tender will be determined; and
 - (iv) the manner in which the tender price is to be formulated and expressed; and
 - (v) any tender security required; and
 - (vi) the date, time and place for the opening of tenders and the procedure to be followed at such opening; and
 - (vii) any right on the part of the procuring entity to reject all tenders;
 - (viii) such other information as may be prescribed;
 - (f) any modification of a solicitation document shall be communicated without delay to all suppliers who have received the document;
 - (g) any extension of the deadline within which tenders must be submitted shall be communicated without delay to all suppliers who have received solicitation documents;
 - (h) tenders shall be submitted in writing and sealed in an envelope or other container so that they cannot be read before the time fixed for the opening of all tenders;
 - (i) before the time fixed for the opening of all tenders, the procuring entity shall take all necessary steps to ensure that the contents of any tender is not disclosed to any other supplier;
 - (j) any tender that is submitted after the deadline for their submission, or any extension of that deadline, shall not be opened and shall be returned to the supplier concerned;

- (k) if suppliers are required to provide security as a condition of their submitting tenders, the requirement shall apply equally to all suppliers;
- (l) all suppliers that have submitted tenders shall be permitted to witness the opening of the tenders and shall have the right to be informed of the price and other salient terms of each tender opened;
- (m) the procuring entity shall accept whichever valid tender offers the lowest price, unless other criteria are specified in the solicitation documents, in which event those criteria shall be followed;
- (n) no negotiations shall take place between the procuring entity and a supplier with respect to a tender submitted by the supplier;
- (o) if any formalities need to be complied with before a procurement contract is concluded, the successful tenderer shall be given due notice of those formalities.

(2) Subject to [subsection \(1\)](#), a procuring entity shall conduct its tendering proceedings in accordance with procurement regulations or, in regard to any matter that is not prescribed in such regulations or this Act, in accordance with such procedure as the procuring entity may fix:

Provided that any procedure so fixed shall be such as to ensure that all suppliers are treated fairly and impartially and shall be communicated without delay to all suppliers concerned.

32. Procedure for procurement of services

- (1) Subject to this Act, in any proceedings for the procurement of a service by a procuring entity -
 - (a) a notice requesting suppliers to submit proposals for the provision of the service shall be published -
 - (i) in the *Gazette*, where the procuring entity is the State; and
 - (ii) in a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the State; and
 - (iii) in a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation, where proposals are invited from suppliers who are not nationals or residents of Zimbabwe;
 - (b) the notice referred to in [paragraph \(a\)](#) shall contain at least the following information -
 - (i) the procuring entity's name and address; and
 - (ii) a brief description of the service to be procured; and
 - (iii) how to obtain documents giving details of the service to be procured and the manner in which the successful supplier is to be selected;
 - (c) the documents referred to in [paragraph \(b\) \(iii\)](#) shall contain the following information -
 - (i) a comprehensive description of the service to be supplied and, where applicable, the time when it is to be provided; and
 - (ii) the criteria and procedures by which, subject to [section 34](#), the qualifications of suppliers will be evaluated; and
 - (iii) the information or evidence, if any, which suppliers must provide to prove their qualifications; and
 - (iv) the deadline for the submission of proposals and the place where they are to be submitted; and
 - (v) the criteria and procedures by which the successful proposal will be ascertained; and
 - (vi) any right on the part of the procuring entity to reject all proposals received; and
 - (vii) the terms and conditions of the procurement contract, to the extent that they are known to the procuring entity; and
 - (viii) such other information as may be prescribed in procurement regulations;
 - (d) an invitation to prequalify shall be published in the manner prescribed in [paragraph \(a\)](#) and shall contain the information referred to in [paragraph \(c\) \(i\), \(ii\), \(iii\), \(v\) and \(vi\)](#), together with the following information -
 - (i) the manner in which prequalification documents may be obtained and their price; and
 - (ii) the deadline for the submission of prequalification documents and the place where they are to be submitted; and
 - (iii) such other information as may be prescribed in procurement regulations;
 - (e) the price charged for the documents referred to in [paragraphs \(c\) and \(d\)](#) shall not exceed the cost of printing them and providing them to suppliers;

- (f) any extension of the deadline within which proposals must be submitted shall be communicated without delay to all suppliers who have received the documents referred to in [paragraph \(b\) \(iii\)](#);
- (g) any proposal that is submitted after the deadline for their submission, or any extension of that deadline, shall not be considered and shall be returned to the supplier concerned;
- (h) if suppliers are required to provide security as a condition of their submitting proposals, the requirement shall apply equally to all suppliers;
- (i) the procuring entity shall treat all proposals submitted in such a manner as to avoid the disclosure of their contents to competing suppliers;
- (j) the procuring entity shall evaluate all proposals that have been validly submitted in accordance with the procedures and criteria specified in the documents referred to in [paragraph \(b\) \(iii\)](#);
- (k) if any formalities need to be complied with before a procurement contract is concluded, the successful supplier shall be given due notice of those formalities.

(2) Subject to [subsection \(1\)](#), a procuring entity shall conduct all proceedings for the procurement of a service in accordance with procurement regulations or, in regard to any matter that is not prescribed in such regulations or this Act, in accordance with such procedure as the procuring entity may fix:

Provided that any procedure so fixed shall be such as to ensure that all suppliers are treated fairly and impartially and shall be communicated without delay to all suppliers concerned.

33. Procurement regulations

(1) Subject to this Act, the Minister, after consultation with the Minister responsible for finance and the State Procurement Board, may make regulations providing for all matters relating to procurement by procuring entities.

(2) Procurement regulations may provide for -

- (a) methods of procurement that may be adopted by procuring entities instead of or in addition to the methods specified in [section 30](#);
- (b) classes of procurement in which any of the provisions of [sections 31](#) and [32](#) may be dispensed with or applied subject to modification;
- (c) subject to [sections 34](#) and [40](#), the qualifications that suppliers must possess in order to participate in procurement proceedings;
- (d) the procedure to be adopted by procuring entities and suppliers, and the manner in which they shall conduct themselves, in procurement proceedings;
- (e) information to be provided to suppliers in procurement proceedings;
- (f) alterations that suppliers may be permitted to make to their tenders, bids or proposals or to any documents submitted by them in any procurement proceedings;
- (g) the evaluation, comparison and acceptance of tenders, bids or proposals made by suppliers;
- (h) measures to ensure that tenders, bids or proposals submitted by suppliers are not disclosed to other suppliers;
- (i) circumstances in which suppliers may be debarred from participating in, or continuing to participate in, any procurement proceedings;
- (j) fees, deposits and charges payable by suppliers and other persons in respect of procurement proceedings and anything done by the State Procurement Board in terms of this Act;
- (k) the monitoring and supervision by the State Procurement Board of the performance of parties to procurement contracts;
- (l) circumstances in which the provisions of the regulations may be departed from or waived.

(3) Procurement regulations may prescribe requirements by reference to the UNCITRAL Model Law on Procurement of Goods, Construction and Services adopted by the United Nations Commission on International Trade Law at its twenty-sixth session in 1993.

(4) Procurement regulations shall not have effect until they have been published in the *Gazette*.

34. Eligibility of suppliers

(1) Subject to this section, a procuring entity may require suppliers, before they participate in procurement proceedings, to satisfy the procuring entity as to all or any of the following matters -

- (a) that they possess the necessary professional and technical qualifications and competence, financial resources, equipment, facilities, personnel and experience to perform the procurement contract;
- (b) that they have the legal capacity to enter into the procurement contract;
- (c) that they are not insolvent, in liquidation or under judicial management under the law of any country, and that proceedings have not been instituted in any country for their sequestration or winding up or for placing them under judicial management;
- (d) that they have paid all taxes, duties and rates for which they are liable in Zimbabwe, together with any contributions or payments due under the National Social Security Authority Act [*Chapter 17:04*];
- (e) that they are not ineligible to participate in procurement proceedings in terms of [section 41](#);
- (f) that neither they nor, in the case of a body corporate, any of their directors or officers have in the preceding ten years -
 - (i) been convicted in any country of an offence by whatever name called relating to -
 - (A) the conduct of their profession or business; or
 - (B) the making of a false statement as to their qualifications to enter into a procurement contract;
 - or
 - (ii) been disqualified in any country from taking part in procurement proceedings as a result of any conduct referred to in [subparagraph \(i\)](#) A or B.

(2) Subject to this section, a procuring entity may restrict participation in procurement proceedings to persons who are citizens of or ordinarily resident in Zimbabwe:

Provided that a procuring entity shall not impose any such restriction except to the extent that it is authorised to do so by procurement regulations.

(3) Any requirement in terms of [subsection \(1\)](#) or [\(2\)](#) shall -

- (a) apply equally to all suppliers for the procurement contract concerned; and
- (b) be set out in any documents by which tenders, bids or proposals in relation to the procurement contract are sought.

(4) A procuring entity shall impose no criterion or requirement with respect to the qualifications of suppliers other than those provided for in this section, and shall not impose different criteria or requirements for different suppliers.

(5) A procuring entity shall evaluate the qualifications of suppliers according to the criteria or requirements set out in the documents by which tenders, bids or proposals in relation to the procurement contract are sought, and according to no other criteria.

(6) This section shall not be construed as affecting any right a procuring entity may have under procurement regulations to debar a supplier from participating in procurement proceedings on account of any act or omission on the supplier's part in connection with those proceedings.

35. Record of procurement proceedings

(1) A procuring entity shall keep a record of its procurement proceedings, which record shall contain -

- (a) a brief description of the goods, construction work or services sought to be procured; and
- (b) the names and addresses of -
 - (i) suppliers that participated in prequalification proceedings; and
 - (ii) suppliers that submitted tenders, bids or proposals in relation to the procurement contract;
 and information relating to the qualifications, or lack of qualifications, of those suppliers; and
- (c) the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, bid or proposal that was submitted in relation to the procurement contract; and
- (d) the name and address of the supplier with whom the procurement contract was entered into, and the contract price; and
- (e) a summary of the procuring entity's evaluation and comparison of the tenders, bids or proposals that were submitted in relation to the procurement contract; and
- (f) such other information and particulars as may be prescribed in procurement regulations.

(2) Except as may otherwise be provided in procurement regulations, a procuring entity shall, on request, disclose -

- (a) to any person, that part of the record of its procurement proceedings that contains the information referred to in [subsection \(1\) \(a\)](#) and [\(b\)](#); and
- (b) to any supplier who submitted a tender, bid or proposal in the procurement proceedings concerned, that part of the record of the proceedings that contains the information referred to in [subsection \(1\) \(c\)](#) to [\(f\)](#).

36. Public access to regulations, etc.

(1) A procuring entity shall ensure that, whenever it engages in procurement -

- (a) a copy of any procurement regulations which apply to the procurement proceedings; and
- (b) where the regulations referred to in paragraph (a) refer to the UNCITRAL Model Law specified in [section 33 \(3\)](#), a copy of that Model Law; and
- (c) a copy of any direction issued in terms of [section 42](#) and applicable to the procurement proceedings concerned; and
- (d) copies of any other documents regulating the procedure in the procurement proceedings or the qualifications of suppliers therein;

are available for public inspection at all reasonable times during business hours at the offices of the procuring entity.

(2) A procuring entity shall either -

- (a) provide any interested party, for a reasonable charge, with a copy of any document referred to in [subsection \(1\)](#); or
- (b) permit any interested party, at his own expense, to make a copy of any document referred to in [subsection \(1\)](#).

37. Suppliers to permit access to their books and accounts

(1) It shall be a condition of every procurement contract concluded with the State or any statutory body after the date of commencement of this Act that -

- (a) the supplier shall permit the State Procurement Board, or any person authorised in writing by the Board, at all reasonable times to inspect the supplier's books and accounts relating to the contract; and
- (b) if the State Procurement Board so directs, the supplier shall permit the Comptroller and Auditor-General, or a person who is registered as a public auditor under the Public Accountants and Auditors Act [*Chapter 27:12*] and nominated by the Comptroller and Auditor-General, to audit the supplier's accounts relating to the contract.

(2) The cost of any audit referred to in [subsection \(1\) \(b\)](#) shall be met from the funds of the State Procurement Board.

38. Non-liability of procuring entity where all tenders are rejected

Where a procuring entity, before accepting any tender, bid or proposal, rejects all the tenders, bids or proposals that were submitted in any procurement proceedings, the procuring entity shall incur no liability towards the suppliers that submitted those tenders, bids or proposals.

39. Effect of bribery, fraud or collusion by supplier

(1) If a procuring entity is satisfied that a supplier, or any employee or agent of a supplier -

- (a) in contravention of [section 3](#) of the Prevention of Corruption Act [*Chapter 9:16*], has given, agreed to give or offered any consideration to an employee or agent of the procuring entity in connection with any procurement proceedings; or
- (b) has knowingly misrepresented any material fact in a tender, bid or proposal submitted in any procurement proceedings; or
- (c) has entered or attempted to enter into a collusive agreement or arrangement, whether enforceable

or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals are or would be, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned;

the procuring entity shall reject any tender, bid or proposal the supplier may have submitted in connection with those proceedings.

(2) If, after a procurement contract has been concluded with a supplier, it is proved that the supplier, or an employee or agent of the supplier -

- (a) in contravention of [section 3](#) of the Prevention of Corruption Act [*Chapter 9:16*], gave, agreed to give or offered any consideration to an employee or agent of the procuring entity in connection with the preceding procurement proceedings; or
- (b) knowingly misrepresented a material fact in a tender, bid or proposal submitted in the preceding procurement proceedings; or
- (c) entered or attempted to enter into a collusive agreement or arrangement, whether enforceable or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals were or would have been, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned;

the procurement contract shall be void as between the procuring entity and the supplier.

40. Effect of failure to disclose interest by member of State Procurement Board or committee thereof

Without derogation from [section 17 \(4\)](#), if the State Procurement Board or a committee of the Board is conducting procurement proceedings on behalf of a procuring entity and a member of the Board or the committee, as the case may be, contravenes subsection (2) or (3) of that section by -

- (a) failing to disclose any relationship or interest he or a relative of his may have in a supplier in those proceedings; or
- (b) taking part in the consideration or discussion of, or voting on, any question before the Board in proceedings such as are referred to in [paragraph \(a\)](#);

any procurement contract concluded between the procuring entity and the supplier concerned shall be void.

41. State Procurement Board may declare supplier ineligible to be awarded State contract

(1) Subject to this section, if the State Procurement Board is satisfied that -

- (a) any supplier has been convicted of contravening [section 48](#) or any provision of the Prevention of Corruption Act [*Chapter 9:16*] in respect of procurement proceedings in which the State or a statutory body was the procuring entity; or
- (b) any procurement contract between a supplier and the State or a statutory body has been cancelled or otherwise terminated on account of fraud on the part of the supplier;

the State Procurement Board may declare the supplier to be ineligible to participate in procurement proceedings with the State or any statutory body for such period as the Board may specify, which period shall not exceed three years.

(2) Before making a declaration in terms of [subsection \(1\)](#), the State Procurement Board shall notify the supplier concerned that it is contemplating making the declaration and shall ensure that the supplier is given an adequate opportunity to make representations in the matter.

(3) The State Procurement Board shall ensure that all Ministries and departments of the State, all statutory bodies and the supplier concerned are notified without delay of the terms of any declaration the Board has made in terms of [subsection \(1\)](#).

(4) The State Procurement Board, on good cause shown, may at any time amend or revoke a declaration made in terms of [subsection \(1\)](#).

(5) During the period that a declaration in terms of [subsection \(1\)](#) is in effect, no tender, bid or proposal submitted by the supplier concerned in any procurement proceedings conducted by the State or any statutory body shall be considered, and any procurement contract concluded between the supplier and the State or a statutory body shall be void.

42. Directions to procuring entities by State Procurement Board

(1) Subject to this Act, the State Procurement Board may issue written directions to any procuring entity

providing, in relation to any particular procurement proceedings or class thereof, for any of the matters for which procurement regulations may be made.

(2) In the event of any inconsistency between a direction issued in terms of [subsection \(1\)](#) and any provision of procurement regulations, the regulations shall prevail.

(3) A procuring entity shall take all necessary steps to comply with a direction issued to it in terms of [subsection \(1\)](#) and shall inform all suppliers in the procurement proceedings concerned of the terms of the direction.

PART V

Appeals

43. Appeal to Administrative Court

(1) Subject to this section, any person who is aggrieved by a decision of the State Procurement Board or any procuring entity -

- (a) in any procurement proceedings; or
- (b) in terms of [section 41](#);

may appeal against that decision to the Administrative Court.

(2) An appeal in terms of [subsection \(1\)](#) shall be noted by lodging a written notice of appeal with the Registrar of the Administrative Court and the principal officer of the State Procurement Board within twenty days from the date on which the appellant was notified of the decision that is the subject of the appeal.

(3) In an appeal in terms of [subsection \(1\)](#), the Administrative Court may confirm, vary or set aside the decision appealed against or give such other decision as in its opinion the State Procurement Board ought to have given, and may make such order as to costs as it thinks fit.

(4) The Administrative Court Act [*Chapter 7:01*] shall apply in relation to the composition, procedure and powers of the Administrative Court in an appeal in terms of [subsection \(1\)](#).

44. Suspension of procurement proceedings pending appeal

(1) Subject to this section, where an appeal has been noted in terms of section 43 -

- (a) the procurement proceedings concerned shall be suspended for a period of seven days from the date on which the appeal was noted; and
- (b) the operation of the procurement contract concerned shall be suspended for a period of seven days from the date on which the appeal was noted, where the contract entered into force before or during that period.

(2) The noting of an appeal in terms of [section 43](#) shall not have the effect referred to in [subsection \(1\)](#) if -

- (a) the Administrative Court considers that the appeal is frivolous or vexatious or is noted solely to delay the procurement proceedings or the operation of the procurement contract concerned, and directs that the noting of the appeal shall not suspend the proceedings or the operation of the contract, as the case may be; or
- (b) the procuring entity concerned certifies in writing that urgent public interest considerations require the procurement to proceed.

(3) A certificate in terms of [subsection \(2\) \(b\)](#) shall be included in the record of the procurement proceedings concerned kept in terms of [section 35](#).

(4) The period during which procurement proceedings or the operation of a procurement contract are suspended in terms of [subsection \(1\)](#) may be extended by a president of the Administrative Court.

PART VI

General

45. State Procurement Board may require information

Every procuring entity shall provide the State Procurement Board with such information as the Board may in writing require regarding procurement engaged in by the procuring entity.

46. Investigations by State Procurement Board

(1) In this section -

"investigator" means a person appointed in terms of [subsection \(2\)](#) to conduct an investigation under this section.

(2) If the State Procurement Board considers that such an investigation is necessary or desirable for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Board may appoint a person to conduct an investigation into any matter related to the conduct of any procurement proceedings by a procuring entity or the conclusion or operation of any procurement contract.

(3) For the purpose of an investigation in terms of [subsection \(2\)](#), an investigator shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and [sections 9 to 13](#) and [15 to 19](#) of that Act shall apply, *mutatis mutandis*, in relation to an investigation in terms of [subsection \(2\)](#) and to any person summoned to give or giving evidence at that investigation.

(4) In addition to the powers referred to in [subsection \(3\)](#), an investigator may, for the purposes of an investigation in terms of [subsection \(2\)](#) -

- (a) at any time during normal office hours, without previous notice, enter any premises of the procuring entity concerned or of any supplier in the procurement proceedings concerned;
- (b) require any officer, employee or agent of the procuring entity or supplier referred to in [paragraph \(a\)](#) to produce any books, records, accounts or documents;
- (c) search any premises referred to in [paragraph \(a\)](#) for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of any books, records, accounts or documents of the procuring entity or supplier referred to in [paragraph \(a\)](#);
- (e) remove any books, records, accounts or documents of the procuring entity or supplier referred to in [paragraph \(a\)](#), for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:

Provided that the investigator shall give a full receipt for any such books, records, accounts or document so removed;

- (f) require any officer, employee or agent of the procuring entity or supplier referred to in [paragraph \(a\)](#) -
 - (i) to explain any entry in any books, records, accounts or documents;
 - (ii) to provide the investigator with such information concerning the management or activities of the procuring entity or supplier as the supervisor may reasonably require.

(5) The powers of entry and search conferred by [subsection \(4\)](#) shall not be exercised except with the consent of the procuring entity or supplier concerned or of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(6) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his functions under this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of No. 22 of 2001.]

47. Procedure on completion of investigation

(1) On completion of an investigation in terms of [section 46](#) an investigator shall -

- (a) forward a copy of his report thereon to the State Procurement Board; and
- (b) send a summary of his findings and recommendations to the procuring entity and to any supplier whose conduct was the subject of the investigation.

(2) If, after considering an investigator's report sent to it in terms of sub-section (1), the State Procurement Board is satisfied that there has been a contravention of this Act or any other law in relation to any procurement proceedings or procurement contract, the State Procurement Board may take such action as in its opinion is necessary to rectify the contravention, including -

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;

- (c) condonation of the contravention;
- (d) ratification of anything done in relation to the proceedings;
- (e) a declaration in terms of [section 41](#);

and, notwithstanding any other law, the proceedings or contract concerned shall be annulled, cancelled or have effect, as the case may be, accordingly.

(3) Before taking any action in terms of [subsection \(2\)](#) which may adversely affect the rights or property of any person, the State Procurement Board shall afford that person an adequate opportunity to make representations in the matter.

48. Offences relating to procurement

If any supplier, or any person acting or purporting to act on behalf of a supplier -

- (a) knowingly misrepresents any material fact in a tender, bid or proposal submitted in any procurement proceedings; or
- (b) enters or attempts to enter into a collusive agreement or arrangement, whether enforceable or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals are or would be, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned;

he shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by No. 22 of 2001.]

49. Application of Act to BOOT or BOT contracts

(1) In this section -

"BOOT or BOT contract" means a contract or other arrangement under which a person undertakes to construct an item of infrastructure for the State, a local authority or a statutory body in consideration for the right to operate or control it for a specified period, after which period he will transfer or restore ownership or control to the State, the local authority or the statutory body concerned.

(2) The Act shall apply, *mutatis mutandis*, in respect of BOOT or BOT contracts as if they were procurement contracts, and for that purpose -

- (a) every person who enters or offers to enter into such a contract with the State or a local authority or statutory body shall be deemed to be a supplier; and
- (b) the State or a local authority or statutory body shall be deemed to be a procuring entity in regard to any such contract which it enters into or seeks to enter into.

50. Savings

(1) In this section -

"former board" means the Government tender board constituted pursuant to instructions issued by the Treasury under [section 18](#) of the Audit and Exchequer Act [*Chapter 22:03*].

(2) Anything made, done or commenced by the former board which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect shall continue to have or to be capable of acquiring, as the case may be, the same effect as if it had been made, done or commenced, as the case may be, by the State Procurement Board in terms of this Act.

CHAPTER 22:14 PROCUREMENT ACT

INDEX TO SUBSIDIARY LEGISLATION

REGULATION

S.I. 171 of 2002: Procurement Regulations

Sis 171/2002, 22/2004, 56/2006, 190/2006, 255/2006, 75/2007, 135/2007, 173/207, 205/2007, 24/2008,
70A/2008, 93/2008, 119B/2008, 161/2008

ARRANGEMENT OF REGULATIONS

[PART I](#)

Preliminary

- [1.](#) Title.
- [2.](#) Interpretation.
- [3.](#) Exercise of powers and duties by procuring entities in terms of these regulations.

[PART II](#)

Invitation of Tenders

- [4.](#) Supplies required to be tendered for by State Procurement Board.
- [5.](#) Supplies not required to be tendered for by State Procurement Board.
- [6.](#) Informal tender procedure.
- [7.](#) Special-formal tender procedure.
- [8.](#) Formal tender procedure.
- [9.](#) Closing date for tenders.
- [10.](#) Costs of advertising tenders.
- [11.](#) Information to be included in tender documents.

[PART III](#)

Opening of Formal Tenders

- [12.](#) Opening of received tenders.
- [13.](#) Tenders received either open or without tender number.

[PART IV](#)

Comparison of Tender and Preferences

- [14.](#) Procurement committees.
- [15.](#) Tenders to be forwarded to head of procuring entity.
- [16.](#) Documents to be attached to the tenders by the head of procuring entity.
- [17.](#) Rejection of tenders.
- [18.](#) Reasons for accepting specific tenders.
- [19.](#) Evaluating tenders.
- [20.](#) Preference of local contractors and suppliers.
- [21.](#) Board to direct which tender to accept.
- [22.](#) Advising tender results.

[PART V](#)

Procedure When No Tenders are Received

- [23.](#) Procedure when no tenders are received.

[PART VI](#)

Specifications and Samples

- [24.](#) Specifications or samples to be available at advertised centres.
- [25.](#) List of approved tenderers.

PART VII

Contracts, Securities and Deliveries

- [26.](#) Contract not to be varied without approval.
- [27.](#) Tender security.
- [28.](#) Deliveries to be inspected.

PART VIII

General

- [29.](#) Procuring entities not to anticipate tender acceptance.
- [30.](#) Names of prospective tenderers not to be disclosed.
- [31.](#) Standard terms and conditions.
- [32.](#) Unsatisfactory work or conduct by contractors.
- [33.](#) Reference to International Trade Law.
- [34.](#) List of enterprises deemed procuring entities.
- [35.](#) Offences.
- [First Schedule](#) General Conditions of Contract.
- [Second Schedule](#) Public Enterprises.

IT is hereby notified that the Minister, after consultation with the Minister responsible for Finance and Economic Development and the State Procurement Board has, in terms of section 33 of the Procurement Act [Chapter 22:14], made the following regulations -

PART I

Preliminary

1. Title

These regulations may be cited as the Procurement Regulations, 2002.

2. Interpretation

In these regulations -

"Accounting officer" means head of the procuring entity;

"Board" means the State Procurement Board;

"procuring entity" means any -

- (a) Ministry, department or other division of the Government; or
- (b) statutory body other than one specified in terms of section 3 (1) of the Act; or
- (c) local authority or other person declared in terms of section 2 (2) of the Act to be a procuring entity;

on whose behalf the State Procurement Board conducts procurement proceedings;

"procurement contract" means contract between a procuring entity and a supplier which results from procurement proceedings;

"Principal Officer" means the principal officer of the State Procurement Board appointed in terms of section 15 of the Act;

"tender security" means a security provided to the procuring entity to secure the fulfilment of any obligation by the contractor.

3. Exercise of powers and duties by procuring entities in terms of these regulations

Whenever any power is to be exercised or duty is to be performed by a procuring entity in terms of these regulations such power shall be exercised or duty performed -

- (a) in a case of where the procuring entity is a Ministry, department or other division of the Government, the accounting officer for that Ministry, department or division prescribed in terms of the Audit and Exchequer Regulations, 1998, as amended or replaced from time to time;

- (b) in a case of where the procuring entity is a statutory body or local authority, the accounting officer of that entity;

or by an officer to whom such power has been specifically delegated by the accounting officer.

PART II

Invitation of Tenders

4. Supplies required to be tendered for by State Procurement Board

(1) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which exceeds the higher of \$500 000 000 000 000,00 (five hundred trillion), or US\$50 000 or equivalent the State Procurement Board shall invite tenders for such supply in accordance with the procedure for -

(a) formal tenders set out in section 8; or

(b) approved list tenders set out in section 25.

[Subsection amended by S.I. 161 of 2008.]

(2) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which -

(a) exceeds the higher of the following figures -

(i) \$100 000000000 000,00 (one hundred trillion dollars); or

(ii) US\$10000,00 or equivalent;

but

(b) does not exceed the higher of the following figures -

(i) \$500 000 000 000 000 000,00 (five hundred trillion dollars); or

(ii) US\$50 000,00 or equivalent.

[Subsection substituted by S.I. 161 of 2008.]

5. Supplies not required to be tendered for by State Procurement Board

(1) Where a procuring entity requires the supply of goods, construction works or services the value of which equals or is less than the higher of the following figures -

(i) \$100 000 000 000 000,00 (one hundred trillion dollars); or

(ii) US\$10 000 or equivalent;

the procuring entity may dispense with the requirement of seeking tenders if the procuring entity considers that the public interest will not benefit from tender procedure but, in such cases, the procuring entity shall obtain at least 3 competitive quotations from suppliers.

[Subsection amended by S.I. 161 of 2008.]

(2) The purchase of second-hand goods by private treaty or at public auction sales may be authorised by the accounting officer of the procuring entity concerned where the estimated value of the goods does not exceed the higher of the following figures -

(i) \$500 000 000 000 000,00 (five hundred trillion dollars); or

(ii) US\$50 000,00.

[Subsection amended by S.I. 161 of 2008.]

(3) Where a procuring entity considers that it would not be in the public interest to call for tenders for a particular supply of goods, construction works or services in terms of section 4, such supply may, subject to [subsection \(5\)](#), be purchased without calling for tenders.

(4) Before purchasing any supply in terms of [subsection \(3\)](#), a procuring entity shall obtain the approval of -

(a) State Procurement Board, where the estimated value of the supply exceeds the higher of the following figures -

(i) \$500 000 000 000 000,00 (five hundred trillion dollars); or

(ii) US\$50 000,00 or equivalent;
[Subsection amended by S.I. 161 of 2008.]

(b) the chairman of the State Procurement Board in consultation with at least three members of the Board where the estimated value of the supply exceeds the higher of the following figures -

(i) \$100 000000000 000,00 (one hundred trillion dollars); or

(ii) US\$10000,00 or equivalent;

but does not exceed the higher of the following figures -

(i) \$500 000 000 000 000 000,00 (five hundred trillion dollars); or

(ii) US\$50 000,00 or equivalent;

respectively;

and, in any case of a purchase referred to in [subsection \(4\)](#), the procuring entity concerned shall clearly and fully state in writing to the Board or the Chairman, as the case may be, the reasons why it would not be in the public interest to call for tenders for the supply in question.

[Subsection amended by S.I. 161 of 2008.]

(5) Where an approval to procure supplies in terms of [subsection \(4\)](#) is denied, the procuring entity shall follow normal tender procedures.

(6) Issues attended to by the Chairman shall be brought to the attention of the Board at the next Board meeting.

6. Informal tender procedure

(1) Where any supply or service is being arranged in terms of these regulations by informal tender, the procuring entity shall invite tenders or letters of quotations from likely tenderers through newspaper advertisements.

(2) The informal tenders or letters of quotation shall be entered on a comparative schedule prepared by the accounting officer.

(3) The accounting officer shall record his decision on the comparative schedule which shall be retained by the department for audit purposes and a copy shall be transmitted to the Board.

7. Special-formal tender procedure

(1) Special-formal tenders may, subject to prior approval by the Board or, in the case referred to in [subsection \(2\) \(a\)](#), the Chairman, be invited by a procuring entity or by the Principal Officer in accordance with such instructions as may be issued by the Board from time to time.

(2) Special-formal tenders may be invited only in the following cases -

(a) urgent requirements where time does not permit the invitation of tenders by advertisement in the *Government Gazette*:

Provided that the authority of the Chairman has been obtained; and

(b) supplies and services of local interest only; and

(c) requirements of a proprietary nature and where names of likely suppliers are known; and

(d) formal tenders to which there has been no response and where it is necessary to re-invite tenders; and

(e) services which in the opinion of the Board are of specialist nature; and

(f) services which in the opinion of the Board concern national security.

8. Formal tender procedure

(1) In the case of supplies or services subject to formal tender, the Principal Officer shall call for tenders, stating the place and the latest day and time up to which tenders will be received.

(2) All notices of formal tender shall be published by the Principal Officer in the *Government Gazette* and in such national newspapers as the Board may deem expedient.

(3) To enable the Principal Officer to prepare the tender advertisement, the procuring entity shall supply the following details -

- (a) a concise description of the supplies or services required;
- (b) the designation and full postal address of the officer from whom tender documents and further particulars are obtainable;
- (c) the proposed fee payable for the tender documents;
- (d) suggested closing date for receipt of tenders by the Board; and
- (e) the names of newspapers in which it is suggested that the tender should be advertised.

9. Closing date for tenders

(1) Tenders shall, unless otherwise approved by the Board, be made returnable not more than 30 days (including public holidays) after the date of publication of the advertisement:

Provided that in cases of emergency, a shorter period may be authorised by the Chairman.

(2) The closing date advertised in the original notice inviting tenders may be extended whenever it is so desirable but the Board shall be furnished in writing with full reasons for the desired extension.

(3) Any extension of any period by the Chairman or the Board in terms of this section shall not be deemed to authorise any similar future departure on the part of the tenderer from the prescribed or advertised periods.

10. Costs of advertising tenders

Procuring entities shall be responsible for the costs of advertising tenders.

11. Information to be included in tender documents

(1) Tender documents shall be subject to the following conditions or be accompanied by the following information as the case may be -

- (a) the lowest evaluated tender to specification shall be accepted;
- (b) unless special circumstances require a longer or shorter period to be fixed, offers must hold good for 30 working days from the closing date for the receipt of tenders;
- (c) tenders will not be considered unless they comply fully with the specifications;
- (d) tenderers shall be at liberty to tender for one or more items;
- (e) the country of origin and/or manufacture must be stated;
- (f) tenderers must be registered with the Zimbabwe Revenue Authority;
- (g) that tenderers should quote unit prices indicating -
 - (i) foreign currency and local currency components;
 - (ii) total prices with sales tax shown separately;
 - (iii) exchange rates applicable, discounts, premiums or any other charges;
- (h) the profile for would be tenderers;
- (i) the broad evaluation criteria;
- (j) requirements for a bid bond or bid security or guarantee;
- (k) whether or not bidders conference is required;
- (l) certified financial statements;
- (m) all entries to be typed or written in ink.

(2) Not less than three copies of all tender documents shall be submitted by the tenderer and the original shall be clearly marked.

PART III

Opening of Formal Tenders

12. Opening of received tenders

(1) Tenders received shall be opened by the Principal Officer in the presence of the Chairman or such other person delegated by the Chairman and tenderers or their authorised representatives, at the expiry of the time advertised.

(2) Each tender and all priced annexures shall be authenticated with the signature and name of the opening officer and the date of opening.

(3) The Board, tenderer and procuring entity shall each retain an authenticated copy of the tendering documents after opening.

13. Tenders received either open or without tender number

Tenders received either open or without the relative tender number on the cover shall, after the tender reference has been ascertained, be sealed and a note shall be made on the envelope stating -

- (a) the date and time of receipt; and
- (b) the relative tender number; and
- (c) the condition in which the tender was received; and
- (d) the name and signature of the officer concerned.

PART IV

Comparison of Tender and Preferences

14. Procurement committees

(1) There shall be a procurement committee for each procuring entity selected by the accounting officer and headed by him or his delegated representative.

(2) The procurement committee shall be responsible for the procurement of goods and services.

(3) The accounting officer shall advise the Board of the composition of the procurement committee and furnish the Board with their specimen signatures.

15. Tenders to be forwarded to head of procuring entity

(1) All tenders after being opened and listed shall be forwarded to the head of the procuring entity by the Board.

(2) The head of procuring entity shall return the documents to the Principal Officer with such recommendations as he desires to make for the consideration and decision of the Board within 15 working days from the date of receiving such documents.

16. Documents to be attached to the tenders by the head of procuring entity

The head of procuring entity shall attach to the tender documents the following -

- (a) a comparative schedule, in triplicate, of the tenders received, showing prices;
- (b) a summary, in triplicate, of recommendations, showing items, quantities and suppliers' prices;
- (c) a statement as to the sufficiency of any security and guarantees required; and
- (d) a note on any points in respect of which the conditions of tender have not been complied with.

17. Rejection of tenders

When rejecting tenders full reasons for rejecting the tender shall be furnished to the Board.

18. Reasons for accepting specific tenders

The reasons for recommending acceptance of a specific tender shall be stated.

19. Evaluating tenders

(1) In evaluating tenders, the procuring entity shall assess the tenderer's capability to perform the contract satisfactorily.

(2) When a procuring entity evaluates tenderers in terms of [subsection \(1\)](#), it may consider the following factors -

- (a) capability to supply; and
- (b) personnel capabilities; and
- (c) equipment capabilities; and
- (d) financial position; and
- (e) litigation history.

(3) Suppliers in procurement proceedings may be requested to supply information with regard to factors outlined in [subsection \(2\)](#).

20. Preference of local contractors and suppliers

(1) When a comparative schedule of tenders for contracts is being prepared, locally based contractors and suppliers should be allowed a 10 *per centum* preference on purchase price or contract price, over external contractors.

(2) When a comparative schedule of tenders for contracts is being prepared, previously economically disadvantaged contractors should be allowed a 10 *per centum* preference on purchase price or contract price, over other classes of contractors.

21. Board to direct which tender to accept

The Board, after considering the procuring entity's recommendations shall direct which tender is to be accepted.

22. Advising tender results

(1) The procuring entity shall be advised of the Board's decision within 10 working days after sending the recommendations to the Board to enable it to enter into the necessary formal procuring contract with the successful tenderer.

(2) The successful tenderer shall be notified promptly in writing, by the Board of the tender acceptance.

(3) Unsuccessful tenderers shall be advised in writing, of the name of the successful tenderer and the amount of his tender by the Board.

PART V

Procedure When No Tenders are Received

23. Procedure when no tenders are received

When no tenders are received in response to a tender invitation or when no tender can be recommended for acceptance, the procuring entity shall report to the Board whether it recommends -

- (a) postponement of further action for the time being; or
- (b) invitation of fresh formal tender; or
- (c) invitation of special-formal or informal tenders; or

- (d) making the best arrangements for the supply or service without inviting tenders and on receiving the Board's decision, the procuring entity shall act accordingly.

PART VI

Specifications and Samples

24. Specifications or samples to be available at advertised centres

(1) The Board shall supply adequate specifications and/or samples at the centres advertised in the tender notice for inspection by intending tenderers.

(2) Any samples required by the Board in connection with a tender shall be furnished by the tenderer at his own risk and cost.

(3) The procuring entity shall not be obliged to keep or purchase the samples.

(4) Where samples are destroyed or damaged in the process of testing or examination, the Board shall not be responsible.

25. List of approved tenderers

(1) The Board may compile a list of approved tenderers in respect of specific articles and services, which list shall be published in the *Gazette*.

(2) Before framing a list in terms of [subsection \(1\)](#) the Board shall publish a notice in the *Government Gazette* inviting tenderers to submit applications for inclusion on the list.

(3) The Board may add or remove from the list any firm or person whom the Board considers no longer suitable to undertake Government contracts.

(4) The Board may invite all tenderers in the approved list to submit special-formal tenders or informal tenders instead of calling for formal tenders.

(5) All tenders submitted in terms of [subsection \(4\)](#) shall be processed in accordance with these regulations.

PART VII

Contracts, Securities and Deliveries

26. Contract not to be varied without approval

(1) In a contract for a fixed supply or service, the quantity of the supply or the extent of the service shall not be varied without the approval of the Board.

(2) All written contracts shall contain provision for the cost of any stamp duty payable to be met entirely by the contractors.

27. Tender security

(1) When security has to be provided by successful tenderers, it shall be in the form of a guarantee by a bank or approved negotiable securities or otherwise in the form of a cash deposit with the procuring entity.

(2) Any security furnished in terms of the [subsection \(1\)](#) shall represent 10 *per centum* of the value of the contract unless otherwise decided by the Board.

28. Deliveries to be inspected

Deliveries of supplies shall be systematically inspected, sampled and tested by the procuring entity and shall not be accepted unless they comply with the specifications.

PART VIII

General

29. Procuring entities not to anticipate tender acceptance

Procuring entities shall not anticipate the acceptance of tenders and no orders shall be placed until proper authority has been issued.

30. Names of prospective tenderers not to be disclosed

No member of the public shall be furnished with the names of prospective tenderers or persons who have applied for or have taken out tender documents.

31. Standard terms and conditions

(1) In drafting procurement contracts, the procuring entity shall include any of the terms and conditions set out in the First Schedule that may be applicable to the procurement.

(2) Procurement contracts shall be subject to monitoring by the Board.

32. Unsatisfactory work or conduct by contractors

If the Board is satisfied that -

- (a) the execution of a Government contract by a contractor has been unsatisfactory; or
- (b) a contractor has offered any consideration to any officer in the service of Government in relation to procurement proceedings; or
- (c) a contractor has acted in a fraudulent manner or in bad faith in relation to any contract with the Government;

the Board may in a case referred in [paragraph \(a\)](#), or shall, in a case referred to in [paragraph \(b\)](#) or [\(c\)](#), direct that no tender from that person shall be considered for a period of at least five years.

33. Reference to International Trade Law

The State Procurement Board may take into consideration the provisions of the UNCITRAL Model Law on Procurement of Goods and Construction adopted by the United Nations Commission on International Trade Law in 1993. when inviting and adjudicating tenders.

34. List of enterprises deemed procuring entities

For purpose of these regulations, public enterprises listed in the Second Schedule shall constitute procuring entities.

35. Offences

Any person who contravenes any provisions of these regulations shall be guilty of an offence.

First Schedule GENERAL CONDITIONS OF CONTRACT

(Section 31)

1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated -

- (a) "The Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;

- (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations;
- (c) "The Goods" means things of every kind and description, including -
 - (i) raw materials, products and equipment; and
 - (ii) things in solid, liquid or gaseous form; and
 - (iii) electricity; and
 - (iv) immovable property; and
 - (v) services, incidental to the supply of goods, where the value of services does not exceed that of the goods themselves;
- (d) "Services" means ancillary to the supply of the goods such as transportation and insurance;
- (e) "The Purchaser" means the Organisation purchasing the goods;
- (f) "The Supplier" means the Organisation supplying the goods under this Contract.

2. Application

- 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. Country of Origin

- 3.1 For purposes of this clause "origin" means the place where the goods are mined, produced or manufactured.
- 3.2 The origin of goods and services is distinct from the nationality of the Supplier.

4. Standards

- 4.1 The goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

5. Patent Rights

The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the goods or any part thereof in the Purchaser's country.

6. Performance Security

- 6.1 Within fourteen (14) days after the supplier's receipt of notification of award of the contract, the Supplier shall furnish performance security to the Purchaser in the amount specified in the Special Conditions of Contract and in the form specified in Section X.
- 6.2 The Performance Security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Purchaser, and shall be in the form of a bank guaranteed or irrevocable Letter of Credit, issued by a bank located in the Purchaser's country or abroad acceptable to the Purchaser, and in the form provided in the Bidding Documents or another form acceptable to the Purchaser.
- 6.3 The Performance Security will be discharged by the Purchaser and returned to the Supplier not later than ninety (90) days following the date of arrival of final instalment of goods at the discharge port/point.

7. Inspections and Tests

- 7.1 The Purchaser or its representative shall, at its own expense, have the right to inspect and/or to test the goods to confirm their conformity to the Contract. The Special Conditions of Contract and/or the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes within 21 days after award of Contract.
- 7.2 The Purchaser's right to inspect, test and, where necessary, reject the goods after the goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the goods' shipment from the country of origin.

8. Packing

- 8.1 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to Clause 15, in any subsequent instructions, issued by the Purchaser.

9. Delivery and Transfer of risk

- 9.1 Delivery of the goods shall be made by the Supplier in accordance with the terms specified by the

Purchaser in its Schedule of Requirements and the Special Conditions of Contract.

- 9.2 For purposes of the Contract, "FOB", "CFR", "OF" and other trade terms used to describe the obligations of the parties have the meanings assigned to them by the current edition of the International Rules for the Interpretation of the Trade Terms (INCOTERMS) published by the International Chamber of Commerce (ICC), Paris.

10. Insurance

- 10.1 The goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the Special Conditions of Contract.
- 10.2 Where delivery of the goods is required by the Purchaser on a CIF basis, the Supplier shall arrange and pay for marine insurance, naming the Purchaser as the beneficiary. Where delivery is on an FOB or CFR basis, marine insurance shall be the responsibility of the Purchaser.

11. Transportation

- 11.1 Where the Supplier is required under the Contract to deliver the goods FOB, transport of the goods, up to and including the point of putting the goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 11.2 Where the Supplier is required under the Contract to deliver the goods CFR or CIF, or to a specified destination within the Purchaser's country, transport of the goods to the port of discharge or such other point in the country of destination as shall be specified in the Contract shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 11.3 Where the Supplier is required to effect delivery under any other terms, the Supplier shall be required to meet all transport and storage expenses until delivery.
- 11.4 In all of the above cases, transportation of the goods after delivery, shall be the responsibility of the Purchaser.
- 11.5 Where the Supplier is required under the Contract to deliver the goods CIF or CFR, no further restriction shall be placed on the choice of the ocean carrier. Where the Supplier is required under the Contract -
- (i) to deliver the goods FOB, and
 - (ii) to arrange on behalf and at the expense of the Purchaser for ocean transportation on specified conference vessels or on national flag carriers of the Purchaser's country, the Supplier may arrange for such transportation on alternative carriers if the specified conference vessels or national flag carriers are not available to transport the goods within the time period(s) specified in the Contract.

12. Warranty

- 12.1 The Supplier warrants that all the goods supplied under the Contract shall fully comply with the specifications laid down in the Contract.
- 12.2 The warranty shall remain valid for ninety (90) days after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the Contract.
- 12.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 12.4 Upon receipt of such notice, the Supplier shall, with all reasonable speed, replace the defective goods without costs to the Purchaser. The Supplier will be entitled to remove, at his own risk and cost, the defective goods.
- 12.5 If the Supplier, having been notified, fails to take remedial action within forty-five (45) days from [the] date of receipt of notice, the Purchaser may proceed to take such action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

13. Payment

- 13.1 The method and conditions of payment to be made to the Supplier under the Contract shall be specified in the Special Conditions of Contract.
- 13.2 Payment will be made in the currency or currencies in which the Contract price has been stated in the Supplier's bid.

14. Prices

- 14.1 Prices charged by the Supplier for goods delivered under the Contract shall not vary from the prices quoted by the Supplier in its bid.

15. Change Orders

- 15.1 Where the Purchaser desires to make changes in the Contract terms such as -

- (a) schedule of deliveries;
- (b) place of delivery;
- (c) product/packing specifications;
- (d) or any other item;

he shall notify the Supplier in writing as soon as possible. The Supplier shall assert his claims for adjustment of price/time schedule within thirty (30) days of receipt of the above notice, and an equitable adjustment shall be made by agreement between the Purchaser and Supplier, and the Contract accordingly amended.

16. Contract Amendments

- 16.1 Subject to Clause 15.1, no variation in or modification of the terms of the Contract shall be made, except by written amendment signed by the parties.

17. Assignment

- 17.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

18. Delays in the Supplier's Performance

- 18.1 Delivery of the goods shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in the Contract.
- 18.2 An unexcused delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to any or all of the following sanctions: forfeiture of its performance security, imposition of liquidated damages, and/or termination of the Contract for default.
- 18.3 If at any time during performance of the Contract, the Supplier should encounter conditions impeding timely delivery of the goods, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance, in which case, the extension shall be ratified by the parties by amendment of the Contract.

19. Liquidated Damages

Subject to Clause 21, if the Supplier fails to deliver any or all of the goods within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% of the contract price of the delayed goods for each week of delay until actual delivery, up to a maximum deduction of 10 per cent, of the delayed goods Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract.

20. Termination for Default

- 20.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part -
- (a) if the Supplier fails to deliver any or all of the goods within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser pursuant to Clause 18; or
 - (b) if the Supplier fails to perform any other obligation(s) under the Contract.
- 20.2 In the event the Purchaser terminates the Contract in whole or in part [?] to paragraph 20.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar goods. However, the Supplier shall continue performance of the Contract to the extent not terminated.

21. Force Majeure

- 21.1 For purposes of this Contract, Force Majeure means an event beyond the control of the parties to the Contract and not involving either party's fault or negligence and not foreseeable.
- 21.2 If, at any time during the existence of the Contract, either party is unable to perform in whole or part of any obligation under this Contract because of such events which include, but are not restricted to, acts of God, acts of Government in its sovereign capacity, war, revolutions, hostility, civil commotions, strikes, fires, floods, epidemics, quarantine restrictions, freight embargoes, explosions, then the date of fulfilment of Contract shall be postponed during the period when such circumstances are operative.
- 21.3 The party which is unable to perform its obligations under the present Contract shall, within fifteen (15) days of occurrence of the Force Majeure event, inform the other party with suitable documentary evidence. Non-availability of raw materials from regular sources shall not be an excuse for the Supplier for not performing its obligations under this clause.
- 21.4 Any waiver/extension of time in respect of the delivery/acceptance of any instalment or part of the goods shall not be deemed to be a waiver/extension of time in respect of the remaining deliveries.

- 21.5 if such inability to perform continues for a period of more than three (3) months, each party shall have the right to be released from further performance of the Contract, in which case, neither party shall have the right to claim damages from the other. All prior performance shall be subject to Contract terms.
- 21.6 Notwithstanding the provisions of Clauses 18, 19, and 20, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of Force Majeure.

22. Termination f or Insolvency

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, without compensation to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

23. Resolution of Disputes

- 23.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 23.2 If, after thirty (30) days from the commencement of such informal negotiations, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the Special Conditions of Contract.

24. Governing Language

The Contract shall be written in the language of the bid, as specified by the Purchaser in the Instructions to Bidders. Subject to Clause 25, that language version of the Contract shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in that same language.

25. Applicable Law

The Contract shall be interpreted in accordance with the laws of the Purchaser's country.

26. Notices

- 26.1 Any notice given by-one party to the other pursuant to the Contract shall be sent in writing or by telegram or telex/cable and confirmed in writing to the address specified for that purpose in the Special Conditions of Contract.
- 26.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

27. Taxes and Duties

A foreign Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

SPECIAL CONDITIONS OF CONTRACT

Table of Clauses

<i>Item number</i>	<i>Topic</i>
1.	-
2.	Definitions (Clause 1)
3.	Country of Origin (Clause 3)
4.	Performance Security (Clause 5)
5.	Inspection and Tests (Clause 6)
6.	Delivery and Documents (Clause 8)
7.	Insurance (Clause 9)
8.	Payment (Clause 12)
9.	Resolution of Disputes (Clause 22)
10.	Notices (Clause 25)

1. -

The following Special Conditions of Contract shall supplement the General Conditions of the Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the General Conditions is indicated in parentheses.

2. Definitions (Clause 1) -

2.1 -

- (a) The Purchaser is (Name of Purchaser);

(b) The Supplier is (Name of Supplier).

3. Country of Origin (Clause 3) -

Any country from which the goods are mined, produced or manufactured.

4. Performance Security (Clause 5) -

4.1 The Performance Security will be as follows -

- (i) where the Contract value is US\$10 million (or equivalent) or less - 10 per cent of the contract value;
- (ii) where the Contract value exceeds US\$10 million (or equivalent) US\$1 million (or equivalent) or 5 per cent of the Contract value, whichever is greater.

4.2 The validity of Performance Security shall be for ninety (90) days after the scheduled arrival of the final instalment of goods at the discharge port/point. The Supplier shall promptly extend the validity suitably to cover agreed extensions of the Contract and delivery schedule.

5. Inspection and Tests (Clause 6) -

5.1 The Supplier shall notify the Purchaser or his representative in writing or by telex, at least ten (10) days prior to availability of goods for inspection prior to each shipment.

5.2 Notwithstanding anything stated elsewhere, the Purchaser or his representative have the right to conduct the inspection and tests on the premises of the Supplier/Producer or elsewhere at any stage during production and thereafter prior to the transportation and placement of the goods on the vessel. The Supplier shall provide all reasonable facilities for the conduct of such inspection and tests at no additional cost to the Purchaser.

5.3 Inspection and analysis shall be made in any case before loading, and the goods shall not be shipped, unless a satisfactory inspection report is obtained by the Supplier from the Purchaser or his representative.

5.4 Should any inspected or tested goods fail to conform to the specifications specified in the Contract, the Purchaser or his representative may reject them, and this decision shall be binding on the Supplier, who will replace the goods to meet contractual specifications with no cost to the Purchaser.

5.5 Where the Supplier contests the validity of the rejection (of product or packing) by the Purchaser or his representative, a sample drawn jointly by the Supplier and Purchaser or his representative and authenticated by both, shall be forwarded for umpire analysis to an independent agency mutually agreed by the Purchaser and Supplier. The umpire's finding, which shall be promptly obtained, shall be final and binding on both parties. The cost of umpire analysis shall be borne by the losing party.

5.6 The following inspection procedures and tests are required by the Purchaser -

6. Delivery and Documents (Clause 8) -

6.1 Immediately on sailing of a vessel, the Supplier shall advise the Purchaser (and wherever necessary, the insurance Company) by telex or cable of the following details -

- (i) Name of vessel;
- (ii) Contract number;
- (iii) Date and time of sailing from load port;
- (iv) Quantity of goods on board;
- (v) (Approximate) value of goods;
- (vi) Bills of lading numbers;
- (vii) Expected time of arrival at port of discharge.

6.2 The Supplier shall also dispatch to the Purchaser one set of the following documents by first class airmail or courier service and another set through the Master of the vessel -

- (i) one negotiable copy of clean bill of lading showing consignee by name;
- (ii) two copies of commercial invoice;
- (iii) certificate of origin;
- (iv) certificate of inspection by purchaser's inspection agency prior to shipment.

6.3 For purposes of payment for the goods shipped, the Supplier shall present to the bank, at which the Letter of Credit has been established, the following documents -

- (i) one negotiable copy of the clean bill of lading with non-negotiable copies (marked freight prepaid in CFR and CIF Contracts);
- (ii) certified commercial invoice with copies;
- (iii) original copy of the Certificate of origin with copies;
- (iv) original copy of the Certificate of inspection furnished to Suppliers by Purchaser's Inspection Agency with ... copies;
- (v) original copy of the Certificate of weight issued by the port authority/licensed authority with copies;
- (vi) Original copy of Manufacturer's warranty of analysis with copies;
- (vii) Insurance Certificate (where applicable CIF Contracts);
- (viii) Stowage plan in copies;
- (ix) Copy of telex/cable sent to Purchaser by Supplier on sailing of vessel;

one identical set of the above documents (as copies) shall be mailed by the Supplier to the Purchaser immediately after presentation to the above-mentioned bank for payment.

7. Insurance (Clause 9) -

7.1 The marine insurance shall be in an amount equal to 110 percent of the CIF value of the goods from "warehouse to warehouse" on an "All Risks" basis, including War Risks and Strike clauses.

8. Payment (Clause 12) -

One hundred (100) per cent of the Contract price of the goods delivered shall be paid through an irrevocable Letter of Credit established in favour of the Supplier in a bank of his choice on submission of the documents specified in Clause 6.3 above. The Letter of Credit shall be opened immediately after signing of the Contract, and shall be valid to cover the scheduled shipments and shall permit partial payments.

9. Resolution of Disputes (Clause 22) -

The dispute resolution mechanism to be applied pursuant to Clause 22 of the General Conditions shall be as follows -

- (a) in the case of a dispute between the Purchaser and a supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country; and
- (b) in the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.

10. Notices (Clause 25) -

For the purpose of all notices, the following shall be the address of the Purchaser and Supplier.

Purchaser (Mailing Address/Telex/Cable No.)

Supplier (To be filled in at the time of Contract signature.)

(Mailing Address/Telex/Cable No.)

Second Schedule PUBLIC ENTERPRISES

(Section 34)

1. Agribank
2. Agricultural & Rural Development Corporation (ARE)A
3. Air Zimbabwe
4. Broadcasting Authority of Zimbabwe
5. Central Mechanical Equipment Department
6. Cold Storage Company (CSC)
7. District Development Fund

8. Electoral Supervisory Commission
9. Export Processing Zone
10. Forestry Commission
11. Grain Marketing Board (GMB)
12. Industry and Trade Competition Commission
13. Medicines Control Authority of Zimbabwe
14. Minerals Marketing Corporation of Zimbabwe
15. National AIDS Council of Zimbabwe
16. National Archives of Zimbabwe
17. National Arts Council of Zimbabwe
18. National Blood Transfusion Services
19. National Gallery of Zimbabwe
20. National Investment Trust (NIT)
21. National Library and Documentation Service
22. National Museums and Monuments
23. National Oil Company of Zimbabwe (Noczim)
24. National Parks and Wildlife Management Authority
25. National Railways of Zimbabwe (NRZ)
26. National Social Security Authority (NSSA)
27. NATPHARM
28. Net*One
29. Peoples' Own Savings Bank (POSB)
30. POTRAZ (Post and Telecommunication Regulation Authority of Zimbabwe)
31. Privatisation Agency of Zimbabwe
32. Research Council of Zimbabwe
33. Reserve Bank of Zimbabwe (RBZ)
34. Roasting Plant - Kwekwe
35. Rural Electrification Agency
36. SIDRC
37. Small Enterprises Development Corporation
38. Sports and Recreation Commission
39. State Hospitals
40. State Lotteries
41. State Procurement Board
42. State Roads Fund
43. State Universities and Colleges
44. Tel*One
45. The Pig Industry Board (PIB)
46. Tobacco Growers Trust
47. Tobacco Marketing Board (TMB)
48. Tobacco Research Board (TRB)
49. Urban Development Corporation (UDCORP)
50. Zimbabwe Broadcasting Corporation (ZBC)

51. Zimbabwe Defence Industry (ZDI)
52. Industrial Development Corporation (IDC)
53. Zimbabwe Electricity Supply Authority (ZESA)
54. Zimbabwe Industrial Development Corporation
55. Zimbabwe Institute of Public Administration & Management (ZIPAM)
56. Zimbabwe Investment Centre (ZIC)
57. Zimbabwe Iron and Steel Company (ZISCO)
58. Zimbabwe Manpower Development Fund
59. Zimbabwe Mining Development Corporation
60. Zimbabwe National Planning Council
61. Zimbabwe National Water Authority (ZINWA)
62. Zimbabwe Revenue Authority
63. Zimbabwe Tourist Development Corporation
64. Zimbabwe United Passenger Company (ZUPCO)
65. Zimpost
66. Zimbabwe Schools Examination Council (Zimsec)
67. Zimtrade